

IN THE CRIMINAL DISTRICT COURT NO. 7 OF DALLAS COUNTY, TEXAS
AND
THE COURT OF CRIMINAL APPEALS OF TEXAS

EX PARTE
JAMES GARFIELD BROADNAX,

Applicant,

Writ No. _____
Writ No. WR-81,573-01
Writ No. WR-81,573-02
Writ No. WR-81,573-03
Trial No. F08-24667-Y

CAPITAL CASE

**THIRD SUBSEQUENT APPLICATION
FOR POST-CONVICTION WRIT OF HABEAS CORPUS
PURSUANT TO TEX. CODE CRIM. PROC. ART. 11.071**

This is a capital case.

Mr. Broadnax is scheduled to be executed Thursday, April 30, 2026.

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INTRODUCTION

Applicant James Garfield Broadnax is scheduled to be executed on April 30, 2026 for shooting two men in Garland, Texas in June 2008 during a robbery. But he did not shoot those two men. Someone else did.

On March 11, 2026, Demarius Cummings, Mr. Broadnax's co-defendant and cousin, signed a Declaration admitting that he—not Mr. Broadnax—shot and killed both victims.¹ Ex. A, Cummings Decl. Under penalty of perjury, Mr. Cummings states:

It was my idea to rob Mr. Swan and Mr. Butler, and I obtained the pistol we took with us that evening and which was used to shoot the victims. Following the crime, James and I spoke about the story we would tell. . . . ***I persuaded James to take the blame for shooting the two victims.*** Later, we both gave statements to the media. In James's statements, he said that he had participated in the robberies and shot the two victims, while in my statements, I said that while I had participated in the robberies, James had shot the two victims. These statements were not accurate. ***In fact, I was the one who shot the two victims, not James.***

Id. ¶¶ 3–5 (emphases added). Mr. Cummings further explains why he chose to come clean only now, and not before:

I have always maintained that James was the one who shot Mr. Swan and Mr. Butler. But the fact that James received a death sentence for these crimes, while I was the one who shot the victims, has been weighing on my conscience, particularly as I have become more spiritual during my years in prison. When [Mr. Broadnax's counsel] told me on February 20 that James was scheduled to be executed on April 30, 2026, I decided it was time to come clean.

Id. ¶¶ 6–7.

¹ Mr. Cummings was tried separately from Mr. Broadnax, and was found guilty of capital murder. The State did not seek a death sentence against him, and he received a sentence of life without parole.

This new evidence fundamentally undermines the State's case for Mr. Broadnax's conviction and death sentence, and as we set forth in more detail below, establishes multiple constitutional violations entitling Mr. Broadnax to review and relief under all three gateways of Texas Code of Criminal Procedure, Article 11.071 § 5(a). At Mr. Broadnax's trial, the only direct evidence that the State had about him being the shooter was Mr. Broadnax's media statements identifying himself as the shooter. Those statements were inherently unreliable given Mr. Broadnax's drug-induced state at the time of the offense and the severe psychological distress he was experiencing when he gave those media statements—but now they have been proven to be entirely false by Mr. Cummings's Declaration. *Id.* ¶¶ 4–5 (“I persuaded James to take the blame for shooting the two victims. Later, we both gave statements to the media. In James's statements, he said that he had participated in the robberies and shot the two victims. . . . These statements were not accurate. In fact, I was the one who shot the two victims, not James.”). No other direct evidence was put on at Mr. Broadnax's trial regarding the identity of the shooter; that evidence has only come into existence now through Mr. Cummings's Declaration. The other evidence at Mr. Broadnax's trial, including DNA evidence presented by the State, corroborates the account Mr. Cummings now gives in his Declaration: the only DNA evidence found on the murder weapon and in the pockets of one of the victims' body belonged to Mr. Cummings, not Mr. Broadnax. State Ex. 391.

The State’s punishment case against Mr. Broadnax likewise relied on the act and method of killing to portray Mr. Broadnax as bloodthirsty and prone to violence, when, in reality, he was a 19-year-old with no violent criminal record. By emphasizing the manner in which the victims were repeatedly shot, the State told the jury that they should ignore the powerful mitigation evidence that Mr. Broadnax put on about his character and history, because “everything you need to know about this defendant, his proclivity towards violence, his ambitions and his desire to engage in violence, speaks to you from just what he did on that night when he executed these two men.” 53 RR 16.² Based on the false theory that Mr. Broadnax was the shooter, the State further resorted to racially insinuating inferences, prejudicial use of rap lyrics composed by Mr. Broadnax, as well as misleading testimony about the “characteristics” of “a psychopath” to argue that he was a dangerous person beyond redemption. *See id.* at 65–66, 75–80.

Neither Mr. Broadnax’s conviction for capital murder nor his death sentence would have occurred had the jury known that Mr. Cummings, and not Mr. Broadnax, shot the two victims. Accordingly, Mr. Broadnax seeks relief from his conviction and death sentence in this successor petition on the following constitutional grounds. *First*, Mr. Cummings’s Declaration makes clear that Mr. Broadnax’s conviction and death sentence were secured by false and misleading evidence, entitling him to relief under the Eighth and Fourteenth Amendments “regardless of whether [the State used false evidence] knowingly or unknowingly.” *Ex parte Chavez*, 371 S.W.3d 200,

² “[vol.] RR [page]” refers to the Reporter’s Record of the trial transcript.

207–08 (Tex. Crim. App. 2012). *Second*, in light of the new evidence establishing that Mr. Broadnax was not the killer, no rational juror could have found beyond a reasonable doubt that Mr. Broadnax “cause[d] the death” of the victims “by shooting [the victims] with a firearm.” 47 RR 182–83. Mr. Broadnax was not charged under the law of the parties (and there is substantial doubt as to whether he could have been), and he is thus entitled to relief from his conviction under *State v. Wilson*, 324 S.W.3d 595 (Tex. Crim. App. 2010) and related cases. *Third*, the new evidence establishes that Mr. Broadnax is actually innocent of the death penalty because no rational juror could have found him eligible for death under the required elements of Texas Code of Criminal Procedure, Article 37.071 §§ 2(b)(1) and 2(b)(2), especially because the State’s entire proof of future dangerousness during the punishment phase of trial relied upon the fact and method of killing—which Mr. Broadnax did not actually commit. *Fourth*, under the Eighth Amendment, the death penalty is disproportionate and unconstitutional for a defendant who did not commit the actual killing unless he is found, despite not having committed the killing, to have the requisite culpable mental state of “reckless indifference to human life.” *Tison v. Arizona*, 481 U.S. 137, 158 (1987). That cannot be satisfied here on the complete record showing that Mr. Broadnax was not the shooter.

All of these claims entitle Mr. Broadnax to relief—or, at least, a remand for further factual development, before Mr. Broadnax is put to death for something he did not actually do.

Mr. Broadnax is also entitled to relief based upon additional evidence that was unavailable at the time of his previous habeas petitions. Mr. Broadnax was a 20-year-old Black man when he was convicted and sentenced to death in August 2009 for the murder of two White victims, by a nearly all-White jury in Dallas County. The racial makeup of the jury was no coincidence—the Dallas County District Attorney’s Office systematically excluded all qualified Black jurors at *voir dire* using practices that blatantly violated Mr. Broadnax’s constitutional rights under *Batson v. Kentucky*, 476 U.S. 79 (1986), as part of an improper race-based strategy that permeated Mr. Broadnax’s entire trial. The State’s discriminatory practices and intent are confirmed not only by its disparate questioning and treatment of the prospective jurors, clearly established in the record of *voir dire*, but also by files from the Dallas County District Attorney’s Office that prosecuted Mr. Broadnax’s and his co-defendant’s trials—including files that were first disclosed to Mr. Broadnax after his previous habeas applications. Under the jurisprudence of both the Supreme Court of the United States and this Court, Mr. Broadnax’s conviction and capital sentence, secured by serious violations of his constitutional rights to equal protection and due process, should be reversed and vacated.

Mr. Broadnax has been asserting that his conviction and sentence were obtained in violation of his rights under *Batson* since the time of his trial in 2009, and he respectfully submits that relief is now proper and urgently due from this Court in light of the new evidence confirming those violations that was previously unavailable to him. At trial, on direct appeal, and in his initial state habeas application,

Mr. Broadnax pointed out the *Batson* violations at his trial based on the record of the *voir dire* proceedings, but was denied relief. After initial state habeas proceedings had concluded, and while Mr. Broadnax's federal habeas petition was pending, the State disclosed to Mr. Broadnax's counsel for the first time an initial set of files that showed the prosecution at trial (i) listed and tracked all prospective jurors by race on a spreadsheet, (ii) singled out and bolded each Black prospective juror's names on the spreadsheet, and (iii) wrote on the jury questionnaire of one qualified Black juror that the "only concern" with this Black juror was regarding his race. See First Subsequent Habeas Corpus Application ("First Subsequent Appl.") at 8–44, Exs. A & B, *Ex parte Broadnax*, No. WR-81,573-01 (Feb. 8, 2023). Mr. Broadnax timely filed his first subsequent state habeas application on the basis of this initial set of newly disclosed evidence, *id.*, but the State argued that the spreadsheet was not created for jury selection, and instead was used to prepare for the *Batson* hearing before the trial court, see Mot. to Dismiss First Subsequent Appl. at 25–27. Although Mr. Broadnax contended that this was not correct, this Court again denied relief. *Ex parte Broadnax*, No. WR-81,573-02, 2023 WL 3855947 (Tex. Crim. App. June 7, 2023).

Now, additional evidence that had been previously unavailable at the time of all of Mr. Broadnax's previous state habeas applications (including a second subsequent habeas application based on non-*Batson* grounds) has been newly disclosed. After Mr. Broadnax filed his second subsequent habeas application, the State disclosed, for the first time, certain jury selection files from Mr. Cummings's related trial, which the State previously had withheld from Mr. Broadnax as work

product. Mr. Cummings’s case was tried by substantially the same team of attorneys from the Dallas County District Attorney’s office that prosecuted Mr. Broadnax, and among the files was a jury selection chart, prepared for and used by the State during Mr. Cummings’s trial, which marked each prospective juror’s race and gender by hand. Ex. C, reproduced *infra* at 54.³

This chart from Mr. Cummings’s trial is significant new evidence supporting Mr. Broadnax’s *Batson* claim for at least two reasons. *First*, the chart is strikingly similar to the spreadsheet from the jury selection proceedings at Mr. Broadnax’s trial, and both serve the clear and unmistakable purpose of marking and tracking prospective jurors by race. This directly confirms that the State was consciously focused on race during both Mr. Cummings’s and Mr. Broadnax’s trials—where two young Black males were accused in the murders of two White victims—and that the State was engaged in a systematic practice of selecting juror members based on race, exactly what is prohibited under the *Batson* line of cases. *Second*, the fact that the same prosecution team prepared a similar chart in Mr. Cummings’s jury selection proceedings directly refutes the State’s contentions that the spreadsheet created for Mr. Broadnax’s trial was not used to select the jury, but in preparation for a post-jury-selection hearing about *Batson* motions. However, there was no *Batson* motion or hearing at Mr. Cummings’s trial, so the chart in Mr. Cummings’s case could not

³ As further explained below, by the time the State disclosed the jury selection files from Mr. Cummings’s trial in January 2025—which until then had been unavailable for Mr. Broadnax’s counsel’s review—this Court had already denied Mr. Broadnax’s first subsequent state habeas application on *Batson* grounds. Mr. Broadnax filed a suggestion for reconsideration of that decision on June 3, 2025. By docket order dated November 6, 2025, this Court denied the suggestion for reconsideration. On February 4, 2026, Mr. Broadnax filed a petition for a writ of certiorari with the U.S. Supreme Court from the denial of reconsideration by this Court.

have been prepared for any *Batson* motion or hearing. The fact that the State prepared such documents, purposefully and on its own account in both Mr. Broadnax’s and Mr. Cummings’s cases, can only be explained by *a conscious practice by the State* to select prospective jurors based on race. Such “persistent focus on race in the prosecution’s file” “plainly belie[s] the State’s claim that it exercised its strikes in a color-blind manner” in Mr. Broadnax’s trial. *Foster v. Chatman*, 578 U.S. 488, 512–13 (2016).

In addition, three of the qualified Black jurors struck by the State during jury selection at Mr. Broadnax’s trial have now come forward and declared under penalty of perjury that they (i) were in favor of the death penalty, (ii) would have properly applied the law had they been selected to serve on the jury, and (iii) had made these facts clear to the government during jury selection. Their declarations further corroborate Mr. Broadnax’s argument that the State’s proffered reasons for striking these qualified Black jurors were pretextual. Ex. D, Long Decl. ¶¶ V–X; Ex. E, Morrison Decl. ¶¶ VII–XI; Ex. F, Riser Decl. ¶¶ VI–X. One of the qualified jurors that provided a declaration was Mr. Curtis Riser, who was struck from the venire pool after a prosecutor wrote on his jury questionnaire “Seems okay . . . Only concern . . . [Defendant]’s age + race w/ Juror’s son age + race, as mentioned.” *Compare* Ex. F *with* First Subsequent Appl. at Ex. B. These three qualified Black jurors also expressed concern in their declarations upon learning that the State had used a spreadsheet to track all prospective jurors by race, as well as the fact that they themselves—along with other qualified Black jurors whom the State peremptorily

struck, and *only* such qualified Black jurors—were singled out on the State’s list. Ex. D ¶¶ XI–XIII; Ex. E ¶¶ XII–XIV; Ex. F ¶¶ XVI–XVII. These struck jurors’ declarations underscore that the prosecutors’ strikes during jury selection not only deprived Mr. Broadnax of his right to a fair trial, but also denied these prospective jurors’ rights to fairly participate in the administration of justice in their community.

* * *

Mr. Broadnax has spent nearly half of his life on death row as a result of a trial fundamentally premised on a lie, and further plagued by improper racial insinuations and constitutional errors. He now faces imminent execution on April 30, 2026 by order of the trial court. It would be a profound affront to the due process, fundamental fairness, and equal protection rights held so dear in this country if Mr. Broadnax was executed without any court having investigated the compelling new evidence from his co-defendant, who now swears that Mr. Broadnax was *not* the killer and falsely confessed only to take the blame for his cousin, and without any court having assessed the totality of the evidence of the *Batson* violations that occurred at Mr. Broadnax’s trial. This Court should expeditiously review this application and either grant relief, or authorize further proceedings on Mr. Broadnax’s claims.

STATEMENT REGARDING CONFINEMENT AND SENTENCE

Mr. Broadnax was confined and sentenced to death pursuant to a judgment entered by the 7th Judicial District Court of Dallas County on August 21, 2009. He is currently illegally confined and restrained of his liberty by the State of Texas on death row at the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, in Livingston, Texas. Mr. Broadnax faces

imminent execution on April 30, 2026 by order of the trial court dated December 17, 2025.

PROCEDURAL HISTORY

In August 2009, a Dallas County jury found Mr. Broadnax guilty of capital murder and sentenced him to death. This Court affirmed Mr. Broadnax's conviction and sentence on direct appeal on December 14, 2011. *Broadnax v. State*, No. AP-76,207, 2011 WL 6225399 (Tex. Crim. App. Dec. 14, 2011), *cert. denied*, 568 U.S. 828 (2012). This Court also dismissed Mr. Broadnax's state habeas corpus petition on May 20, 2015. *Ex parte Broadnax*, No. WR-81,573-01, 2015 WL 2452758 (Tex. Crim. App. May 20, 2015), *cert. denied*, 577 U.S. 842 (2015). The U.S. District Court for the Northern District of Texas denied Mr. Broadnax's federal habeas petition on July 23, 2019. *Broadnax v. Davis*, No. 3:15-CV-1758-N, 2019 WL 3302840 (N.D. Tex. July 23, 2019); *see also Broadnax v. Lumpkin*, 987 F.3d 400 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 859 (2022).

On February 8, 2023, Mr. Broadnax filed his Amended First Subsequent State Habeas Application pursuant to Texas Code of Criminal Procedure, Article 11.071 § 5(a)(1), based on new factual evidence that had become available to him for the first time after the state habeas proceedings had concluded, which established that (i) serious *Batson* violations had occurred at his trial, and (ii) the State violated his Eighth and Fourteenth Amendments rights by presenting false and misleading expert testimony purporting to show, without basis, that Mr. Broadnax was a psychopath. *See* First Subsequent Appl. On June 7, 2023, this Court denied Mr. Broadnax's Amended First Subsequent State Habeas Application on both

grounds. *Ex parte Broadnax*, No. WR-81,573-02, 2023 WL 3855947 (June 7, 2023), *cert. denied*, 2024 WL 3089627 (June 24, 2024).

