No.

In the Supreme Court of the United States

JAMES GARFIELD BROADNAX, PETITIONER

v.

STATE OF TEXAS

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

CAPITAL CASE
EXECUTION SCHEDULED FOR APRIL 30, 2026

AMANDA VALERIO-ESENE
SRAAVYA POONUGANTI
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006

STEVEN C. HERZOG
Counsel of Record
PIETRO J. SIGNORACCI
JENNIFER R. KIM
SOPHIA CHUNG
JULIE J. CHANDLER
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
sherzog@paulweiss.com

CAPITAL CASE

QUESTIONS PRESENTED

1. Where a defendant was convicted and sentenced to death for shooting and killing two victims without a finding of "reckless indifference to human life" under *Tison* v. *Arizona*, 481 U.S. 137 (1987), whether new, previously unavailable evidence from his codefendant, recanting his previous statements and declaring under penalty of perjury that he, and not the defendant, shot and killed the two victims, entitles the defendant to relief under the Eighth Amendment.

2. Whether the State's racially discriminatory strikes of all seven qualified prospective Black jurors, shown by it identifying prospective jurors by race on a spreadsheet used during jury selection, by a notation that its "only concern" about a juror was his "age + race," by newly disclosed evidence of notations of race on a chart used during jury selection at the codefendant's trial, and by newly obtained affidavits from three struck prospective Black jurors, violated the Equal Protection Clause of the Fourteenth Amendment under *Batson* v. *Kentucky*, 476 U.S. 79 (1986).

PARTIES TO THE PROCEEDING

James Garfield Broadnax, Petitioner

State of Texas, Respondent

RELATED PROCEEDINGS

Criminal District Court of Texas (Dallas County):

State v. *Broadnax*, No. F08-24667-Y (Aug. 21, 2009)

Ex parte Broadnax, No. W08-24667-Y(A) (Sept. 17, 2014)

Ex parte Broadnax, No. W08-24667-Y(B) (Feb. 6, 2023)

Texas Court of Criminal Appeals:

Broadnax v. *State*, No. AP-76,207 (Dec. 14, 2011)

Ex parte Broadnax, No. WR-81,573-01 (May 20, 2015)

Ex parte Broadnax, No. WR-81,573-02 (June 7, 2023)

Ex parte Broadnax, No. WR-81,573-03 (Nov. 6, 2025)

Ex parte Broadnax, No. WR-81,573-04 (April 7, 2026)

United States District Court (N.D. Tex.):

Broadnax v. *Davis*, Civ. No. 15-1758 (July 23, 2019)

United States Court of Appeals (5th Cir.):

Broadnax v. *Lumpkin*, No. 19-70014 (Feb. 8, 2021)

United States Supreme Court:

Broadnax v. *Texas*, No. 11-9294 (Oct. 1, 2012)

Broadnax v. *Texas*, No. 14-9964 (Oct. 5, 2015)

Broadnax v. *Lumpkin*, No. 21-267 (Jan. 18, 2022)

Broadnax v. *Texas*, No. 23-248 (June 24, 2024)

Broadnax v. *Texas*, No. 25-938 (pending)

Broadnax v. *Texas*, No. 25-939 (pending)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

In the Supreme Court of the United States

No.

JAMES GARFIELD BROADNAX, PETITIONER

v.

STATE OF TEXAS

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

James Garfield Broadnax respectfully petitions for a writ of certiorari to review the order of the Court of Criminal Appeals of Texas (the "TCCA") dismissing his third subsequent habeas application for relief from his conviction and death sentence.

OPINIONS BELOW

The notation of the Dallas County Criminal District Court forwarding Petitioner's third subsequent habeas application to the TCCA (App. A at 1a) is unreported. The TCCA's order dismissing Petitioner's third subsequent habeas application (App. B at 3a) and the concurring opinion of Judges Parker and Finley (App. C at 5a) are not

published in the South Western Reporter, but are reproduced at 2026 WL 937859.

JURISDICTION

The TCCA order dismissing Petitioner's third subsequent habeas application was entered on April 7, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE

This case presents two exceptionally important questions concerning the constitutional protections in place to prevent the ultimate miscarriage of justice that will result if Mr. Broadnax is put to death on April 30, 2026.