On August 20, 2024, Mr. Broadnax filed his Second Subsequent State Habeas Application, which relied on newly available legal grounds to point out that (i) the State's improper use of rap lyrics to prove Mr. Broadnax's purported dangerous propensity violated his rights to due process, fundamental fairness, and equal protection under the Eighth and Fourteenth Amendments; and (ii) the State's introduction of testimonial hearsay in the form of an out-of-court expert's serology report violated Mr. Broadnax's rights under the Confrontation Clause of the Sixth Amendment. On November 6, 2025, this Court again denied relief. *Ex parte Broadnax*, No. WR-81,573-03, 2025 WL 3095921 (Tex. Crim. App. Nov. 6, 2025), *pet. for cert. filed*, No. 25-939 (Feb. 4, 2026).

In January 2025, the Dallas County District Attorney's Office for the first time allowed counsel for Mr. Broadnax to review its jury selection files from the related trial of Mr. Cummings. Because this review revealed new evidence of *Batson* violations at Mr. Broadnax's trial, and based on declarations newly received from three struck qualified Black jurors from Mr. Broadnax's trial, Mr. Broadnax filed a Suggestion for Reconsideration with this Court, asking the Court to reconsider, on its own motion, Mr. Broadnax's *Batson* claim in his First Subsequent State Habeas Application that the Court previously denied. Suggestion for Reconsideration, *Ex parte Broadnax*, No. WR-81,573-01 (Tex. Crim. App. June 3, 2025). This Court

declined to do so. *Ex parte Broadnax*, No. WR-81,573-01 (Tex. Crim. App. Nov. 6, 2025), *pet. for cert. filed*, No. 25-938 (Feb. 4, 2026).

By Declaration dated March 11, 2026, Mr. Cummings recanted his prior statements and admitted under penalty of perjury, that he, not James Garfield Broadnax, was the person who shot and killed the two victims. Ex. A. Mr. Broadnax timely brings this Third Subsequent State Habeas Application asserting claims based on Mr. Cummings's Declaration and the new evidence of *Batson* violations, both of which were unavailable at the time Mr. Broadnax filed his previous state habeas applications.

CLAIMS FOR RELIEF

Mr. Broadnax is entitled to review and relief from his conviction and death sentence under Texas Code of Criminal Procedure, **Article 11.071 §§ 5(a)(1)–(3)** because his co-defendant, Mr. Cummings, recently recanted his previous statements and declared under penalty of perjury that he was the shooter of the two victims—not Mr. Broadnax. This previously unavailable evidence entitles Mr. Broadnax to relief under the Eighth and Fourteenth Amendments, including because the State secured his conviction and death sentence by relying on false evidence at trial. Absent the false evidence and constitutional violations, no rational juror would have found Mr. Broadnax guilty beyond a reasonable doubt under the instructions the jury was given at trial, and no rational juror would have answered in the State's favor either of the special issues that were required to sentence Mr. Broadnax to death under Texas Code of Criminal Procedure, Article 37.071 § 2(b).

Separately, Mr. Broadnax is entitled to review and relief from his conviction and death sentence under **Article 11.071 § 5(a)(1)** because newly discovered evidence that was unavailable at the time of his previous state habeas applications establishes that the State violated his constitutional rights to equal protection and due process during jury selection, pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986).

CLAIMS ONE THROUGH FOUR: THE NEW DECLARATION FROM MR. BROADNAX'S CO-DEFENDANT, MR. CUMMINGS, ESTABLISHES THAT MR. BROADNAX WAS NOT THE KILLER AND IS ENTITLED TO RELIEF FROM HIS CONVICTION AND DEATH SENTENCE

I. Statement of the Case

A. The Trials of Mr. Broadnax and Mr. Cummings

On June 19, 2008, Mr. James Garfield Broadnax and Mr. Demarius Cummings, two young Black men who were cousins, were arrested for murdering Mr. Stephen Swan and Mr. Matthew Butler in Garland, Texas. Their cases were severed, and at both trials, the State based its case on the theory that Mr. Broadnax shot both victims.

At Mr. Broadnax's trial, the State set out to prove that Mr. Broadnax shot and killed both victims, and secured a death sentence based on that theory. The State expressly refused any law of the parties charge, insisting that Mr. Broadnax should be convicted and sentenced to death as the person who actually "cause[d] the death of [the victims] by shooting [them] with a firearm." 47 RR 182–83. During the charge conference at the guilt phase, the trial court asked whether the State wanted the law of the parties instruction included as an alternative charge theory, but the State refused: "No, sir, we—we won't be requesting it." *Id.* at 3. Accordingly, the jury was

instructed to convict Mr. Broadnax if, and only if, they found beyond a reasonable doubt that Mr. Broadnax shot both victims:

Now, if you find from the evidence beyond a reasonable doubt that on or about the 19th day of June, 2008, in Dallas County, Texas, the defendant, James Garfield Broadnax, ***did unlawfully then and there intentionally cause the death of*** Stephen Swan, an individual, ***by shooting*** the said Stephen Swan ***with a firearm***, a deadly weapon, and the defendant, James Garfield Broadnax, was then and there in the course of committing or attempting to commit the offense of robbery of the said deceased, then you will find the defendant guilty of capital murder. If you do not so believe or if you have a reasonable doubt thereof, or if you're unable to agree, you will next consider whether the defendant is guilty of the lesser-included offense of murder.

47 RR 182 (emphases added); *see also id.* at 183 (defining the lesser-included offense of murder as “***intentionally or knowingly caus[ing]*** the death of the victim ***by shooting him/her with a firearm***”) (emphases added); *id.* at 184 (“If you have a reasonable doubt as to whether the defendant is guilty of any offense defined in this Charge, you will acquit the defendant and say by your verdict not guilty.”).

Similarly, at the punishment phase of Mr. Broadnax's capital trial, the State again disavowed any law of the parties theory, telling the jury:

You'll recall from *voir dire* that we talked to you about another special issue, a parties issue, and you'll see that that's not presented to you in this case. It wasn't presented to you in the first part of the trial, and it's not now, and that's because the defendant is on his own merit, on his own, individually responsible for the robbery and the murder of Stephen Swan. ***He is the triggerman that we talked about in voir dire, so you do not need to concern yourself with*** the issue we talked about before, and that being ***whether or not he was a party to the offense.***

53 RR 11–12 (emphases added). Accordingly, while Texas Code of Criminal Procedure, Article 37.071 permits the State to seek the death penalty against a defendant found guilty under the law of the parties when additional requirements

are satisfied, here, the State proceeded only under the actual killer theory, and the jury was charged only on the issue of whether the defendant constituted “a continuing threat to society.” Tex. Code Crim. Proc. Art. 37.071 § 2(b)(1); 53 RR 5. Had the jury been given the law of the parties charge under Texas Code of Criminal Procedure, Article 37.071 and Penal Code §§ 7.01 and 7.02, the jury would also have been required to find beyond a reasonable doubt that the defendant “intended to kill the deceased or another or anticipated that a human life would be taken.” Tex. Code Crim. Proc. Art. 37.071 § 2(b)(2).

When arguing that Mr. Broadnax constituted “a continuing threat to society” under Texas Code of Criminal Procedure, Article 37.071 § 2(b)(1), the State heavily relied upon the purported act of killing, and urged the jury to find future dangerousness “based strictly on the facts of the offense,” as “everything you need to know about this defendant, his proclivity towards violence, his ambitions and his desire to engage in violence, speaks to you from just what he did on that night when he executed these two men.” 53 RR 15–16. The jury answered “yes” to the special issue of future dangerousness and sentenced Mr. Broadnax to death.

At Mr. Cummings’s separate trial, the State again advanced the theory that Mr. Broadnax was the shooter. It thus proceeded under the law of the parties doctrine, and asked the jury to find Mr. Cummings guilty because he anticipated that Mr. Broadnax would kill the victims. *See State v. Cummings*, No. F08-24666-Y, Cummings Trial Tr. 5 RR 93–98 (jury charge on the law of the parties). Significantly, the State did *not* pursue the death penalty against Mr. Cummings. Upon Mr.

Cummings's conviction, the sentence of life without parole automatically applied. *Id.* at 138.

B. The new confession by Mr. Cummings unravels the State's case against Mr. Broadnax.

From the time of his arrest and throughout the years following Mr. Broadnax's conviction and capital sentencing, Mr. Cummings has maintained that Mr. Broadnax was the shooter who killed the two victims. These false statements from Mr. Cummings, both to the police and to the media, along with the consistent (and likewise false) statements given in media interviews by Mr. Broadnax, formed the central premise of the State's case at Mr. Cummings's and Mr. Broadnax's trials, and were the main evidence of Mr. Broadnax's guilt and culpability.

On December 17, 2025, the trial court ordered Mr. Broadnax to be executed on April 30, 2026. Mr. Cummings learned of this execution date for the first time from Mr. Broadnax's counsel on February 20, 2026. During that meeting, Mr. Cummings informed counsel for Mr. Broadnax that he wished to come clean, and to make it known that Mr. Broadnax was not the shooter—that he himself was, and that Mr. Broadnax falsely took the blame for him. On March 11, 2026, Mr. Cummings executed a Declaration under penalty of perjury, admitting that he—not Mr. Broadnax—shot the two victims.

Under penalty of perjury, Mr. Cummings states that: "On June 19, 2008, I participated in a robbery in Dallas with my cousin, James Broadnax. During the course of the robbery, the two victims, Stephen Swan and Matthew Butler, were shot and killed. . . . It was my idea to rob Mr. Swan and Mr. Butler, and I obtained the

pistol we took with us that evening and which was used to shoot the victims.” Ex. A ¶¶ 2–3. Mr. Cummings further explains that: “Following the crime, James and I spoke about the story we would tell. At the time, we were both still high on PCP and marijuana. I persuaded James to take the blame for shooting the two victims.” *Id.* ¶ 4. Accordingly, as Mr. Cummings explains, “we both gave statements to the media. In James’s statements, he said that he had participated in the robberies and shot the two victims, while in my statements, I said that while I had participated in the robberies, James had shot the two victims.” *Id.* However, as Mr. Cummings now affirms, “[t]hese statements were not accurate. ***In fact, I was the one who shot the two victims, not James.***” *Id.* ¶ 5.

Mr. Cummings explains that Mr. Broadnax agreed to take the blame for him, because “[a]t the time we committed these crimes, I had previously committed and been convicted of other crimes, including burglaries; my cousin James was 19 years old and did not have a criminal record, except for a marijuana possession conviction.” *Id.* ¶ 2. Mr. Cummings further explains why he is only providing this Declaration now: “I have met with James’s lawyer, Steven Herzog, several times over the past ten years. Until our meeting on February 20, 2026, I have always maintained that James was the one who shot Mr. Swan and Mr. Butler. But the fact that James received a death sentence for these crimes, while I was the one who shot the victims, has been weighing on my conscience, particularly as I have become more spiritual during my years in prison. When Mr. Herzog told me on February 20 that James was scheduled to be executed on April 30, 2026, I decided it was time to come clean, and

I told him that it was me, and not James, who had shot the two victims.” *Id.* ¶¶ 6–7. As a result, Mr. Cummings states that “I am signing this declaration so that the real truth about what happened on June 19, 2008 is known. My hope is that James will not be executed for committing acts that he did not do. I want to clear my conscience and do not want James to be executed for shooting two people when I was the one who committed those acts. It was my decision to come clean with the facts set forth above and sign this declaration.” *Id.* ¶ 8.

C. Evidence from Mr. Broadnax’s trial record corroborates Mr. Cummings’s claim that Mr. Broadnax was not the killer.

The truth and reliability of Mr. Cummings’s Declaration is strongly supported by the record evidence at Mr. Broadnax’s trial. The *only* evidence suggesting Mr. Broadnax was the killer was Mr. Broadnax’s own statements to the media, made when he was in an unstable mental state and which were shown to be completely unreliable by Mr. Cummings’s Declaration. The other evidence at trial, including the forensic evidence, corroborates Mr. Cummings’s Declaration.

1. The DNA evidence clearly points to Mr. Cummings as the shooter.

The DNA evidence introduced at both Mr. Broadnax’s and Mr. Cummings’s trials confirms that Mr. Cummings held the murder weapon and excludes Mr. Broadnax from its key contact surfaces. The State’s DNA expert, James Nichols of the Texas Department of Public Safety Crime Laboratory, testified that “[t]he DNA profile from the swab of the right grip . . . is consistent with a mixture from Demarius Cummings and an unknown individual. . . . James Broadnax was excluded as a contributor to the right grip of the pistol.” 46 RR 184, 205–06; *see also* Cummings

Trial Tr. 4 RR 198. The statistical weight of this finding was substantial: “[T]he probability of selecting an unrelated person at random who could be a contributor to the swab to the right grip, is approximately 1:1.06 million for Caucasians, 1:403.7 thousand for blacks, and 1:1.101 million for Hispanics.” 46 RR 206. The same expert’s written report also confirmed that Mr. Broadnax was excluded as a contributor to swabs from the trigger of the pistol. State Ex. 391. Moreover, Mr. Cummings’s DNA was found in the sample collected from one of the victims’ pockets, but Mr. Broadnax’s DNA was not. *Id.*

2. Mr. Broadnax’s media confessions that he was the killer were inherently unreliable.

In fact, the *only* evidence the State presented that supported the theory that Mr. Broadnax was the shooter was a series of media interviews given by Mr. Broadnax in the days following his arrest, made while he was in jail shortly after his arrest. However, Mr. Cummings’s Declaration now clearly states that those statements were false and explains why Mr. Broadnax made them—because they were the result of a coordinated false story Mr. Broadnax agreed to tell in order to protect his cousin. Ex. A ¶¶ 2–4. Moreover, both the circumstances surrounding the interviews and the details the resulting statements contain make clear that Mr. Broadnax’s media confessions have always been inherently unreliable. Mr. Broadnax’s memory regarding the underlying incident was compromised as he was under the influence of PCP and marijuana, and the media interviews were given while he was experiencing severe psychological distress. And in those interviews,

Mr. Broadnax repeatedly expressed that he had “blanked out” and had little memory of the events of the offense:

- “I blanked out. I went in that mode. I don’t know what the fuck it was.” 46 RR 246.
- “I blanked the fuck out. *Id.* at 143.
- “I just blanked out.” State Ex. 18 at 04:27.
- “I don’t even remember the day.” State Ex. 403 at 04:58.
- “I just blanked out . . . Like . . . You know, I blanked the fuck out . . . I just went into that mode . . . I don’t know what the fuck it was. I just blanked the fuck out.” State Ex. 406 at 02:33.

See also 45 RR 144 (one of the news reporters who interviewed Mr. Broadnax testifying that he understood that Mr. Broadnax was saying his memory “blanked out” from drug use at the time of the offense, and that Mr. Broadnax needed “to come down from the high.”). Other contemporaneous, objective evidence also confirmed Mr. Broadnax’s drug use at the time of the offense. *See, e.g.*, 47 RR 23, 34 (inmate intake form at the time of arrest—which happened within 12 hours of the offense—documenting that Broadnax had been smoking “wet blunt,” which is marijuana “laced with something like PCP or formaldehyde,” around the time of the offense).

Indeed, University of Texas Professor of Psychiatry and Pharmacology John D. Roache reviewed the facts of Mr. Broadnax’s mental state and drug consumption at the time of his media statements. He concluded that Mr. Broadnax was in “a very unstable and compromised mental state” and that his cognitive capacity to make

informed decisions was “seriously compromise[d]” at the time of the offense and during the media interviews. Ex. B, Roache Aff. ⁴

3. Contradictions between Mr. Broadnax’s and Mr. Cummings’s media statements also support that Mr. Broadnax was not the shooter.

Mr. Cummings’s claim that Mr. Broadnax lied to protect him is further supported by conflicting details in their media statements. As Mr. Cummings now explains in his Declaration, when Mr. Cummings persuaded Mr. Broadnax to take the blame for shooting the two victims, they agreed on the story they would tell, and then each gave statements to the media in which Mr. Broadnax took the blame. Ex. A ¶ 4. However, an important contradiction in their accounts nonetheless appeared in these media interviews, a contradiction which would lack an explanation if they were both telling the truth, but is not surprising when viewed in conjunction with Mr. Cummings’s recent admissions.

Specifically, Mr. Broadnax stated that *he* asked the victims for a cigarette, and then used the time of the victims’ reaction to pull the gun on them and shoot them to death. State Ex. 406 at 01:38; State Ex. 403 at 15:55. However, in all three media statements contemporaneously given by Mr. Cummings, Mr. Cummings consistently

⁴ Scholars have long recognized and cautioned about the inherently unreliable nature of confessions from young defendants and drug users, as both groups are scientifically proven to be susceptible to giving false confessions. See, e.g., John Pearse et al., *Police Interviewing and Psychological Vulnerabilities: Predicting the Likelihood of a Confession*, 8 J. Cmty. & Applied Soc. Psych. 1, 9, 12 (1998) (finding that “younger suspects are more likely to make a confession than older suspects” and that the odds of a suspect making a confession are more than three times greater if that suspect has reported using a non-prescribed drug within the 24-hour period prior to arrest); see also Alexandra O. Cohen et al., *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psych. Sci. 549, 559 (2016) (warning about diminished cognitive control that is “vulnerable to negative emotional influences” in young adults between the ages of 18 and 21).

stated that *he himself* was the one who asked the victims for a cigarette. See Cummings State Ex. 2 at 02:15 (“I asked the dude for a cigarette, and when I turned around, he opened fire.”); Cummings State Ex. 4 at 02:21 (“so I asked the dude for a cigarette”); Cummings State Ex. 6 at 02:22 (“When I asked him for a cigarette . . .”). This detail is not trivial: the State emphasized the request for a cigarette and the use of that request as a disguise to approach the victims, both to show that Mr. Broadnax’s confession was detailed and credible, and to prove the premeditated and cold-blooded nature of the killing. 45 RR 57 (“In each of those interviews, [Mr. Broadnax is] going to tell you exactly how he killed the victims. That he popped this guy after asking him for a cigarette and he popped the guy.”); 47 RR 197 (“Give me a cigarette. What does that show? Does that show anything other than someone who is so cold and so calculated and has total disregard for human life, and that’s why we’re here, and that’s what this case is about.”).

One of these accounts was wrong. But why would they differ? When viewed in light of Mr. Cummings’s new statement, the discrepancy makes sense: Mr. Cummings was telling the truth about his cigarette request, while lying about his next action of shooting the gun, and Mr. Broadnax was trying to take the blame for everything that Mr. Cummings actually did.

4. Other aspects of Mr. Broadnax’s media confessions help explain his willingness to take the blame for shooting the victims.

As Mr. Cummings explained, Mr. Broadnax confessed to being the actual shooter to protect Mr. Cummings, who had a more serious and violent criminal record. Ex. A ¶¶ 2–4. As Mr. Broadnax stated, his own criminal record was clean

except for a marijuana possession. State Ex. 18 at 08:45 (“Spent a couple of days in jail for . . . possession of a controlled substance . . . And that’s it. I ain’t got no dirty ass record.”); *see also* State Ex. 454A; 50 RR 269–71. It may have seemed to both Mr. Cummings and Mr. Broadnax that if Mr. Cummings was the shooter, he surely would get the death penalty, but that if Mr. Broadnax was the shooter, given his insignificant record, they might neither receive a death sentence. Mr. Broadnax demonstrated that he clearly understood the sentencing consequences of the identity of the shooter: “I pulled the trigger. He was just there. That’s accomplice to murder though. . . . But I’m probably getting the death penalty. He gonna probably get twenty-five to life.” State Ex. 18 at 07:00.

But Mr. Broadnax may also have been inclined to agree with his cousin’s plan because he was actually ambivalent about whether he wanted a death sentence. While a desire for a death sentence may seem unfathomable to most people, it is reflected in the rest of Mr. Broadnax’s statements to the media and almost understandable in light of the extreme mitigation evidence about his background that came out at the punishment phase of his trial. Mr. Broadnax exhibited clear signs of depression and psychological struggle during all three of his media interviews. He repeatedly stated that he wished for the death penalty, that he could not bear to live on further, and that he would gladly take his own life if the State does not take it, because his life had been “HELL” ever since he was born, with nothing worth living for:

- “They might as well give me the death penalty. . . . What am I living for? My life has been fucked up since I was born.” State Ex. 403 at 21:00.

- “I ain’t got anything to live for. . . . Cause I don’t. I don’t even know why the fuck I was born in the first place. . . . I could’ve been better off somewhere else.” State Ex. 406 at 03:22.
- “Q. What’s your past been like, Mr. Broadnax? A. Hell. Q. Tell me, sir. Explain it to me. A. Hell . . . Capital H, Capital E, double LL, HELL. For real.” *Id.* at 03:35.
- “Q. What has happened to make you feel you don’t have a life? A. It’s a lot of shit, man. It’d take me a year to tell you. It’s a long ass story. Q: Is it your family? The street you grow up in? A. All together . . . I ain’t got no fucking family.” *Id.* at 05:53.
- “I don’t want life. . . . Pick one [vein]. If they don’t, I will.” *Id.* at 04:17.

The State’s own assessment of Mr. Broadnax at the time of his arrest and intake specifically confirmed that he had suicidal tendencies, prompting the prison to put him on suicide watch. *See, e.g.*, 47 RR 171 (confirming that the jail’s suicide observation log showed that Mr. Broadnax was “placed on suicide prevention”); *id.* at 37 (the State’s psychiatric evaluator who evaluated Mr. Broadnax in jail testifying that Mr. Broadnax was “placed on suicide precautions” after initial evaluation). At the punishment phase of his trial, numerous witnesses who knew Mr. Broadnax throughout his upbringing spoke to the severe physical and psychological abuse Mr. Broadnax experienced at the hands of his own family from childhood through adolescence, and testified that throughout childhood he never had a stable home environment and was at times homeless. *See, e.g.*, 51 RR 51–62, 66–74, 80–82, 161–63. All of this evidence, together, powerfully explains the troubled mental state that prompted Mr. Broadnax to take the blame—and the accompanying death sentence—for his cousin, corroborating Mr. Cummings’s Declaration that Mr. Broadnax lied to the media so he would get the death penalty and Mr. Cummings would not.

II. Standards for Authorization of Relief

Under Texas Code of Criminal Procedure, Article 11.071 § 5(a), relief may be warranted if a successor petition passes any of three gateways: (i) when the current claims and issues could not have been presented before because the factual basis was “unavailable on the date the applicant filed the previous application[s],” § 5(a)(1); (ii) when, by a preponderance of the evidence, no rational juror could have found the applicant guilty beyond a reasonable doubt but for a constitutional violation, § 5(a)(2); or (iii) when, by clear and convincing evidence, no rational juror would have found in the State’s favor one or more of the special issues required for eligibility of the death sentence under Article 37.071 but for a constitutional violation, § 5(a)(3). This Court has referred to the standard of § 5(a)(1) as a “threshold” review, requiring that the applicant “make a *prima facie* showing of [the underlying claim] in his subsequent pleading, and then, if granted leave to proceed by this Court, must establish in the subsequent proceedings that he is [entitled to relief] by a preponderance of the evidence.” *Ex parte Blue*, 230 S.W.3d 151, 156 n. 20, 162 (Tex. Crim. App. 2007). Similarly, for claims brought under §§ 5(a)(2) and 5(a)(3), at the authorization stage, the applicant only needs to make “a *threshold* showing of evidence that would be at least *sufficient* to support an ultimate conclusion” that the requisite standards are met, in order to be authorized for further proceedings to determine relief. *See id.* at 163; *see also Ex parte Reed*, 271 S.W.3d 698, 733 (Tex. Crim. App. 2008).

Mr. Cummings’s recent confession is indisputably “previously unavailable” evidence under § 5(a)(1). Mr. Cummings himself explains this clearly: “I have met with James’s lawyer, Steven Herzog, several times over the past ten years. Until our

meeting on February 20, 2026, I have always maintained that James was the one who shot Mr. Swan and Mr. Butler.” Ex. A ¶ 6. Mr. Cummings withheld the truth until confronted with Mr. Broadnax’s impending execution date and an awakened conscience, *id.* ¶ 7—circumstances that could not have been anticipated or manufactured through good faith efforts by the defense. This new factual basis, underlying Mr. Broadnax’s Claims One through Four in this petition, thus “was not ascertainable through the exercise of reasonable diligence” and was previously unavailable for the purposes of § 5(a)(1). In addition, Mr. Cummings’s Declaration makes clear that Mr. Broadnax’s conviction and capital sentence were based on a false factual premise, and that there were multiple constitutional violations during Mr. Broadnax’s trial and sentencing proceedings (and continuing to this day). At this stage, pursuant to §§ 5(a)(2) & 5(a)(3), Mr. Broadnax has made sufficient showings to support the ultimate conclusion that, but for these constitutional violations, no rational juror could have found him guilty or answered any of the special issues required to sentence him to death in favor of the State beyond a reasonable doubt.

Mr. Broadnax is therefore entitled to review and relief under all three gateways of Article 11.071 § 5(a).

III. Claim One: Mr. Broadnax’s Rights Under the Eighth and Fourteenth Amendments Were Violated Because the State Secured His Conviction and Death Penalty by Relying on False Evidence.

Texas recognizes that “[t]he Due Process Clause of the Fourteenth Amendment can be violated when the State uses false testimony to obtain a conviction, *regardless of whether it does so knowingly or unknowingly.*” *Ex parte Chavez*, 371 S.W.3d 200, 207–08 (Tex. Crim. App. 2012) (quoting *Ex parte Robbins*, 360

S.W.3d 446, 459 (Tex. Crim. App. 2011)) (emphasis added). This Court has consistently held that “[t]estimony need not be perjured to constitute a due process violation; rather, it is sufficient that the testimony was false.” *Id.* at 208. This is because a constitutional claim based on the use of false evidence is “not aimed at preventing the crime of perjury—which is punishable in its own right—but [is] designed to ensure that the defendant is convicted and sentenced on truthful testimony.” *Id.* at 211 (Womack, J., concurring). For the same reasons, it is “no longer relevant” even if the “misinformation” presented at trial “was in no way attributable to prosecutorial misconduct,” because there is “no reason for affording disparate treatment to claims in which the State lacked knowledge of testimony’s falsity at the time of trial.” *Id.* at 207 (citing *Ex parte Chabot*, 300 S.W.3d 768, 771 (Tex. Crim. App. 2009)); *see also Townsend v. Burke*, 334 U.S. 736, 740–41 (1948) (finding conviction based on “materially untrue” information violates due process “whether caused by carelessness or design”); *Ex parte Ghahremani*, 332 S.W.3d 470, 478 (Tex. Crim. App. 2011) (Texas “allows applicants to prevail on due-process claims [even] when the State has unknowingly used false testimony.”).

In the context of capital sentencing proceedings, the Eighth Amendment similarly prohibits the use of false evidence to obtain a death sentence. This Court has been clear that “a death sentence based on materially inaccurate evidence violates the Eighth Amendment.” *Velez v. State*, 2012 WL 2130890, at *32 (Tex. Crim. App. June 13, 2012) (granting relief from death sentence obtained by false testimony); *Estrada v. State*, 313 S.W.3d 274, 287 (Tex. Crim. App. 2010) (setting aside death

sentence where the State presented expert testimony at punishment that was later revealed to be “incorrect” and “mistaken”); *see also Johnson v. Mississippi*, 486 U.S. 578, 590 (1988) (finding an Eighth Amendment violation where “the jury was allowed to consider evidence that has been revealed to be materially inaccurate”).

Thus, under the established law of Texas, a subsequent habeas applicant is entitled to relief if he can show that (1) false evidence was presented at trial and (2) the false evidence was material to the jury’s verdict of guilt or punishment. *See Ex parte Weinstein*, 421 S.W.3d 656, 665 (Tex. Crim. App. 2014). In determining whether particular evidence is “false,” the relevant question is whether the testimony, taken as a whole, gives the jury a false impression. *See Ex parte Ghahremani*, 332 S.W.3d at 479 (agreeing that evidence was false because it “creat[ed] a misleading impression of the facts”); *see also Alcorta v. Texas*, 355 U.S. 28, 31 (1957) (evidence is false if it leaves jury with a “false impression”). For the false evidence to be “material” enough to warrant relief, there only need be “a reasonable likelihood that the false testimony affected the judgment of the jury.” *Ex parte Weinstein*, 421 S.W.3d at 665; *see also Napue v. Illinois*, 360 U.S. 264, 271 (1959) (due process requires a new trial if there is “any reasonable likelihood” that the false testimony affected the jury’s judgment).

Both requirements are satisfied here. Mr. Cummings’s Declaration is strong evidence that Mr. Broadnax’s confession to being the triggerman, given to the media while he was in State custody, was false. Ex. A ¶ 5 ([James’s statements to the media] “were not accurate. In fact, I was the one who shot the two victims, not James.”).

And Mr. Cummings convincingly explains why: in claiming to be the shooter as Mr. Cummings had urged, Mr. Broadnax was trying to protect his cousin—a motivation explained in part by Mr. Broadnax’s troubled and suicide-prone mental state at the time of the arrest, and in part by Mr. Broadnax’s awareness of the potentially different sentencing consequences awaiting him and Mr. Cummings. *See supra* § I.C.4. This Court need not merely take Mr. Cummings’s at his word. The accuracy of his Declaration is corroborated by the trial record, including the DNA evidence that linked only Mr. Cummings and not Mr. Broadnax to the murder weapon and the victims’ bodies. *See supra* § I.C. Further, the fact and method of the shooting went on to become the State’s central evidence at the punishment phase about Mr. Broadnax’s inherent dangerousness. *See, e.g.*, 48 RR 22 (“[w]hen we talk about future dangerousness . . . the act itself is sufficient enough for you to say future dangerousness is proven”). Under these facts, it would be constitutionally intolerable under both the Eighth and Fourteenth Amendments for Mr. Broadnax’s conviction and death penalty to stand.

* * *

Mr. Broadnax’s Claim One should be authorized to proceed under all three gateways pursuant to Article 11.071 §§ 5(a)(1)–(3). As discussed above, Mr. Cummings’s Declaration is previously unavailable evidence, and it establishes *prima facie* constitutional violations by the State through their use of false evidence to secure Mr. Broadnax’s conviction and death penalty. The threshold inquiry under § 5(a)(1) is thus satisfied. The threshold inquiries under §§ 5(a)(2) and 5(a)(3),

respectively, are also satisfied, because without the false confessions that he was the shooter, no rational juror would have found that Mr. Broadnax “intentionally cause[d] the death of [the victims] . . . by shooting [them] with a firearm,” 47 RR 182, or that he “would commit criminal acts of violence that would constitute a continuing threat to society,” Tex. Code Crim. Proc. Art. 37.071 § 2(b)(1). This Court should authorize further proceedings under Article 11.071 §§ 5(a)(1)–(3) and grant Mr. Broadnax relief.

IV. Claim Two: Because Mr. Broadnax Did Not Commit the Capital Murder With Which He Was Charged, His Conviction Violated His Due Process Rights Under the Fourteenth Amendment.

As this Court has unequivocally held, “execution of an innocent person would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.” *State ex rel. Holmes v. Court of Appeals*, 885 S.W.2d 389, 397 (Tex. Crim. App. 1994) (citing *Herrera v. Collins*, 506 U.S. 390 (1993)). “[C]laims of actual innocence are cognizable by this Court in a postconviction habeas corpus proceeding whether the punishment assessed is death or confinement. In either case, such claims raise issues of federal constitutional magnitude.” *Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996). When the actual-innocence claim is accompanied by another constitutional violation—which is the case here because Mr. Broadnax’s conviction and sentencing also caused standalone violations of the Eighth Amendment and the Fourteenth Amendment, as explained above in § III—relief is warranted when “it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.” *Id.* (citing *Schlup v. Delo*, 513 U.S. 298 (1995)); *cf. Ex parte Wood*, 2025 WL 2148862, at *11 (Tex. Crim. App. July 30, 2025) (C.J., Schenk, concurring in part and dissenting in part) (calling for the

“preponderance standard” in actual innocence claims in capital cases based on the Texas Constitution). This burden may be met by a single piece of exculpatory evidence. See *Ex parte Kussmaul*, 548 S.W.3d 606, 636 (Tex. Crim. App. 2018) (“[M]any actual-innocence cases are based on a single piece of new evidence such as DNA or the recantation of a victim or witness.”).