First, Mr. Broadnax did not kill anyone, and no jury has determined whether he had the mental state this Court has determined is required to sentence a nontriggerman to death. The State persuaded a jury to convict Mr. Broadnax of capital murder and sentence him to death on the theory that Mr. Broadnax shot two victims,

based on his incriminating statements to local news outlets, which were allowed access to him while he was in police custody and in an unstable state of mind. The jury never received the instruction that this Court has held is constitutionally required before sentencing to death a defendant who did not himself carry out the killing. After a Texas court set Mr. Broadnax's execution date, Mr. Cummings came forward and confessed under penalty of perjury that he, and not Mr. Broadnax, shot the two victims. Mr. Cummings's confession is corroborated by the fact that his DNA, and not Mr. Broadnax's, was found on the murder weapon and in the pocket of one of the victims. Mr. Cummings's admission was previously unavailable; indeed, Mr. Broadnax's counsel had met with Mr. Cummings several times over the past ten years, and he had consistently refused to acknowledge his responsibility for the shootings. This claim thus met the requirement of Art. 11.071, § 5(a) that, to proceed with a subsequent application for habeas corpus under Texas state law, the claim must have been previously unavailable. Yet despite the fact that no jury has ever considered whether Mr. Broadnax, as the non-shooter, had the state of mind required by this Court's precedents to constitutionally impose a death sentence, the TCCA dismissed Mr. Broadnax's claim. His death sentence under these circumstances violates the Eighth Amendment and is properly before this Court.

Second, Prosecutors struck all seven of the qualified Black jurors in Mr. Broadnax's case, using a spreadsheet that noted each Black juror's race, and noting with respect to one juror that the State's "only concern" about him was his "age + race." Recently disclosed evidence confirms that the spreadsheet noting the race of prospective jurors was prepared for jury selection, and not for a *Batson* hearing, as the State had previously contended.

This claim thus also met the requirement of Art. 11.071, § 5(a) that it be previously unavailable, and the TCCA's dismissal of Mr. Broadnax's *Batson* claim is also properly before this Court.

A. Facts Relevant to the First Question Presented

On June 19, 2008, Petitioner James Garfield Broadnax and Demarius Cummings, two Black teenagers, were arrested for the shooting deaths of Stephen Swan and Matthew Butler, two White music producers, during the course of a botched robbery in Garland, Texas. After the two men were arrested and invoked their Miranda rights with law enforcement, and while they were still intoxicated from having smoked PCP-laced marijuana, local news media were allowed to access and interview them. During these interviews, Mr. Broadnax confessed to having robbed and shot both victims, and Mr. Cummings admitted to participating in the robbery but denied being the shooter.

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 both the conviction of Mr. Broadnax and his death sentence based on the theory that Mr. Broadnax was the person who actually "cause[d] the death of [the victims] by shooting [them] with a firearm." 47 RR 182–83; *see also* 53 RR 11–12. At Mr. Broadnax's sentencing, the State argued that Mr. Broadnax constituted "a continuing threat to society" because Mr. Broadnax was himself the actual killer, and argued to the jury 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. The jury subsequently answered "yes" to the special issue of future dangerousness and sentenced Mr. Broadnax to death.

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. Throughout the course of his arrest, trial, subsequent conviction, and Mr. Broadnax's conviction and capital sentencing, Mr. Cummings maintained that Mr. Broadnax was the shooter who killed the two victims. At Mr. Cummings's trial, the State again advanced the theory that Mr. Broadnax was the actual shooter, asking the jury to find Mr. Cummings guilty of capital murder because he participated in the robbery that led to the victims' deaths. *See State* v. *Cummings*, No. F08-24666-Y, Cummings Trial Tr. 5 RR 93–98 (jury charge on the law of the parties). The State did *not* seek the death penalty against Mr. Cummings, so upon Mr. Cummings's guilty conviction, the sentence of life without parole was automatic.