In the context of post-conviction relief, this Court has also held that such claims encompass cases where the defendant is guilty only of a lesser offense instead of the crime charged and convicted. *State v. Wilson*, 324 S.W.3d 595, 598 (Tex. Crim. App. 2010) (“[W]e will interpret a claim of ‘actual innocence’ to mean ‘guilty only of a lesser-included offense or ‘ineligible for’ the sentence assessed, or both.”). On the basis of that holding, in *Wilson*, this Court granted habeas corpus relief where the defendant “was not guilty of the felony DWI of which he was convicted,” because one of the prior offenses used to enhance what otherwise would have been a misdemeanor to a felony turned out not to have been finalized and thus could not have been used as an enhancement. *Id.* at 599–600; see also *Ex parte Warfield*, 2020 WL 4217648 (Tex. Crim. App. July 22, 2020) (granting habeas relief because the applicant was “guilty only of a lesser offense”); *Ex parte Bodden*, 707 S.W.3d 399, 411 (Tex. Crim. App. 2024) (granting habeas relief where, as compared to the crime charged on the indictment, the defendant “is guilty only of a lesser second-degree felony offense and is entitled to relief on due process grounds.”).

Here, Mr. Broadnax was indicted, charged, and convicted as the person committing the murder, not under the law of the parties doctrine. The State explicitly

declined to instruct the jury on the law of the parties. *See* 47 RR 3 (Court: “There was conflicting reports about whether the State of Texas wanted the law of the parties added to the instructions or not. . . . So what does the State want me to do on that?” The State: “No, sir, we—we won’t be requesting it.”); *see also* 47 RR 182–83 (actual jury charge at the end of guilty phase not including the law of the parties). However, the newly available confession by Mr. Cummings—corroborated by forensic evidence placing only Mr. Cummings’s DNA on the pistol and excluding Mr. Broadnax’s—establishes that Mr. Broadnax did not fire the gun. In light of that newly available proof, no reasonable juror could have found beyond a reasonable doubt that Mr. Broadnax was guilty of the offense as tried, and, under the established laws of this jurisdiction, “due process simply will not tolerate” Mr. Broadnax’s current conviction to stand upon that incongruous basis. *Ex parte Dixon*, 2022 WL 1498140, at *7 (Tex. App. May 12, 2022); *State v. Vigil*, 2015 WL 2353507, at *4 (Tex. App., May 15, 2015) (“[Defendant] correctly notes that the State did not charge [Defendant] under law of the parties, and that as such, [Defendant] cannot be held criminally liable for injuries caused by [a third party].”).

* * *

Mr. Broadnax’s Claim Two should be authorized to proceed pursuant to Article 11.071 §§ 5(a)(1)–(2). The threshold inquiry under § 5(a)(1) is satisfied, because Mr. Cummings’s Declaration is previously unavailable evidence that establishes a *prima facie* case that Mr. Broadnax was actually innocent of the crime charged. The threshold inquiry under § 5(a)(2) is also satisfied, because in light of

Mr. Broadnax's documented mental state at the time of the crime, and the lack of evidence in the record concerning his knowledge of the possibility that Mr. Cummings might murder the victims, no rational juror would have found that Mr. Broadnax intentionally caused the death of the victims beyond a reasonable doubt. This Court should authorize further proceedings under Article 11.071 §§ 5(a)(1) and (2) and grant Mr. Broadnax relief.

V. Claim Three: Mr. Broadnax Was Not Eligible for the Death Penalty, and His Death Sentence Violated His Rights Under the Eighth Amendment and the Fourteenth Amendment.

Habeas relief is warranted when an applicant is “actually innocent of the death penalty,” on the ground that “but for a constitutional error, no reasonable juror would have found the petitioner eligible for the death penalty under the applicable state law.” *Sawyer v. Whitley*, 505 U.S. 333, 334 (1992). “Sensible meaning is given to the term ‘innocent of the death penalty’ by allowing a showing . . . that there was no aggravating circumstance or that some other condition of eligibility had not been met.” *Id.* at 345; *see also Dretke v. Haley*, 541 U.S. 386, 388 (2004) (habeas relief is appropriate “in the capital sentencing context” where the applicant “can demonstrate that the alleged constitutional error has resulted” in a finding of “the aggravating circumstances rendering the inmate eligible for the death penalty”).

In Texas, this Court has explicitly recognized successor claims under § 5(a)(3) on this ground, explaining that § 5(a)(3) “represents the Legislature’s attempt to codify something very much like th[e] federal doctrine of ‘actual innocence of the death penalty’” articulated in *Sawyer v. Whitley*. *Ex parte Blue*, 230 S.W.3d at 160; *see also id.* at 161 (explaining that the “actual innocence of the death penalty” claim

is available in successor petitions when applicant demonstrates either constitutional or statutory ineligibility for the death penalty). If errors “so permeated the State’s evidence relevant to one of the special issues upon which it carries the burden of proof that, absent the error,” no rational juror would have answered “the special issues in a way that mandates the death penalty, then the applicant may raise the merits of that error in a subsequent writ application.” *Id.* Importantly, at the authorization stage, the applicant need not “necessarily convince this Court by clear and convincing evidence” that no rational juror would have found him eligible for death, as § 5(a)(3) facially requires; rather, “a threshold showing of evidence that would be at least sufficient to support [the] ultimate conclusion” is adequate to warrant remand and further proceedings to determine relief. *Id.* at 162–63.

Relief is warranted on this ground for at least two reasons. *First*, because the State tried Mr. Broadnax on the false premise that he was the actual shooter, the jury was never instructed on one of the two requisite elements of statutory eligibility for the death penalty under Texas law. Texas Code of Criminal Procedure, Article 37.071 § 2(b)(2) requires that, whenever a defendant “did not actually cause the death of the deceased” but is being held criminally responsible for the murder committed by another under the law of the parties doctrine, the jury must find, beyond a reasonable doubt, that the defendant “intended to kill the deceased or another or anticipated that a human life would be taken.” This required finding was entirely foregone at Mr. Broadnax’s trial, as the prosecutor explicitly told the jury: “You’ll recall from *voir dire* that we talked to you about another special issue, a parties issue,

and you'll see that that's not presented to you in this case . . . and that's because the defendant is on his own merit. . . . He is the triggerman." 53 RR 11; *see also* 49 RR 174–84. However, even if the jury had been instructed on this element, no rational juror would have found for the State, because absent the false media confessions given by Mr. Broadnax, the jury would be left with no basis on which to infer that Mr. Broadnax ever had the intent or anticipation that human life be taken when he joined in the robbery that Mr. Cummings initiated. Ex. A ¶ 3 (Mr. Cummings confessing that "it was [his] idea to rob" the victims and that he "obtained the pistol [they] took with [them] that evening and which was used to shoot the victims"); *cf.* Cummings State Ex. 2 at 2:51 ("[James] was like 'Nah, I don't think we need to do that bro. . . . We can just rob them. We ain't even gotta kill nobody.'").

Second, even under the jury instructions that were actually given at the punishment phase of Mr. Broadnax's trial, no rational juror would have found Mr. Broadnax eligible for the death penalty but for the fundamentally false premise that misled the jury into thinking of Mr. Broadnax as the actual killer—which, as explained above in § III, itself constituted constitutional errors that deserve relief. Before sentencing Mr. Broadnax to death, the jury had to answer affirmatively beyond a reasonable doubt that Mr. Broadnax "would commit criminal acts of violence that would constitute a continuing threat to society," 53 RR 5, in accordance with Texas Code of Criminal Procedure, Article 37.071 § 2(b)(1). However, a fundamental premise of the State's case at punishment phase was that Mr. Broadnax met this requirement of "continuing threat" *just based on* his style of killing the two victims

in the instant case. Now that this premise has been shattered by Mr. Cummings's Declaration, there is no plausible basis left upon which the jury's finding under Article 37.071 § 2(b)(1) could still stand.

That the State's punishment future-dangerousness case was anchored in the execution style of the offense ascribed to Mr. Broadnax is undeniable upon a close examination of the record. To start, the State explicitly argued to the jury multiple times: "When we talk about future dangerousness, it is very apparent from the evidence . . . because if you think about the act itself . . . ***the act itself is sufficient enough for you to say future dangerousness is proven.***" 48 RR 22 (emphasis added). The State repeatedly emphasized this, including during closing argument:

[T]he law recognizes that you may . . . answer Special Issue Number 1 yes based strictly on the facts of the offense without looking at history, without looking at what he's done while he's been awaiting trial. You may look just at the crime and have enough before you to say that yes, he is a future danger. The law recognizes that there are some crimes that are so heinous, that are so cold-blooded, that are so calculating and without remorse, and a complete disregard for life, that they speak in and of themselves to this issue right here. I'll submit to you that you have that case before you today; that everything you need to know about this defendant, his proclivity towards violence, his ambitions and his desire to engage in violence, speaks to you from just what he did on that night when he executed these two men.

53 RR 15–16 (emphases added). As such, the jury was expressly urged to find that Mr. Broadnax was a violent person by nature who should be put to death, for no reason other than that he "executed" the two victims with a gun—a false premise.

But the State's heavy reliance upon the fact of the killing at punishment phase did not stop there. In fact, all of the State's other arguments at punishment phase built upon and revolved around its theory about the execution style of the killing of

the two victims, and this theory served as the central thread to tie together the remaining dubious evidence the State used at punishment phase to portray Mr. Broadnax as a violent and bloodthirsty person beyond redemption.

For example, the State used rap lyrics composed by Mr. Broadnax to argue that those lyrics confirmed Mr. Broadnax would engage in killing later, because they were purportedly true accounts of what Mr. Broadnax already did: “He told you what he was going to do in his writings before he even did it. He talked about the murder and the robbery of people. And you know what? Maybe if he never got out and did it, maybe he’d just be another gangster rapper. But then he went out and did it . . . you’ve got evidence right here that told you what he was going to do, and then he went out and did it.” *Id.* at 79. As the State itself conceded in this speech, rap lyrics are artistic expressions that are not necessarily indicative of any criminal propensity of the composer—it is only on the basis that Mr. Broadnax already “went out and did it” that the State claimed to have a tangible basis for arguing the rap lyrics are probative at all of Mr. Broadnax’s character. Thus, any reliance by the State upon the rap lyrics evaporates once it is clear that Mr. Broadnax was never the triggerman and did not kill the victims.

Another central piece of the State’s case at punishment was the testimony from Dr. Jack Randall Price, who testified misleadingly about the so-called characteristics of “a psychopath”—based on a theory that has since been disproven by the scientific community, and without ever examining or diagnosing Mr. Broadnax in person. *See* First Subsequent Appl. at 44–75. This baseless and misleading testimony allowed

the State to argue, erroneously at closing, that Mr. Broadnax is a “predator” and a “psychopathic killer” who would “kill again” given the chance. 53 RR 75, 80. However, there was no factual or scientific basis for these arguments or testimony; indeed, the State was only able to make them by seizing upon the facts of the killing that was erroneously ascribed to Mr. Broadnax, and invoking racial stereotypes to stoke the jury’s fear that Mr. Broadnax would engage in similar killing again. *See, e.g., id.* at 75–80 (“James Broadnax is the worst kind of predator. And he’s not going to stop. There is no stopping. You heard what Dr. Price said, that once a psychopath, always a psychopath. There’s no cure for it . . . The only thing that explains why we’re here today is that James Broadnax is a psychopathic killer, and y’all know it. And he will kill again.”). This testimony and argument, dubious even if Mr. Broadnax had been the shooter, cannot possibly support a finding of future dangerousness once it is established that Mr. Broadnax was not the shooter.

Put simply, the State’s entire punishment phase case falls apart once it becomes clear that Mr. Broadnax was not the triggerman. This is before one even considers the powerful mitigation case that Mr. Broadnax presented at the punishment phase. Mr. Broadnax was 19 years old at the time of the offense, just past the 18-year-old-threshold for which the death penalty would have been per se unconstitutional. *See Roper v. Simmons*, 543 U.S. 551 (2005). He presented expert testimony on the underdeveloped nature of brain and emotional maturity at that young age, as well as the anxiety, depression, and hallucinations he had long suffered due to substance use. 50 RR 26–52, 86–90, 177–80. Multiple witnesses also testified

at length about the physical and psychological abuse Mr. Broadnax experienced at the hands of his own family from childhood through adolescence, and that throughout childhood he never had a stable home environment and was at times homeless. 51 RR 51–62, 66–74, 80–82, 161–63. The evidence also established that despite these hardships, Mr. Broadnax had no history of being violent, and was viewed by others as trustworthy and thoughtful. 50 RR 232–33; 51 RR 273. He had no prior criminal record aside from a single marijuana possession charge, a non-violent offense. *See* State Ex. 454A; 50 RR 269–71. When contrasted against the State’s case at punishment—which relied on the false premise that Mr. Broadnax personally shot the two victims—it is clear that with the newly available evidence proving Mr. Broadnax was not the shooter, no jury would have found that Mr. Broadnax should be given the death penalty.

* * *

Mr. Broadnax’s Claim Three should be authorized to proceed pursuant to Article 11.071 §§ 5(a)(1) & 5(a)(3). The threshold inquiry under § 5(a)(1) is satisfied, because Mr. Cummings’s Declaration is previously unavailable evidence that establishes a *prima facie* case that Mr. Broadnax was actually innocent of the death penalty. The threshold inquiry under § 5(a)(3) is also satisfied, because no rational juror would have answered either of the two special issues required under Articles 37.071 §§ (b)(1) and (b)(2) in favor of the State at punishment phase in light of Mr. Cummings’s recent confessions. This Court should authorize further proceedings under Article 11.071 §§ 5(a)(1) and (3) and grant Mr. Broadnax relief.

VI. Claim Four: Mr. Broadnax's Death Sentence Violated the Eighth Amendment Because He Neither Killed Nor Exhibited Reckless Indifference to Human Life.

It is well established that the Eighth Amendment requires an individualized assessment and must be proportionally calibrated to the defendant's personal culpability before the death sentence can be issued. *Tison v. Arizona*, 481 U.S. 137, 157 (1987); *Enmund v. Florida*, 458 U.S. 782, 798 (1982). "While the States generally have wide discretion in deciding how much retribution to exact in a given case, the death penalty, unique in its severity and irrevocability, requires the State to inquire into the relevant facets of the character and record of the individual offender." *Tison*, 481 U.S. at 149 (quoting *Gregg v. Georgia*, 428 U.S. 153, 187 (1976) and *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976)). This means that "the focus had to be on [defendant's] culpability . . . for we insist on individualized consideration as a constitutional requirement in imposing the death sentence." *Id.* (quoting *Enmund*, 458 U.S. at 798). "A critical facet of the individualized determination of culpability required in capital cases is the mental state with which the defendant commits the crime." *Id.* at 156.

In particular, and critically for the purpose of this case, whenever the defendant was not the actual killer that caused the death of the victims, the death penalty is *not* proportionate under the Eighth Amendment unless an examination shows that that defendant's own "conduct and state[] of mind warrant[] imposition of the death penalty" by distinguishing him to be "the most culpable and dangerous of murderers." *Id.* at 157–58. The relevant inquiry is whether the defendant had "major participation in the felony committed, combined with reckless indifference to human

life.” *Id.* at 158. This requirement stems from the “precept of justice that punishment for crime should be graduated and proportioned to [the] offense.” *Graham v. Florida*, 560 U.S. 48, 59 (2010), *as modified* (July 6, 2010) (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)); *see also Miller v. Alabama*, 567 U.S. 460, 469 (2012) (“[T]he concept of proportionality is central to the Eighth Amendment.”). Accordingly, “[f]or purposes of imposing the death penalty, [defendant’s] criminal culpability must be limited to his participation in the [underlying felony], and his punishment must be tailored to his personal responsibility and moral guilt. Putting [a defendant] to death [for] killings that he did not commit and had no intention of committing or causing does not measurably contribute to the retributive end of ensuring that the criminal gets his just deserts,” and thus is not allowed under the Eighth Amendment. *Enmund*, 458 U.S. at 801.

Mr. Broadnax’s death sentence plainly fails this test when viewed in light of the new evidence from Mr. Cummings’s Declaration. Contrary to the State’s case that portrayed Mr. Broadnax as the cold-blooded triggerman, Mr. Cummings’s Declaration states that Mr. Broadnax was **not** the one who suggested the robbery, obtained the murder weapon, or shot the two victims to death. Ex. A ¶ 3. The DNA evidence corroborates this account entirely, as Mr. Broadnax’s DNA was never found on the murder weapon, whereas Mr. Cummings’s DNA was. State Ex. 391. Similarly, Mr. Broadnax’s DNA was never found on samples recovered from the victims’ bodies—Mr. Cummings’s was. *Id.* Indeed, the only other evidence that could support the theory that Mr. Broadnax was the killer, or that he had **any intention or**

anticipation to kill, were his media interviews, which were given while in an extremely distressed mental state, when he could not reliably recall what occurred during the incident due to drug-impaired memory, and when he was lying to protect his cousin. Those interviews, apart from being inherently unreliable, are contradicted by Mr. Cummings's Declaration. Without them, the State had no evidence to show that Mr. Broadnax had the "reckless indifference to human life" that is constitutionally required to put him to death. *Tison*, 481 U.S. at 157–58; *see also Ladd v. State*, 3 S.W.3d 547, 573 (Tex. Crim. App. 1999) (requiring "[a]nticipating that a human life will be taken" to satisfy the Eighth Amendment under *Tison*).

Multiple courts, when faced with similar circumstances, have vacated the death penalty and granted relief. In *Jackson v. State*, 575 So.2d 181 (Fla. 1991), the Florida Supreme Court vacated a death sentence after finding that evidence at trial was insufficient to establish that the defendant committed murder, or to "show beyond every reasonable doubt that his state of mind was any more culpable than any other armed robber whose murder conviction rests solely upon the theory of felony murder." *Id.* at 192–93. Specifically, "[t]here was no evidence presented in this trial to show that [defendant] personally possessed or fired a weapon during the robbery," and "[t]here was no real opportunity for [defendant] to prevent the murder." *Id.* "To give [defendant] the death penalty for felony murder on these facts would qualify every defendant convicted of felony murder for the ultimate penalty. That would defeat the cautious admonition of *Enmund* and *Tison*, that the constitution requires proof of culpability great enough to render the death penalty proportional

punishment, and it fails to ‘genuinely narrow the class of persons eligible for the death penalty.’” *Id.* at 193 (quoting *Zant v. Stephens*, 462 U.S. 862, 877 (1983)). So too here—as Mr. Cummings’s Declaration now makes clear, Mr. Broadnax never committed the murder he was accused of, and there is no evidence showing his mental state ever went beyond that of “any other armed robber” to amount to the level of culpability required to make him deserving of death. *Id.* at 193.

Similarly, in *Benedith v. State*, 717 So.2d 472 (Fla. 1998), the court vacated the death sentence where the evidence failed to establish whether the defendant was the actual shooter or possessed the requisite culpable state of mind. Because “[b]ased upon the evidence, a reasonable inference could be drawn that either appellant or [the co-defendant] did the actual shooting,” and because “[t]he evidence does not prove that appellant was the actual shooter, that he procured the firearm for use in the robbery, that he possessed the firearm before or during the robbery, that he or [the co-defendant] had ever used a firearm previously in a robbery, or that he could have prevented the use of the firearm while the robbery was being committed,” the “death sentence must be vacated.” *Id.* at 477. Other courts have been in accord. *See, e.g., People v. Jones*, 447 N.E.2d 161, 173 (Ill. 1982) (vacating death sentence where the evidence does not show that “defendant killed, attempted to kill, or intended to kill the victim”); *People v. Banks*, 61 Cal. 4th 788, 807–08 (Cal. 2015) (vacating the death sentence where “[t]here was no evidence [defendant] intended to kill or . . . knowingly conspired with accomplices known to have killed before.”); *id.* at 809–10

(refuting the argument that “any major participant” in a felony like robbery “necessarily exhibits reckless indifference to the value of human life”).

The same result should follow in Mr. Broadnax’s case in light of Mr. Cummings’s Declaration. It would be fundamentally disproportionate and unfair for Mr. Broadnax to be executed based on the false premise that he shot the two victims to death, especially when the State did not seek the death penalty for the co-defendant whom the State believed was not the shooter. The State’s own strategy at the two trials reinforces the conclusion that the non-killer in this offense—Mr. Broadnax—does not deserve death. *Cf. State v. Gamble*, 63 So. 3d 707, 724 (Ala. Crim. App. 2010) (granting relief from death penalty under the Eighth and Fourteenth Amendments, in part to avoid “the ‘bizarre’ result that the more culpable Presley no longer faces execution, while the lesser culpable Gamble remains on death row,” which result “this Court finds . . . to be arbitrary, disproportionate, and fundamentally unfair”).

Multiple additional factors strongly indicate that Mr. Broadnax could not have had the culpable mental state of reckless disregard for human life at the time of the offense—including Mr. Broadnax’s young age at the time of the offense, his lack of any previous violent criminal record, his altered state of mind at the time of the offense given his drug use, and the long-standing abuse he suffered at the hands of his own family and caretakers. *See, e.g., Johnson v. Texas*, 509 U.S. 350, 367 (1993) (emphasizing the “lack of maturity and an underdeveloped sense of responsibility” in youth and the importance of the sentencer giving due consideration to such

“mitigating qualities of youth” in the context of other considerations); *Eddings v. Oklahoma*, 455 U.S. 104, 116 (1982) (similar); *Henderson v. Norris*, 258 F.3d 706, 710 (8th Cir. 2001) (finding it “highly important” that the defendant “had no prior convictions” when assessing the proportionality of the sentence under the Eighth Amendment); *Ex parte Smith*, 309 S.W.3d 53, 63 (Tex. Crim. App. 2010) (holding that the defendant’s drug use “was an explanation for his behavior that might reduce his moral culpability”).

* * *

Mr. Broadnax’s Claim Four should be authorized to proceed pursuant to Article 11.071 §§ 5(a)(1) & 5(a)(3). The threshold inquiry under § 5(a)(1) is satisfied, because Mr. Cummings’s Declaration is previously unavailable evidence that establishes a *prima facie* case that Mr. Broadnax’s death sentence was constitutionally disproportionate. The threshold inquiry under § 5(a)(3) is also satisfied, because no rational juror would have found beyond a reasonable doubt that Mr. Broadnax had the requisite mental culpability to be sentenced to death in light of Mr. Cummings’s recent confessions. This Court should authorize further proceedings under Article 11.071 §§ 5(a)(1) and (3) and grant Mr. Broadnax relief.

**CLAIM FIVE: PREVIOUSLY UNAVAILABLE EVIDENCE
CLEARLY ESTABLISHES THAT THE STATE VIOLATED
MR. BROADNAX'S *BATSON* RIGHTS AT TRIAL**

I. Statement of the Case

A. The State systematically struck every qualified Black prospective juror at Mr. Broadnax's trial.

Mr. Broadnax was a 19-year-old Black man when he was accused of capital murder of two White victims in Dallas County. During *voir dire*, all unqualified jurors were removed, resulting in a venire pool of 47 qualified prospective jurors. 37 RR 49–51. Of those 47 venire members, seven were Black, two were Hispanic, and 38 were White. The State ultimately exercised a total of 15 peremptory strikes, using more than half of them to strike all seven Black jurors and one of the two Hispanic jurors. See 38 RR 78–79, 84–85.

During *voir dire*, the State questioned Black prospective jurors in a markedly more aggressive manner than the White prospective jurors, replicating the discriminatory practices from this very same prosecutor's office which the Supreme Court explicitly condemned in *Miller-El v. Cockrell*, 537 U.S. 322, 332–33 (2003) ("*Miller-El I*"). Five of the seven Black prospective jurors were given graphic descriptions of the lethal injection process at execution, or were directed to look at Mr. Broadnax while being asked whether they could find it in themselves to sentence Mr. Broadnax to death. See, e.g., 34 RR 21–22 ("I need you to take a look at him. . . . He will be strapped to a gurney and they will put needles into his arm and they will continue to pump poison into his body until he dies."); see also 10 RR 23; 11 RR 123; 13 RR 249–50; 30 RR 36–37. In contrast, most of the White prospective jurors,

including three who confessed nervousness about serving in a capital case, were not given this treatment. *See* 10 RR 96; 13 RR 70; 56 RR 135.

More striking still, some of the State's *voir dire* questioning of Black prospective jurors explicitly invoked race as a basis for doubting their ability to sit on the jury. For example, the State asked Mr. Curtis Riser, a Black prospective juror: "[Y]ou're sitting in the case of a black man. . . . Do you feel like you owe him any allegiance because of that?" 13 RR 251. Despite Mr. Riser's unequivocal answer, "No," the State pressed on: "So, in terms of race. . . . There is not a problem for you in that . . . somebody could potentially say to you afterwards, how could you do that to another black man?" *Id.* at 252.

The numbers of the State's peremptory strikes are telling. Minority prospective jurors constituted just 17% of the qualified venire pool, yet the State spent more than half of its peremptory strikes on them. Put another way, qualified White jurors faced a 18% chance of being struck by the State, while qualified Black jurors had a 100% chance of being struck. The State struck every single one of the qualified Black jurors, and one of the two qualified Hispanic jurors. Indeed, the only qualified minority juror whom the State did not strike was the other Hispanic juror, whom the State *could not* strike, because it had exhausted all of its peremptory strikes. 38 RR 79, 82–83. Defense counsel objected to each of the State's strikes of qualified minority prospective jurors. *See id.* at 9, 14, 21, 26, 44, 51, 69, 71.

B. The trial court expressly refused to conduct an appropriate *Batson* inquiry.

Following *voir dire*, a *Batson* hearing was held at defense counsel's request. Although the State contended that it used its peremptory strikes to remove qualified jurors "not in favor of the death penalty," two of the struck Black jurors had expressed the opposite view. 42 RR 7–8; *see also* 57 RR 103, 122. In fact, one struck Black juror rated herself a 7 out of 10 on a scale of support for the death penalty—higher than some of the White jurors whom the State deemed acceptable. *Compare, e.g.,* 57 RR 106 *with* 55 RR 124, 276. The State also cited spelling and grammatical errors in another Black juror's questionnaire as the reason for striking her, yet it accepted White jurors whose questionnaires had the same problems. *Compare, e.g.,* 38 RR 17 *with* 56 RR 139, 141–46, 154. Further, while the State invoked a decade-old deferred adjudication for a bad check case as its motivation for striking a third Black juror, it accepted a White juror who pled guilty to driving while intoxicated. 38 RR 48–49; *compare, e.g.,* 57 RR 110 *with* 56 RR 145. The State also proffered self-contradictory reasons for striking some of the minority jurors, claiming that one Hispanic juror was unacceptable because she had "four children and no job," while simultaneously striking a Black juror because she was "a single woman with no children." 38 RR 10, 22.

However, at the *Batson* hearing, the trial court explicitly refused to engage in any *Batson* analysis. The trial court confessed that "the fact that there are no African-American jurors on this jury and there was a disproportionate number of African-American jurors who were struck" actually "d[id] concern me quite a bit." 42

RR 33. Nonetheless, the court went out of its way to clarify that it did not want to or mean to conduct a *Batson* inquiry, because of what the court viewed as “the problem . . . with the whole line of [*Batson*] cases.” *Id.* at 33–35 (“The problem . . . of course, is that if you grant a *Batson* challenge it implies some sort of nefarious intent on the part of the prosecutors.”); *see also* 38 RR 84–85. Thus, while the trial court restored one Black juror who had been struck by the State in order to “fix” the fact that the State had selected an all-White jury—resulting in a jury that consisted of 11 White members and one Black member—it refused to inquire into whether the State’s peremptory strikes of any of the non-White jurors had constituted a *Batson* violation. 42 RR 33–35. Mr. Broadnax was subsequently convicted and sentenced to death by the nearly all-White jury panel.

C. The State appealed to the jury’s racial bias throughout trial to secure Mr. Broadnax’s conviction and death sentence.

The purpose of this discriminatory jury selection became apparent as the trial proceeded: The State’s case was designed to inflame and appeal to racial prejudice. The State told the jury that Mr. Broadnax sought out the crime scene “because that’s where the rich white folks live,” and argued to the jury (without proper basis) that Mr. Broadnax belonged to a Black gang. 45 RR 50; *see also* 49 RR 89, 108, 111. During the punishment phase, the State read to the jury page after page of rap lyrics composed by Mr. Broadnax, invoking the widespread stereotypical perception of the rap music genre—and the Black men that often composed and performed rap music—as being dangerous, violent, and bloodthirsty. *See generally* Second Subsequent Appl. at 1–43, *Ex parte Broadnax*, No. WR-81,573-03 (Aug. 20, 2024).

The State’s race-based advocacy culminated in a closing argument at the punishment phase that explicitly analogized Mr. Broadnax to the animal predators shown on *Animal Planet*, calling Mr. Broadnax “a new breed” and a “monster” who was “chomping at the bit to engage in violence.” *See* 53 RR 74–75. According to what the State told the jury, the death penalty was warranted because Mr. Broadnax was like “the worst kind of predator[s]” that “we like to watch” on “Animal Planet,” the type that “once he’s tasted the human blood, he ain’t going to be able to stop.” *Id.* The nearly all-White jury returned with a verdict of a death sentence on the same day. 54 RR 4–5.

D. After initial state habeas proceedings were concluded, the State disclosed additional evidence showing multiple *Batson* violations.

In 2011, while Mr. Broadnax’s direct appeal was pending, and in preparation for his state habeas corpus proceedings, Mr. Broadnax’s counsel requested access from the Dallas County District Attorney’s Office to its files pertaining to Mr. Broadnax’s case, including files relating to jury selection. The District Attorney’s office rejected that request, claiming that its jury selection files were subject to the work product privilege. *See* First Subsequent Appl. at 21–22 & Ex. D. Mr. Broadnax exhausted his state initial habeas corpus proceedings in May 2015, and filed a timely federal habeas corpus petition in May 2016. *See* Pet. for Writ of Habeas Corpus, *Broadnax v. Davis*, No. 3:15-CV-1758-N, ECF No. 29 (N.D. Tex. May 18, 2016).

While Mr. Broadnax’s federal habeas petition was pending, in June 2016, the Dallas County District Attorney’s Office made available for counsel’s review, for the first time, a group of the jury selection files that counsel had previously requested but

had been denied access during Mr. Broadnax's state habeas proceedings. *See* First Subsequent Appl. at 8–9 & Ex. D. These documents included a spreadsheet created and used by the State during jury selection at Mr. Broadnax's trial, which listed each qualified prospective juror with a "Race/Sex" column, and marked each juror as "B/M" (Black male), "B/F" (Black female), "W/M" (White male), or "W/F" (White female). *Id.* at Ex. A. The names of *every single* Black juror, and *only* the Black jurors, were bolded. *Id.* In addition, metadata associated with the electronic version of the spreadsheet confirmed that the spreadsheet had been created, used, modified, and printed by the State during jury selection. *Id.* at 27 & Ex. F.

In September 2016, the Dallas District Attorney's Office disclosed additional documents from its jury selection files. These newly disclosed files included the State's handwritten annotations on the jury questionnaire of Mr. Curtis Riser, a qualified Black juror peremptorily struck by the State. During the *Batson* hearing at trial, the State asserted that it struck Mr. Riser because of his stated concerns about exonerations, his belief in rehabilitation, and the fact that he had relatives who had been incarcerated. 38 RR 27–28. However, all these stated reasons were belied by the State's own notes on Mr. Riser's questionnaire, where the State wrote and circled out: "Believes in [death penalty], but wants to be sure," "Seems very thoughtful w/ his answers during voir dire," "Not a problem w/ telling his 15-yrs-old kid that he took part in [the death penalty] process," and "Seems okay. . . **only concern** . . . [Defendant]'s **age + race** w/ Juror's son **age + race**." First Subsequent Appl. at Ex. B (emphases added).

Both the federal district court and the court of appeals held that they could not consider any of the State’s jury selection files—including the spreadsheet and the State’s annotations on Mr. Riser’s questionnaire—because federal habeas review was limited to “the record before the state court” during previous state habeas proceedings. *Broadnax v. Lumpkin*, 987 F.3d 400, 406 (5th Cir. 2021); *Broadnax v. Davis*, 2019 WL 3302840, at *19 (N.D. Tex. July 23, 2019). The U.S. Supreme Court denied certiorari. *Broadnax v. Lumpkin*, 142 S. Ct. 859 (2022).