On December 17, 2025, the trial court set Mr. Broadnax's execution date for April 30, 2026. Mr. Cummings learned of this execution date for the first time from Mr. Broadnax's counsel on February 20, 2026. Mr. Broadnax's counsel had met with Mr. Cummings several times over the previous ten years, but Mr. Cummings had consistently maintained during those meetings that Mr. Broadnax was the shooter, and he was not. App. E at 23a–24a. During the February 20 meeting, Mr. Cummings informed Mr. Broadnax's counsel for the first time that he wished to come clean and make it known that he, and not Mr. Broadnax, was the shooter of the two victims, and that Mr. Broadnax had falsely taken the blame for Mr. Cummings. *Id.*

On March 11, 2026, Mr. Cummings executed a Declaration under penalty of perjury, admitting that he shot the two victims. In it, Mr. Cummings states that he convinced Mr. Broadnax 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.* at ¶ 3.

Importantly, the DNA evidence from Mr. Broadnax's trial is consistent with Mr. Cummings's account, and not Mr. Broadnax's PCP-influenced confession. During Mr. Broadnax's trial, the State's DNA expert testified that "[t]he DNA profile from the swab of the right grip . . . is consistent with a mixture from Demarius Cummings and an known individual. . . . James Broadnax was excluded as a contributor to the right grip of the pistol." 46 RR 184, 205–06. The same expert also confirmed that Mr. Broadnax was excluded as a contributor to swabs from the trigger of the pistol. State Ex. 391. And, while Mr. Cummings's DNA was found in the pocket of one of the victims, Mr. Broadnax's was not. *Id.* The only evidence that the State presented to demonstrate that Mr. Broadnax was the shooter were Mr. Broadnax's media statements, which did admit to the shooting, but also repeatedly expressed that Mr. Broadnax had "blanked out." 44 RR 143, 264; State Ex. 403 at 04:58; *see also, e.g.*, State Ex. 18 at 04:27, State Ex. 406 at 02:33.

B. Facts Relevant to the Second Question Presented

During *voir dire* for Mr. Broadnax's trial, the State used seven of its 15 peremptory strikes to strike all seven

qualified prospective Black jurors.[1] The State engaged in multiple practices during jury selection that focused on race, including utilizing a spreadsheet during jury selection that bolded only the names of every Black juror. *See* Third Subsequent Habeas Corpus Application ("Appl."), at 51, *Ex parte Broadnax*, No. WR-81,573-04 (March 18, 2026); 38 RR 1–86. The State also subjected Black prospective jurors to disparate questioning with graphic descriptions of the execution process, directing them to look at Mr. Broadnax when asked whether they could sentence him to death, and explicitly questioning whether their race would inhibit their ability as a juror, *see, e.g.*, 10 RR 23; 11 RR 123; 13 RR 249–50; 30 RR 36–37; 34 RR 21–22.

Having secured a nearly all-White jury, the State subsequently invoked racial stereotypes throughout the trial by, for example, telling the jury that Mr. Broadnax sought out the crime scene "because that's where the rich white folks live." 45 RR 50. The State also introduced Mr. Broadnax's rap lyrics as purported evidence that he was part of a Black gang and was likely to be dangerous in the future, and compared him to "the worst kind of predator" that "we like to watch" on "Animal Planet." 49 RR 89, 108, 111; 53 RR 22, 26–27, 74–75.

---

[1] One Black juror was reinstated to the jury by the trial judge. The trial judge declined to engage in the required *Batson* analysis during a *Batson* hearing, expressing his view that there was a "problem with the whole line of [*Batson*] cases" for "impl[ying] some sort of nefarious intent on the part of the prosecutors." 38 RR 84–85. Despite that view of this Court's precedents, even the trial judge found the prosecution's conduct intolerable. He reinstated a single Black juror "because of 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." 42 RR 33–35.