In February 2023, Mr. Broadnax filed an amended first subsequent state habeas application, arguing that the newly disclosed evidence from the State’s jury selection files confirmed that serious *Batson* violations occurred at his trial. First Subsequent Appl. at 1–44. This Court dismissed the application for failing to satisfy the threshold requirements of Texas Code of Criminal Procedure, Article 11.071 § 5(a)(1). *Ex parte Broadnax*, No. WR-81,573-02, 2023 WL 3855947 (Tex. Crim. App. June 7, 2023). Though the U.S. Supreme Court subsequently denied a writ of certiorari, two Justices dissented from the denial, stating that they would have granted certiorari and reversed the judgment. *Broadnax v. Texas*, 144 S. Ct. 2700 (2024).

E. Newly disclosed evidence further confirms Mr. Broadnax’s *Batson* claims.

1. Previously unavailable evidence corroborates the State’s racial motivation in jury selection.

After this Court denied Mr. Broadnax’s First Subsequent Habeas Corpus Application on *Batson* grounds, and after Mr. Broadnax had filed his Second Subsequent Habeas Corpus Application raising non-*Batson* claims, for the first time,

the Dallas County District Attorney’s Office permitted defense counsel to review the State’s jury selection files from the trial of Mr. Demarius Cummings, Mr. Broadnax’s cousin and co-defendant. Mr. Cummings was tried, convicted, and sentenced to life without parole in a separate trial that took place in January 2010, less than five months after Mr. Broadnax’s trial. The two trials were prosecuted by substantially the same team of attorneys from the Dallas County District Attorney’s Office. *Compare* 45 RR 2 (appearances for the State during Mr. Broadnax’s trial) *with* Cummings Trial Tr. 4 RR 2 (appearances for the State during Mr. Cummings’s trial).

The State’s jury selection files from Mr. Cummings’s trial included a chart of prospective jurors, with handwritten notations marking each prospective juror as “BM” (Black male), “BF” (Black female), “WM” (White male), or “WF” (White female)—*i.e.*, the same notations used to track the race and gender of venire members at Mr. Broadnax’s trial. *See* Ex. C. While no computer metadata (such as the electronic file history produced for the spreadsheet used in Mr. Broadnax’s trial) was disclosed in association with this chart, other markings on the same document suggest that the chart was prepared and used by the State during *voir dire* at Mr. Cummings’s trial. *Id.* For ease of comparison, we reproduce both the chart from Mr. Cummings’s trial and the spreadsheet from Mr. Broadnax’s trial below:

65 W/M	64 W/F	63 H/F	62 W/M	61 W/F	60 H/M	59 W/F	58 W/M	57 W/F	56 W/M	55 W/F	54 W/F	53 W/F	52 W/F	51 W/M
Feel Cred/cred Aptuse CapU	C/C	C-SS	2	C-Partis	1	3	3	POS-C	1	4	Victim	3	1	8-4
F0824666			Demarius	Cummings		1-18-11								

48 W/F	44 W/M	43 W/F	42 W/F	41 W/F	40 W/F	39 W/F	38 B/F	37 W/F	36 B/M	35 W/M	34 W/M	33 H/M	32 W/F	31 W/M
C-SSS		4-5	C-Media C-SSS	12	C-BOI	C-SS	C-partis	C-partis	C-partis	C-SSS	C-SSS	11	C-BOI	C-BOI
30 B/F	29 W/F	28 W/F	27 W/F	26 B/M	25 A/M	24 W/F	23 B/M	22 H/M	21 C/M	20 B/F	19 B/F	18 W/F	17 W/F	16 W/M
C-partis	C-SSS	C-SSS	C-SSS	10	9	10	9	A	8	7	6	5	4	3
15 W/F	14 B/M	13 B/M	12 W/F	11 W/F	10 W/M	9 W/F	8 W/F	7 W/M	6 W/F	5 W/F	4 H/F	3 W/M	2 W/M	1 W/F
5	4	3	2	1	3	2	1	2	1	2	1	2	1	2

72 W/M	73 W/F	74 W/F	75 W/F		
		C-partis	C-partis		
66 W/F	67 W/M	68 W/M	69 H/M	70 W/M	71 B/M
C-Media	C-SSS	2	3-4	3	4-5

Ex. C, Jury Selection Chart from *State v. Cummings*, No. F08-24666-Y, at 6-7 (highlighting added).

QUALIFIED JURORS				
Qualified #	Juror #	Name	Race/Sex	*Death Penalty #
1	6	Jerome Mitchell Williams	W/M	2 • 1
2	58	Jason Micah Ross	W/M	2
3	34	John Edward Wherry	W/M	2
4	101	Jon D. Desmond	W/M	2
5	123	Sue McCormick	W/F	3
6	165	Sharron Denise McCraney	B/F	3
7	134	Edith Elaine Clements	W/F	2 • 2
8	150	Bradley A. Wiltshire	W/M	2
9	131	Mattie M. Vation	B/F	2
10	227	Alex James Folz	W/M	2 • 3
11	208	Angella Marin Rivera	Hisp/F	2
12	222	Curtis Demetre Riser	B/M	3
13	265	Johnny William Sanford	W/M	3
14	277	Vicki Sue Wood	W/F	2
15	272	Kelly Lynn McDonald	W/F	2 • 4
16	337	Helen Ann Noble	W/F	2
17	301	Billy Eugene Henry	W/M	2
18	284	Heather Sylvia Eger	W/F	2
19	289	John P. Maguire, Jr.	W/M	2
20	392	Lisa Lanelle Davison	W/F	2
21	544	Carl Whitt Jackson	W/M	3
22	401	Leah Michelle Kunard	W/F	2
23	451	Bruce Edward McDonald	W/M	2
24	601	Teresa Elaine Randleas	W/F	2
25	626	Kimberly Bronwyn Morris	W/F	2 • 5
26	573	Guy Gant Ferreira	W/M	2 • 6
27	596	Rindy Kay Woodward	W/F	2
28	474	John Joseph Cantwell	W/M	2
29	660	Alexander Wayne Konkle	W/M	2
30	551	Wesley Brian Marshall	W/M	2
31	468	Lance Russell Bedford	W/M	2
32	412	Steven James Zaidel	W/M	2 • 7
33	684	William T. Stinson	W/M	2 • 8
34	797	Lyle Wynne Livingston	W/M	2
35	824	Jennifer Robin Stockton	W/F	2
36	868	Aqwana Swhell Long	B/F	2
37	930	Robert Lee patterson	B/M	2
38	874	William Bruce Kreighbaum	W/M	2 • 9
39	977	Patricia Diane Hodges	W/F	2
40	1397	Betty Rue Jackson	B/F	3
41	1062	Dedric Olin Morrison	B/M	2
42	1321	Clarence Ray Winfield	W/M	2 • 10
43	1345	John Francis Vessels	W/M	2 • 11
44	1313	Emily Alane Blevins	W/F	2 • 12
45	1094	Barry Douglas Fiddick	W/M	2 • Alternate (1)
46	1178	Eisa Yvonne Olvera	Hisp/F	2
47	1389	George Rene Paradise	W/M	2
48	1335	James M E Roy	W/M	2 Alternate (2)

- * With reference to the death penalty, which of the following statements best represents your feelings?
1. I believe that the death penalty is appropriate in all murder cases.
 2. I believe that the death penalty is appropriate in some murder cases, and I could return a verdict in a proper case which assessed the death penalty.
 3. Although I do not believe that the death penalty ever ought to be invoked, as long as the law provides for it, I could assess it under the proper set of circumstances.
 4. I believe that the death penalty is appropriate in some murder cases, but I could never return a verdict which assessed the death penalty.
 5. I could never, under any circumstances, return a verdict which assessed the death penalty.

Calli:

I need you to type my notes on each of the Jurors

I have numbered ~~1-12~~ 1-12 and the 2 alternates. My notes are on the respective questionnaire and in the 2 legal pads.

Also: Please make a copy of the questionnaire for Juror # 412. Thanks.

First Subsequent Appl. at Ex. A, Jury Selection Spreadsheet from *State v. Broadnax*, No. F08-24667-Y.

Notably, during *voir dire* at Mr. Cummings's trial, there was no challenge to any peremptory strike by either side, and no *Batson* hearing was held. See generally

Cummings Trial Tr. 3 RR 7–155. In other words, the State prepared the jury selection chart and hand-marked each prospective juror by race *on its own initiative* and during its ordinary course of preparation for Mr. Cummings’s *voir dire*, without the need to address any *Batson* argument from defense counsel. Indeed, a side-by-side comparison of the chart used at Mr. Cummings’s trial and the spreadsheet used at Mr. Broadnax’s trial makes clear that the State’s routine practice was to track venire members by race—the notations and terms used are strikingly similar, confirming that race was first and foremost on the prosecution’s mind when it selected the jury in these two Black defendants’ trials.

Thus, the chart from Mr. Cummings’s trial directly contradicts the State’s argument that the spreadsheet in Mr. Broadnax’s files had been created, and the Black qualified jurors’ names bolded, only “in order to prepare for” the “*Batson* objections at the strike hearing.” See Mot. to Dismiss First Subsequent Appl. at 25–27. The fact that the State *did the exact same thing* in a related trial where there were no *Batson* challenges and no need to prepare for a *Batson* hearing exposes the State’s argument about the spreadsheet in Mr. Broadnax’s trial as “reek[ing] of afterthought.” *Foster v. Chatman*, 578 U.S. 488, 514 (2016); see also *Miller-El v. Dretke*, 545 U.S. 231, 246 (2005) (“*Miller-El II*”) (“[T]he State’s new explanation reeks of afterthought.”)

2. Declarations from struck Black venire numbers confirm that the State violated Mr. Broadnax’s *Batson* rights at trial.

In addition, after Mr. Broadnax had filed his previous state habeas applications, defense counsel was able to obtain declarations from three of the Black

prospective jurors who were peremptorily struck by the State in Mr. Broadnax's trial, Ms. Aqwana Long, Mr. Dedric Morrison, and Mr. Curtis Riser. Exs. 2–4. In those declarations, each of these struck Black jurors states under penalty of perjury that they supported the death penalty at the time of Mr. Broadnax's trial, and affirms that they would have followed the law and the court's instructions in rendering a verdict. Ex. D ¶¶ V–VII; Ex. E ¶¶ IX–XI; Ex. F ¶¶ VIII–X. As explained *infra* at § III.C, those statements further impeach the State's proffered reasons for striking these Black perspective jurors—*i.e.*, because they were supposedly not in favor of the death penalty, or otherwise could not have served as impartial jurors or followed the law—confirming that those reasons were pretextual and would not have survived a proper *Batson* inquiry.

Importantly, one of the declarations was signed by Mr. Curtis Riser, the same qualified juror on whose questionnaire the State had written “Seems okay . . . hardworking, smart. **Only concern** . . . [Defendant]'s age + race w/ Juror's son age + race, as mentioned.” First Subsequent Appl. at Ex. B (emphasis added). During the *Batson* hearing, one of the State's proffered reasons for striking Mr. Riser was that he had stated during *voir dire* “I see my son in this room,” implying that Mr. Riser felt allegiance towards Mr. Broadnax because his son was of the same race and age. 38 RR 28–29. However, as Mr. Broadnax previously explained, and as Mr. Riser again confirms in his declaration attached here, this rationale was directly contradicted by the record, because Mr. Riser explained clearly during *voir dire* that he was comparing his son to the bailiff, not Mr. Broadnax. 13 RR 249–50; Ex. F ¶ XI.

Mr. Riser’s Declaration further confirms that the State’s race-based questioning during *voir dire* was not lost on him: Mr. Riser distinctly recalls the State’s “interrogat[ion]” of his “ability to put another black man to death and whether someone [who is also Black] would have questioned [him] for [his] decision,” and affirms that he would have been an impartial juror capable of following the law, and that he had made this clear to the State during *voir dire*. Ex. F ¶¶ XI–XVIII.

The declarations also make clear that the struck Black jurors were troubled to learn that the State had used a spreadsheet to track the race of venire members during *voir dire*, and that this spreadsheet had singled out all Black venire members (and only Black venire members) by bolding their names. Ex. D ¶¶ XI–XIII; Ex. E ¶¶ XII–XIV; Ex. F ¶¶ XVI–XVII. To these Black jurors, this indicates that the State had used race as an improper basis for its jury selection decisions, and is reflective of broader racial discrimination issues that still plague the criminal justice system in this State—issues that the *Batson* line of cases explicitly aim to address. Ex. D ¶¶ XII–XIII; Ex. E ¶¶ XIII–XIV; Ex. F ¶ XVII; *cf. Batson*, 476 U.S. at 87 (discriminatory jury selection practices “touch the entire community” by “undermin[ing] public confidence in the fairness of our system of justice.”). Mr. Morrison states: “I was not surprised to see my name in bold; although it is obviously inappropriate. I believe black jurors still tend to not get picked, particularly when the individual on trial is black. I believe this is wrong, and I am hopeful that the courts will take steps to correct this form of racial discrimination.” Ex. E ¶ XIII. Mr. Riser similarly says: “I was not surprised but I was upset that race had played

a part in who was part of the jury.” Ex. F ¶ XVII. Ms. Long states: “I was surprised to learn of the spreadsheet’s existence . . . It appears I was not chosen for the jury because I am black.” Ex. D ¶¶ XII–XIII. Both Ms. Long and Mr. Morrison explicitly state that “[b]ecause the prosecution appears to have struck me because I am black, I do not believe James Broadnax was given a fair trial.” Ex. E ¶ XIV; Ex. D ¶ XIII. The third Black juror, Mr. Riser, also condemns the State’s race-based practices at jury selection: “We all belong in rooms where decisions are made, good or bad. We all have to make hard decisions in life. Being struck from the jury showed me that some people will not be allowed to be decisionmakers if they look like I do.” Ex. F ¶ XIV.

II. Standards for Authorization of Relief

Under Texas Code of Criminal Procedure, Article 11.071 § 5(a)(1), a subsequent habeas application is proper basis for granting relief if the “factual . . . basis for the claim was unavailable on the date the applicant filed the previous application,” and if “the specific facts alleged, if established, would constitute a constitutional violation that would likely require relief from either the conviction or sentence.” *Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007). As discussed above, under § 5(a)(1), this Court engages in a “threshold” review, requiring only that the applicant “make a *prima facie* showing of [the underlying claim] in his subsequent pleading, and then, if granted leave to proceed by this Court, must establish in the subsequent proceedings that he is [entitled to relief] by a preponderance of the evidence.” *Ex parte Blue*, 230 S.W.3d at 162. Mr. Broadnax satisfies this threshold requirement because the newly disclosed jury selection files from Mr. Cummings’s trial had been

withheld when his previous state habeas applications were filed, and because this new evidence establishes a *prima facie* case of serious *Batson* violations of his equal protection and due process rights under the Fourteenth Amendment at his trial.

III. Relief Is Appropriate Because the Newly Disclosed Jury Selection Chart From Mr. Cummings’s Trial Confirms That the State Selected Jurors Based on Race.

A. The State purposefully selected jurors by race at Mr. Broadnax’s trial.

The U.S. Supreme Court has repeatedly emphasized the importance of considering all evidence available in a *Batson* inquiry: “[A]lthough some false reasons are shown up within the four corners of a given case, sometimes a court may not be sure unless it looks beyond the case at hand. Hence *Batson*’s explanation that a defendant may rely on ‘all relevant circumstances’ to raise an inference of purposeful discrimination.” *Miller-El II*, 545 U.S. at 240. An unexhaustive list of factors that have been considered probative for *Batson* violations include (1) “statistical evidence about the prosecutor’s use of peremptory strikes,” (2) evidence of “disparate questioning and investigation,” (3) “side-by-side comparisons of black prospective jurors who were struck and white prospective jurors who were not struck,” (4) the “prosecutor’s misrepresentations of the record when defending the strikes during the *Batson* hearing,” (5) “relevant history of the State’s peremptory strikes in past cases,” and (6) “other relevant circumstances that bear upon the issue of racial discrimination.” *Flowers v. Mississippi*, 139 S. Ct. 2228, 2243 (2019). The *Batson* violations in this case are clearly established by all six types of evidence in the record.

1. The State's Jury Selection Files at Mr. Broadnax's Trial

The State's "persistent focus on race in the prosecution's file" from Mr. Broadnax's trial "plainly belie[s] the State's claim that it exercised its strikes in a color-blind manner." *Foster*, 578 U.S. at 512–13. Indeed, the State was not merely conscious of race during jury selection; its focus was race. This is clearly shown by the spreadsheet that the State created, used, modified, and printed during *voir dire*, which listed each qualified prospective juror with a "Race/Sex" column, marked each juror as "B/M" (Black male), "B/F" (Black female), "W/M" (White male), or "W/F" (White female), and singled out all of the Black prospective jurors—and only the Black prospective jurors, by bolding their names. First Subsequent Appl. at Ex. A. Any possible doubt about the State's race-conscious strategy at *voir dire* is further dispelled by the State's handwritten annotations on Mr. Riser's jury questionnaire, which are full of references to his race: "I see my son in this room b/c son is black and there are black people in this room;" "Does Not feel he owes [defendant] any allegiance b/c he's black. Not a problem if someone asks him how cd he vote to put to death a black man;" and "**Only concern** ... [Defendant]'s **age + race** w/ Juror's son **age + race**, as mentioned." *Id.* at Ex. B (emphases added).

2. Statistics

The statistics of the State's peremptory strikes in this case are arresting. Out of a pool of 47 qualified prospective jurors, the State used nearly half of its peremptory strikes to eliminate all 7 Black members, who collectively constituted only 15% of the qualified pool. To look at this another way, the State used peremptory strikes on 100% of the eligible Black jurors, and just 18% of the eligible White jurors in the same

pool. In cases with even less extreme statistics, the U.S. Supreme Court has concluded that “[h]appenstance is unlikely to produce this disparity.” *Miller-El II*, 545 U.S. at 241 (noting that the State had struck “91% of the eligible African-American venire members”); see also *Snyder v. Louisiana*, 552 U.S. 472, 476 (2008) (noting that “all 5 of the prospective black jurors were eliminated by the prosecution”); *Foster*, 578 U.S. at 493 (noting that the State “remov[ed] all four of the remaining black prospective jurors”); *Flowers*, 139 S. Ct. at 2235 (noting that the State “struck five of the six black prospective jurors” in the instant trial). Such “[p]roof of systematic exclusion from the venire raises an inference of purposeful discrimination because the ‘result bespeaks discrimination.’” *Batson*, 476 U.S. at 94.

3. Disparate Questioning

“The lopsidedness of the prosecutor’s questioning and inquiry can itself be evidence” of a *Batson* violation. *Flowers*, 139 S. Ct. at 2248. In particular, “[i]f the graphic script is given to a higher proportion of blacks than whites, this is evidence that prosecutors more often wanted blacks off the jury.” *Miller-El II*, 545 U.S. at 255. That is what happened here. Most prospective Black jurors—but not most White jurors—were either directed to look at Mr. Broadnax, and/or given a graphic description of the execution process, while the prosecutor questioned their ability to render a death sentence. See 10 RR 23; 11 RR 123; 13 RR 249–50, 30 RR 36–37; 34 RR 21–22. For example, the prosecutor asked one of the prospective Black jurors:

We’re talking about you potentially being a part of taking another person’s life. . . . [The judge] will have to go and sign a warrant for the death of the defendant and that’s the defendant sitting down there. ***I don’t know if you got a good look at him.*** Take a good look at him. Are you okay with that?

10 RR 18 (emphasis added). This was then followed by a detailed description of the death penalty:

If you ultimately found yourself on a case where I had proved to you beyond a reasonable doubt the person was guilty of capital murder and I had proved to you . . . those special issues should be answered in a way that means you're going to kill him . . . that means he's going to go to Huntsville and receive a lethal injection and he is going to die on a gurney, how do you feel about that?

Id. at 23. In response, this qualified Black juror assured the State that she could evenhandedly deliver a verdict. *Id.* at 24–25. The State struck her nonetheless. 38 RR 9.

At the *Batson* hearing, the prosecutor justified the strike and this line of questioning on the ground that this particular juror allegedly appeared nervous. *Id.* at 11. However, multiple White jurors who similarly admitted nervousness were not subject to the same rigorous questions. One such White juror wrote on her questionnaire that she “would be nervous” if she were chosen as a juror in a death penalty case, 56 RR 135; another answered that she was “nervous about” the possibility of serving on a death penalty jury, 10 RR 96; and a third similarly volunteered that he felt nervous just for being present in a criminal proceeding, 13 RR 70. None of these White prospective jurors was asked to look at Mr. Broadnax while hearing a detailed description of the death penalty; and none was struck by the State. 38 RR 13–14, 20, 38. Such disparate questioning is strong evidence of *Batson* violations because it is used precisely to “elicit responses that would justify the removal of African-Americans from the venire.” *Miller-El I*, 537 U.S. at 345.

In addition, the State's improper focus on race during *voir dire* is also made clear by its preoccupation with whether the Black prospective jurors felt any "allegiance" to Mr. Broadnax because they were both Black. *See, e.g.*, 11 RR 122–23, 143; 13 RR 250–53. This itself is direct evidence of *Batson* violations, as the Equal Protection Clause "forbids the States to strike black veniremen on the assumption that they will be biased in a particular case simply because the defendant is black." *Flowers*, 139 S. Ct. at 2241 (quoting *Batson*, 476 U.S. at 97).

4. Side-by-Side Comparisons

There is evidence of pretext when "a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve." *Miller-El II*, 545 U.S. at 241. Such disparate treatment occurred in multiple instances here. For example, one of the Black prospective jurors stated in her jury questionnaire that she was in favor of the death penalty, that she believed the death penalty is used too seldom and never has been misused "to [her] knowledge," and ranked herself a 7 out of 10 on a scale of support for capital punishment. 57 RR 103, 106. Although she believed intoxication was a mitigating circumstance, she specifically stated during *voir dire* that she would be able to render a death sentence against a defendant who was intoxicated. 30 RR 67–68. Still, the State struck her because it purportedly considered her opposed to the death penalty, and because she considered intoxication a mitigating factor. 38 RR 45, 47. But the same can be said of multiple White jurors who were not struck. *See, e.g.*, 57 RR 141 (accepted White juror writing on his questionnaire: "It bothers me to read about all the death row inmates that have been there for years, and be very close to having

their sentence carried out and thankfully exonerated before it could”); 13 RR 90 (accepted White juror stating in *voir dire* that he would support the death penalty only “in certain circumstances”); 27 RR 134 (accepted White juror acknowledging that intoxication could be a mitigating factor).

As another example, with respect to prospective juror Mr. Riser, the State provided three reasons for his strike that applied with equal or greater force to multiple White jurors acceptable to the State: (1) his stated concerns about exonerations, (2) his belief in rehabilitation, and (3) the fact that he had relatives who were incarcerated. 38 RR 27–28. But several White empaneled jurors also expressly raised concerns about wrongful convictions. *See* 55 RR 124, 181; 57 RR 144, 277. Another ranked rehabilitation as the most important goal of the criminal justice system. 56 RR 126. And many White empaneled jurors also had relatives who served time in prison. *See* 55 RR 128–29, 280–81; 56 RR 126–27; 57 RR 224–25. “The fact that [the State’s] reason [for peremptory strike] also applied to these other panel members, [all] of them white, none of them struck, is evidence of pretext.” *Miller-El II*, 545 U.S. at 248. In fact, *we know* that all of these proffered race-neutral reasons for striking Mr. Riser were pretextual, and that the real and only reason for striking him was based on his race, because the State itself told us so in its handwritten annotations on Mr. Riser’s jury questionnaire: “Seems okay. . . **only concern** . . . [Defendant]’s **age + race** w/ Juror’s son **age + race**.” First Subsequent Appl. at Ex. B (emphases added).

5. Misrepresentations

Erroneous or shifting representations of the record by the State in response to a *Batson* challenge “naturally give[] rise to an inference of discriminatory intent” because the “stated reason . . . does not hold up.” *Snyder*, 552 U.S. at 485; *see also Foster*, 478 U.S. at 512–13 (considering “shifting explanations” and “misrepresentations of the record” as evidence probative of *Batson* violations); *Miller-El II*, 545 U.S. at 252 (“[A] prosecutor simply has got to state his reasons as best he can and stand or fall on the plausibility of the reasons he gives. A *Batson* challenge does not call for a mere exercise in thinking up any rational basis.”).

The fact that the State engaged in precisely this type of misrepresentation at Mr. Broadnax’s *voir dire* is, again, confirmed by the State’s annotations on Mr. Riser’s jury questionnaire. One of the justifications offered by the State for striking Mr. Riser was that he “doesn’t believe in the death penalty.” 38 RR 29. But this is contradicted by the prosecution’s own contemporaneous notes regarding Mr. Riser, which stated: “Believes in [death penalty], but wants to be sure;” “Seems very thoughtful w/ his answers during voir dire;” “Not a problem w/ telling his 15-yrs-old kid that he took part in [the death penalty] process;” and “Seems okay ... Only concern ... [Defendant]’s age + race w/ Juror’s son age + race, as mentioned.” First Subsequent Appl. at Ex. B.

In addition, when defending the strike of Mr. Riser, the State had also explained that: “He had stated . . . that ‘*I see my son in this room.*’ And that kind of gave me pause because apparently his son is about the same age as *this particular defendant in this case.*” 38 RR 28–29 (emphases added). But Mr. Riser was *not*

comparing his son to Mr. Broadnax. When asked “[w]hat do you mean, you see him in this room,” he answered:

The lawyer right there. One of those gentlemen in the back is not a lawyer but -- oh, a bailiff. You know, my son is a black boy, and I see him in this room.

13 RR 249; *see also* Ex. F ¶ XI (“During the *voir dire* process, I metaphorically mentioned that I saw my son in the room. I was speaking about the bailiff, another young black man, to demonstrate the importance of representation. . . . I thought I was clear that . . . everyone in the courtroom so understood.”).

6. Historical Practice of the District Attorney’s Office

The Dallas County District Attorney’s Office that prosecuted Mr. Broadnax’s trial has a long-marked record of *Batson* violations. In *Miller-El I*, the U.S. Supreme Court called out the Dallas County prosecution’s violations of *Batson*, noting among other things that the prosecutors had “marked the race of each prospective juror on the[] juror cards” bearing each juror’s name. 537 U.S. at 347. The Court reprimanded this practice in the context of “historical evidence of racial discrimination by the [Dallas] District Attorney’s Office,” which had been “suffused with bias against African–Americans in jury selection.” *Id.* at 346–47. Two years later, in *Miller-El II*, the U.S. Supreme Court again noted that “the prosecutors’ own notes proclaim[ed] that . . . race was on their minds when they considered every potential juror.” 545 U.S. at 266. What occurred in *Miller-El I* and *Miller-El II* is precisely the same practice, *by the same district attorney’s office*, demonstrated by the spreadsheet used at Mr. Broadnax’s trial and the chart used at Mr. Cummings’s trial, confirming that

the Dallas County District Attorney's Office's systematic "bias against African-Americans in jury selection" also resulted in *Batson* violations in Mr. Broadnax's case.

Several years later, around the time of Mr. Broadnax's trial, the Dallas County District Attorney's Office was once again found to have violated *Batson* in *Reed v. Quarterman*, 555 F.3d 364 (5th Cir. 2009). In *Reed*, the Fifth Circuit found that "the facts of *Miller-El II* and the facts here are almost identical:"

In both cases, the prosecution used its peremptory challenges to strike prospective black jurors. In both cases, the State had accepted several white jurors who exhibited the exact same characteristics as these black jurors. In both cases, the comparative analysis demonstrated that the State's post hoc rationalizations for challenging these jurors were in reality pretexts for discrimination. And in both cases, which occurred within three years of each other and involved one of the same prosecutors, ***a policy of excluding African-Americans from juries pervaded the Dallas County District Attorney's Office.***

Id. (emphasis added).

This line of decisions is significant here, not only because the same District Attorney's Office that prosecuted Mr. Broadnax's case was found to have an unconstitutional jury selection policy that "pervaded" the entire office around the time of Mr. Broadnax's trial, *id.*, but also because the enumerated behaviors that led to *Batson* violation findings in *Miller-El I*, *Miller-El II*, and *Reed* are extremely similar to what occurred in this case. The patterns of disparate questioning and pretextual justifications—and, above all, the consistent practice of listing and tracking every qualified prospective juror by race and singling out the names of qualified Black prospective jurors—all confirm the serious *Batson* violations underlying Mr. Broadnax's conviction and death sentence. Indeed, the evidence here

is even more compelling than in the previous cases, as the State explicitly wrote about one of the potential Black jurors who was ultimately struck: “Seems okay . . . hard working, smart. **Only concern** . . . [Defendant]’s **age + race** w/ Juror’s son **age + race**, as mentioned.” First Subsequent Appl. at Ex. B (emphases added). Such persistent and blatant violations of *Batson* should not go uncorrected in Mr. Broadnax’s case.

B. The State’s notes on the *voir dire* seating chart from Mr. Cummings’s trial further confirm that the State inappropriately tracked prospective jurors by race.

The recently disclosed jury selection chart from Mr. Cummings’s trial further confirms that the same Dallas County prosecutors who tried both Mr. Broadnax’s and Mr. Cummings’s cases were focused on race during jury selection. The chart used during the Cummings *voir dire* is similar in form and function to the spreadsheet used at Mr. Broadnax’s *voir dire*. Both documents were created and used by the State during jury selection, and both identified and tracked the race and gender of every single prospective juror. The notations used are also strikingly similar—“W” means “White,” “B” means “Black,” and “H” means “Hispanic,” so that “BM” means “Black Male,” and “BF” means “Black Female,” et cetera. *Compare* Ex. C at 6–7 with First Subsequent Appl. at Ex. A; *see also supra* at 54–55. The fact that the spreadsheet and the chart were created by the same team from the Dallas County District Attorneys’ Office, in two trials involving Black defendants and White victims that occurred around the same time, dispels any doubt that the State employed a conscious strategy that selected jurors based on race.

The jury selection chart from Mr. Cummings’s files is significant for yet another reason. In response to Mr. Broadnax’s First Subsequent Habeas Corpus Application, and after Mr. Broadnax first pointed out during federal habeas corpus review the spreadsheet that tracked prospective jurors by race and singled out Black prospective jurors, the State attempted to explain away this evidence by arguing that the spreadsheet had been specifically created in preparation for the *Batson* hearing. Mot. to Dismiss First Subsequent Appl. at 23–27. Ignoring the fact that the spreadsheet had been created and edited *before* final jury selection and the exercise of peremptory strikes, *see* First Subsequent Appl. at 27 & Exs. F & G, the State argued that just because metadata showed that the last modification to the spreadsheet occurred at some point between the empaneling of the venire and two days after the *Batson* hearing, Mot. to Dismiss First Subsequent Appl. at 24–25, courts should assume that the spreadsheet “was made” solely “in order to prepare for the inevitable *Batson* objections at the strike hearing,” *id.* at 25–26. This representation was significant. The Fifth Circuit, in denying relief, appeared to partially rely upon that argument of the State. *See Broadnax v. Lumpkin*, 987 F.3d 400, 410 (5th Cir. 2021) (noting that the State could have used the spreadsheet “to defend its use of peremptory challenges”).

But the jury selection chart from Mr. Cummings’s files directly refutes this argument. At Mr. Cummings’s trial, there was no challenge to peremptory strikes from either side, and no *Batson* hearing was scheduled or held. *See generally* Cummings Trial Tr. 3 RR 7–155 (trial record of jury selection). Thus, the only

“reasonable conclusion” that could explain the chart and the markings was that the State marked the race of all venire members *because it was the State’s practice to do so during voir dire*. See *Miller-El I*, 537 U.S. at 346–47 (condemning the same practice from the same prosecutor’s office); *Miller-El II*, 545 U.S. at 266 (same). The State’s hand-annotated *voir dire* chart from Mr. Cummings’s trial irrefutably establishes that the Dallas County District Attorney’s Office’s routine practice—and in particular, the routine practice of the attorneys who tried both Mr. Cummings’s and Mr. Broadnax’s cases—was to track and consider prospective jurors by race. Cf. *Foster*, 578 U.S. at 512–13 (condemning the “sheer number of references to race” in the prosecution’s file, including marking each Black prospective juror by “B” and highlighting their names).