During Mr. Broadnax's appeals, the State has represented to the courts that it created the spreadsheet in preparation for an upcoming *Batson* hearing after the jury had already been selected. *See, e.g.*, Resp't's Answer with Br. in Supp. at 71, *Broadnax* v. *Davis,* No. 3:15-cv-01758-N (N.D. Tex. June 26, 2017), ECF No. 63. Additional and critical evidence undermining this assertion became newly available to Mr. Broadnax after the courts denied Mr. Broadnax's First Subsequent Habeas Corpus Application (which asserted a *Batson* claim), 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. Cummings.[2] Mr. Cummings's trial was prosecuted by substantially the same team of attorneys as Mr. Broadnax's trial, and the State's jury selection files from Mr. Cummings's trial includes a chart of prospective jurors with the same notations used to track the race and gender of the prospective jurors as the notations in Mr. Broadnax's jury selection files. However, in the Cummings case, there were no *Batson* objections, and consequently, the State had no need to prepare for a *Batson* hearing.

Counsel for Mr. Broadnax also received statements from three of the qualified Black jurors who were struck from Mr. Broadnax's jury. In each of these statements, the three struck Black jurors stated under penalty of perjury that they supported the death penalty at the time of Mr. Broadnax's trial and they would have followed the law

[2] The District Attorney's office had previously denied Petitioner's request to review those files, asserting that they were covered by the work product privilege.

and the court's instructions in rendering a verdict.

C. Procedural History

Mr. Broadnax was sentenced to death in 2009. He exhausted his direct appeal in 2012 and timely sought state and federal habeas relief, including on *Batson* grounds based on the State's racially motivated peremptory strikes. In 2015, the TCCA denied Mr. Broadnax's state habeas application, and this Court denied certiorari review. In 2022, Mr. Broadnax also exhausted federal habeas review.

Because the State did not disclose critical *Batson*-related materials (i.e., the juror spreadsheet and questionnaire) until after Mr. Broadnax's initial state habeas proceedings were closed, Mr. Broadnax filed an amended first subsequent state habeas application in 2023 on *Batson* grounds based on newly available evidence. The TCCA denied review that same year, and this Court denied certiorari in 2024. Justices Sotomayor and Jackson dissented from the denial, stating that they "would reverse the judgment." *Broadnax* v. *Texas*, 144 S. Ct. 2700 (2024) (Sotomayor, J., and Jackson, J., dissenting).

In June 2025, after receiving for the first time the jury selection files from Mr. Cummings's trial, Mr. Broadnax filed with the TCCA a Suggestion for Reconsideration, seeking reconsideration of the dismissal of his first subsequent habeas application based on the Cummings jury chart and the affidavits from the three struck Black jurors. *Ex parte Broadnax*, No. WR-81,573-01 (Tex. Crim. App. June 3, 2025). The TCCA denied the Suggestion for Reconsideration in November 2025. On February 4, 2026, Mr. Broadnax filed a petition for certiorari (Case No. 25-938) with this Court seeking a review of the TCCA's denial. While Mr. Broadnax believes the renewed *Batson*

claim is properly before this Court in Case No. 25-938, the State has contended that this Court does not have jurisdiction to review the TCCA's denial of a Suggestion for Reconsideration. Resp't's Br. in Opp. to Pet., *Broadnax* v. *Texas*, Case No. 25-938, at 13.

On March 11, 2026, Mr. Cummings signed a declaration recanting his prior statements and admitted under penalty of perjury that he was the person who shot and killed the two victims. On March 18, 2026, Mr. Broadnax filed a third subsequent state habeas application asserting claims based on Mr. Cummings's declaration and again seeking relief based on the new evidence of *Batson* violations. On April 7, 2026, the TCCA dismissed the petition for failure to satisfy the requirements of Texas Code of Criminal Procedure Art. 11.071 § 5. *Ex parte Broadnax*, No. WR-81,573-04 (Tex. Crim. App. Apr. 7, 2026). In a concurring opinion, Judges Parker and Finley rejected the claims related to Mr. Cummings's confession, stating that they were "unwilling to hold that [Mr. Broadnax's] confessions were false when [he] hasn't bothered to recant them" during the previous 16 years, and that they "find problematic the notion that he caused his own due-process violation by making voluntary inculpatory statements." App. C at 5a–6a. This petition timely follows.

REASONS FOR GRANTING THE PETITION

A. This Court should grant review to decide whether new, previously unavailable evidence entitles Petitioner to relief under the Eighth Amendment.