It is appropriate for this Court to consider this evidence from a related but separate trial. As explained above, in *Batson* cases, “although some false reasons are shown up within the four corners of a given case, sometimes a court may not be sure unless it looks beyond the case at hand.” *Miller-El II*, 545 U.S. at 240; see also *Flowers*, 588 U.S. at 302–04 (considering the “relevant history” of the State’s similar practices in past cases as an important factor for *Batson*). Any other approach would be tantamount to “blind[ing] ourselves” from probative evidence of discriminatory intent, which cannot be justified in an inquiry such as *Batson*, where courts need to grapple with “the practical difficulty of ferreting out discrimination in selections discretionary by nature, and choices subject to myriad legitimate influences.” *Foster*, 578 U.S. at 501; *Miller-El II*, 545 U.S. at 238. This is even more so here, given the

historical culture that “pervaded” the Dallas County District Attorney’s Office, as both the Fifth Circuit and the U.S. Supreme Court have repeatedly recognized in the past. *Reed*, 555 F.3d at 382 (citing *Miller-El II*, 545 U.S. at 264).

* * *

In sum, the newly discovered jury chart in Mr. Cummings’s files makes it even clearer than before that in Mr. Broadnax’s case the Dallas County District Attorney’s Office was tracking prospective jurors by race. Such a “focus on race in the prosecution’s file plainly demonstrates a concerted effort to keep black prospective jurors off the jury,” and must be considered as part of “all of the circumstances that bear upon the issue of racial animosity.” *Foster*, 578 U.S. at 501 (quoting *Snyder*, 552 U.S. at 478), 514; *see also Miller-El I*, 537 U.S. at 347 (the contention that “race was a factor” in the prosecution’s use of peremptory strikes was “reinforced” by the notation of race on juror cards); *Miller-El II*, 545 U.S. at 266 (“[T]he prosecutors’ own notes proclaim that the [Dallas County District Attorney Office’s policy and practice regarding] race was on their minds when they considered every potential juror.”). Indeed, in *Whitsey v. State*, 796 S.W.2d 707 (Tex. Crim. App. 1989) (en banc), this Court granted a new trial based on *Batson* violations in part because the State “during the jury selection, identified each of the six black jurors on his information sheet by writing the letters ‘B’ (sic) above their names.” *Id.* at 711; *see also id.* at 709 (noting that the State eventually used six of its 10 peremptory strikes to remove all six qualified Black venire members from the jury). The same result is justified here.

C. Declarations From Black Venire Members in Mr. Broadnax’s Trial Confirm That the State Struck Black Qualified Jurors Based on Their Race.

Three qualified Black jurors from Mr. Broadnax’s trial have signed declarations regarding their understanding and experience of the jury selection process at Mr. Broadnax’s trial. These declarations confirm that the trial record accurately reflects their views, which the prosecutor mischaracterized at the *Batson* hearing in order to deprive Mr. Broadnax and the jurors of their constitutional rights.

1. Ms. Aqwana Long’s declaration confirms that the State’s reasons for striking her were pretextual.

Ms. Aqwana Long was peremptorily struck by the State, purportedly because she “ha[d] mixed feelings about the death penalty.” 38 RR 45. The State was referring to one sentence in Ms. Long’s questionnaire, which stated that “I have mixed feelings about the death penalty, but I lean more towards yes.” 57 RR 103. But the State conveniently disregarded that, during *voir dire*, Ms. Long clarified that “[w]hen I said I have mixed feelings about the death penalty, [it] mean[t] I’m for it on some cases and I’m against it on some other cases . . . [d]epending on the situation.” 30 RR 31. Of course, this is the *only* view that any qualified juror may have. Indeed, the State accepted multiple White jurors who had selected a similar option on the jury questionnaire, which stated “I believe that the death penalty is appropriate in some murder cases, and I could return a verdict in a proper case which assessed the death penalty.” *See, e.g.*, 55 RR 178, 273.

Ms. Long also confirmed multiple times in her questionnaire and during *voir dire* that she was supportive of the death penalty, and would have no problem

applying it in accordance with the law if she were selected for the jury. 57 RR 103, 106. In fact, she rated herself a seven out of 10 on a scale in favor of the death penalty, which is *higher* than some of the White jurors found acceptable to the State. *Compare* 57 RR 106 *with, e.g.*, 55 RR 124, 276. Ms. Long also stated that she believed the death penalty was used too seldom, and had never been misused “to [her] knowledge.” 57 RR 103, 106. While the State also claimed that it struck Ms. Long because she had once received a deferred adjudication in a bad check case, it did not explain the relevance of that dated adjudication from 10 years ago, or why the State was amenable to accepting a White juror who had pleaded guilty to a DWI charge. 38 RR 48–49; *compare, e.g.*, 57 RR 110 *with* 56 RR 145.

The declaration signed by Ms. Long further confirms the pretextual nature of the State’s proffered reasons for striking her. Ms. Long states that “I was pro-death penalty when I was struck, and I believed that the death penalty is appropriate, and I would have been able to return a verdict in a proper case that assessed the death penalty.” Ex. D ¶ V. In addition, Ms. Long states that “I believe that the death penalty can be granted solely based on the severe facts of a case, even if an individual has not previously committed violent acts,” and that “I also believe drugs can play a role in altering one’s thought process, but ultimately, people are responsible for their own actions.” *Id.* ¶¶ IX–X. She further states: “I have always been a very honest and open person. If I did not think that I could be fair and impartial, I would have told the lawyers and the judge. I would have been able to listen to all the facts of the case and assess without bias. I would have done my best to understand the law and

how it needs to be applied.” *Id.* ¶¶ VI–VII. All of these representations are consistent with the record at *voir dire*, and confirm that the State’s offered reasons for striking Ms. Long were pretextual.

2. Mr. Dedric Morrison’s declaration confirms that the State’s reasons for striking him were pretextual.

The State’s proffered reasons for striking Mr. Morrison were that he was “not in favor of the death penalty,” and that he purportedly demonstrated some sympathy for the defense’s intoxication arguments. 38 RR 72–73. But that cannot be squared with Mr. Morrison’s jury questionnaire, where he selected the option stating “I believe that the death penalty is appropriate in some murder cases, and I could return a verdict in a proper case which assessed the death penalty.” Tellingly, the State accepted multiple White jurors who selected this same option. *See* 55 RR 273, 178; 57 RR 198. As for Mr. Morrison’s purported acknowledgement of intoxication as a potential mitigating factor, the same is true of some of the White jurors accepted by the State. *See, e.g.*, 27 RR 134, 169–70; 57 RR 51.

The pretextual nature of these reasons offered by the State is again confirmed by the declaration submitted by Mr. Morrison. Mr. Morrison states that “I answered my questionnaire truthfully and accurately. On my questionnaire, I indicated I believed the death penalty to be appropriate and could return a verdict in a proper case which assessed the death penalty. During *voir dire*, I clarified that if there was an intentional death with specific intent . . . and [that] was proven beyond a reasonable doubt, I would be able to answer affirmatively to whether a person is guilty or not guilty of capital murder.” Ex. E ¶¶ VII–VIII. He further states: “I was

in favor of the death penalty. It was my belief that if there is evidence that someone intentionally killed someone in a premediated manner, the death penalty should be eligible. If an individual was in the right frame of mind and understood what he or she did then they should be eligible for death. . . . If selected, I would have been able to follow the instructions of the court and the law. I would not have been biased or used any personal opinions to render a verdict. . . . If I were picked as a juror, I would have followed the law impartially, and if the prosecution were to prove their case beyond a reasonable doubt, I would have imposed the death penalty.” *Id.* ¶¶ IX, XI, XVI. These statements highlight that Mr. Morrison was fully willing and capable of serving on the jury in Mr. Broadnax’s case, and that the State’s proffered reasons for striking him were pretextual.

3. Mr. Curtis Riser’s declaration confirms that the State’s reasons for striking him were pretextual.

As discussed above, the State offered a range of reasons for excluding Mr. Riser from the panel, none of which survive scrutiny. *See infra* at §§ III.A.3–5. The State also targeted Mr. Riser with inappropriate race-based questions, asking him “you’re sitting in the case of a black man. . . . Do you feel like you owe him any allegiance because of that?” 13 RR 251. Even after Mr. Riser answered “No,” the State repeated essentially the same questions: “So, in terms of race . . . There is not a problem for you in that . . . somebody could potentially say to you afterwards, how could you do that to another black man?” *Id.* at 252. Mr. Riser’s Declaration confirms that he remembers this line of questioning very well, and his recollection underscores the inappropriateness of such questions from the perspective of a qualified juror: “Race

was not a factor and would not have contributed to my decision in the case. I would have only discussed the facts of the case and assessed only what I was given. . . . The prosecutor interrogated my ability to put another black man to death and whether someone would have questioned me for my decision. But I would have been completely impartial as a juror.” Ex. F ¶¶ XII–XIII.

The State also misstated the record when it argued that Mr. Riser had identified his son with Mr. Broadnax and thus could not have served as an impartial juror, 38 RR 28–29, because Mr. Riser had been clear that he was referring to the bailiff, not Mr. Broadnax, 13 RR 249. Now, more than 15 years later, Mr. Riser remembers this incident well, and points out the State’s misrepresentation in his declaration: “During the *voir dire* process, I metaphorically mentioned that I saw my son in the room. I was speaking about the bailiff, another young black man, to demonstrate the importance of representation. . . . I was able to look around the room and see black faces, so I believed Mr. Broadnax should have had black faces on the jury to represent him as well.” Ex. F ¶ XI.

Mr. Riser’s declaration confirms that he would have been an impartial, conscientious, and thoughtful juror: “In the 1990s, I served as the foreman of a jury on an unrelated driving while intoxicated case in which we found the defendant guilty. I was capable of applying the law as it should have been in that case, and knew I could perform the same way under Broadnax’s circumstances. During the time of Mr. Broadnax’s trial, I could invoke the death penalty under the proper set of circumstances. I would have been able to return a verdict in compliance with the

law.” *Id.* ¶¶ V–VI. “I have no moral or religious views that would have stopped me from being able to return a verdict of death.” *Id.* ¶ IX. “I truly believe that I could assess [the death penalty] under the proper set of circumstances. I told the prosecutor I could handle sitting as a death-qualified juror because I knew that I could.” *Id.* ¶ VIII. These statements further confirm that Mr. Riser was fully capable of serving as a juror, and that the State’s reasons for striking him were pretextual.

4. All three declarations underscore the community-wide harms caused by *Batson* violations, further justifying relief.

These three struck jurors’ declarations counsel in favor of relief for yet another reason. They illustrate that the State’s *Batson* violations should be corrected because the continuing failure to do so undermines the community’s sense of the fairness of the criminal justice process. All three Black jurors were troubled by the existence of the State’s spreadsheet, which tracked each prospective juror by race and singled out all Black prospective jurors.

Ms. Long was “surprised to learn of the spreadsheet’s existence.” Ex. D ¶ XII. To her, this meant that “the prosecution had apparently considered me to be a less desirable juror because I am black.” *Id.* “James Broadnax deserved a fair trial and I wanted to give him a fair trial;” however, “[i]t appears I was not chosen for the jury because I am black, and therefore, I do not believe James Broadnax was given a fair trial.” *Id.* ¶¶ XIII–XIV. As for Mr. Riser, though he “was not surprised,” he was similarly “upset that race had played a part in who was part of the jury.” Ex. F ¶ XVII. Mr. Morrison likewise stated that “I was not surprised to see my name in bold; although it is obviously inappropriate.” Ex. E ¶ XIII. “Because the prosecution

appears to have struck me because I am black, I do not believe James Broadnax was given a fair trial.” *Id.* ¶ XIV.

The jurors also explain, eloquently, why it is important that such discriminatory practices be corrected. As Mr. Riser explains: “During the *voir dire* process . . . I was able to look around the room and see black faces, so I believed Mr. Broadnax should have had black faces on the jury to represent him as well.” Ex. F ¶ XI. “We all belong in rooms where decisions are made, good or bad. We all have to make hard decisions in life. Being struck from the jury showed me that some people will not be allowed to be decisionmakers if they look like I do.” *Id.* ¶ XIV. Mr. Morrison also unequivocally condemns the State’s racial practices, and expresses his hopes that the judiciary could help make it right: “I believe black jurors still tend to not get picked, particularly when the individual on trial is black. I believe this is wrong, and I am hopeful that the courts will take steps to correct this form of racial discrimination.” Ex. E ¶ XIII.

The declarations are relevant to this Court’s consideration not only because they come from the same qualified minority jurors who were unconstitutionally struck by the State, but also because they are representative voices of the residents and members of the very same community that continues to be harmed by unaddressed *Batson* violations even today. Ex. D ¶ I; Ex. E ¶¶ I–II; Ex. F ¶ I; *see also* Ex. E ¶ XV (expressing doubt about the impartiality of the Dallas judicial system “based on my experiences in Dallas and witnessing the racial strife in my community”). Their voices echo powerfully the Court of Criminal Appeals’ and the

U.S. Supreme Court’s stated concern about *Batson* violations writ large—when Black defendants like Mr. Broadnax receive an unfair and unconstitutional trial in violation of their *Batson* rights, the integrity of the criminal justice system is at stake. See, e.g., *State ex rel. Curry v. Bowman*, 885 S.W.2d 421, 424 (Tex. Crim. App. 1993) (“The harm caused by a *Batson* violation is inflicted not only upon the parties but the excluded juror and the entire community as well.”); *Casarez v. State*, 913 S.W.2d 468, 475 (Tex. Crim. App. 1994) (“Discrimination in jury selection . . . causes harm to the litigants, the community, and the individual jurors who are wrongfully excluded from participation in the judicial process.”); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 140 (1994) (“The community is harmed by the State’s participation in the perpetuation of invidious group stereotypes and the inevitable loss of confidence in our judicial system that state-sanctioned discrimination in the courtroom engenders.”).

* * *

Mr. Broadnax’s Claim Five should be authorized to proceed pursuant to Article 11.071 § 5(a)(1). Mr. Broadnax respectfully submits that he has presented more than sufficient evidence, including evidence that was unavailable during his previous state habeas proceedings, to state a *prima facie* case of serious *Batson* violations of his equal protection and due process rights under the Fourteenth Amendment. This Court should grant relief, or at a minimum stay Mr. Broadnax’s execution and remand the case for further proceedings, so that the important constitutional rights of both Mr. Broadnax and the Black qualified jurors who had

been wrongfully struck from the venire can be finally vindicated, and that Mr. Broadnax is not executed before his *Batson* claims can be fully assessed by a court on the complete factual record.

PRAYER FOR RELIEF

Wherefore, Mr. Broadnax respectfully requests that this Court:

1. Stay Mr. Broadnax's execution;
2. Remand the claims to the trial court with instructions to conduct an evidentiary hearing and provide Mr. Broadnax with an opportunity to seek appropriate discovery;
3. After the evidentiary hearing, enter findings that Mr. Broadnax has met his burden of proof on one or more of his claims;
4. Strike Mr. Broadnax's convictions for capital murder;
5. Strike Mr. Broadnax's death sentence;
6. Grant Mr. Broadnax a new trial and sentencing hearing; and
7. Grant such other relief as law and justice require.

Dated: Dallas, Texas
March 18, 2026

Respectfully submitted,

By: /s/ Camille M. Knight
Camille M. Knight

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CERTIFICATE OF SERVICE

I certify that on March 18, 2026, I served a copy of the foregoing application on counsel for the Respondent at:

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By: /s/ *Camille M. Knight*
Camille M. Knight

VERIFICATION

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Camille M. Knight, who upon being duly sworn by me testified as follows:

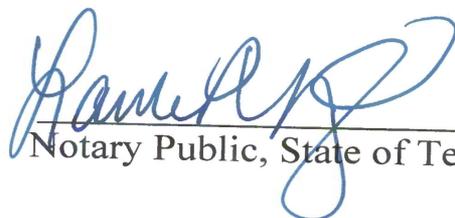
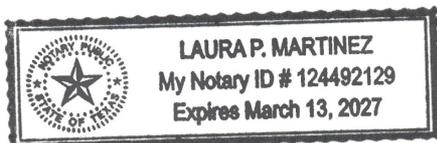
1. I am a member of the State Bar of Texas in good standing.
2. I am the duly authorized attorney for James Garfield Broadnax, having the authority to prepare and to verify Mr. Broadnax's application for a writ of habeas corpus.
3. I have prepared and read the foregoing application and I believe all allegations in it to be true to the best of my knowledge.

Signed under penalty of perjury:



Camille M. Knight
Texas Bar No. 24027124

SUBSCRIBED AND SWORN TO BEFORE ME on March 18, 2026.



Notary Public, State of Texas

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Case Contacts

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