1. The decision below is incorrect.

The TCCA denied Mr. Broadnax's claim that was

premised on a previously unavailable declaration under penalty of perjury stating that Mr. Broadnax's codefendant, and not Mr. Broadnax, was the actual shooter.

Under Texas law, if Mr. Broadnax had been convicted as a non-shooter, the jury before sentencing him to death would have been required to find beyond a reasonable doubt that Mr. Broadnax "intended to kill the deceased or another or anticipated that a human life would be taken" under Tex. Code Crim. Proc. Art. 37.071 § 2(b)(2), the Texas *Tison* corollary. The jury would also have been required to find that he was "a continuing threat to society," Tex. Code Crim. Proc. Art. 37.071 § 2(b)(1), and to consider any mitigating factors. The new evidence, together with DNA evidence presented at trial, likely would have led to a life sentence, because had the jury known that Mr. Broadnax was not the shooter, it would have had little basis for concluding that he actually anticipated death or would commit acts of violence in the future, and little reason to minimize the significance of the mitigation he proffered. By declining to authorize this claim, the TCCA betrayed the Eighth Amendment requirement that a death sentence not be issued absent an individualized assessment, proportionally calibrated to the defendant's personal culpability. *Tison* v. *Arizona*, 481 U.S. 137, 157 (1987).

a. Mr. Broadnax should be afforded the opportunity to have a jury consider whether the death penalty is appropriate for him, a non-shooter, under these facts. "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)) (internal quotations and citations omitted). 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* v. *Florida*, 458 U.S. 782, 798 (1982); *see also id.* at 156 ("A critical facet of the individualized determination of culpability required in capital cases is the mental state with which the defendant commits the crime.").

In particular, this Court has found the death penalty is not proportionate under the Eighth Amendment for non-killer defendants unless the prosecution establishes that the 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."); *Enmund*, 458 U.S. at 801 (stating that "[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" and that "[p]utting [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).

Mr. Broadnax should not be executed without a jury ever having considered whether he has the requisite culpability to be sentenced to death. Relying on his drug-induced statement and augmenting it with unsupported insinuations that Mr. Broadnax was a psychopath, the State's case portrayed Mr. Broadnax as the cold-blooded triggerman. But Mr. Cummings's Declaration paints a completely different picture, establishing that it was Mr. Cummings, and not Mr. Broadnax, who came up with the idea for the robbery, obtained the murder weapon, and shot the two victims to death. App. E at 23a.

The DNA evidence corroborates this account. Mr. Broadnax's DNA was not found on the murder weapon, Mr. Cummings's DNA was. State Ex. 391. Nor was Mr. Broadnax's DNA found on samples recovered from the victims' bodies—Mr. Cummings's was. *Id.* Indeed, the only 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 a distressed mental state, when he could not reliably recall what occurred during the incident due to drug-impaired memory, and when he was motivated to protect his cousin who had a criminal record. Those inherently unreliable interviews are contradicted by Mr. Cummings's Declaration. The now available evidence establishes that Mr. Broadnax did not have the "reckless indifference to human life" that is constitutionally required to put him to death. *Tison*, 481 U.S. at 157–58.

In addition, there is substantial doubt that, even if the jury had found Mr. Broadnax exhibited such recklessness in participating in the robbery that he was death-eligible, it would have found Mr. Broadnax deserving of a death

sentence had it known he did not kill the two victims. In addition to the fact that he was not the shooter, multiple additional factors strongly indicate that Mr. Broadnax was not deserving of a death sentence—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).

It would be disproportionate and unfair for Mr. Broadnax to be executed based on the incorrect premise that he shot the two victims to death, especially when the State did not seek the death penalty for the codefendant 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"); *Parker* v. *Dugger*, 498 U.S. 308, 309 (1991) (holding that the Florida Supreme Court did not properly review a capital sentence because it incorrectly found the trial judge had not found any non-statutory mitigating factors but the defendant's attorney had raised mitigating

factors during sentencing, including that none of the accomplices were sentenced to death).

b. The concurring opinion of Judges Parker and Finley make much of the fact that Mr. Broadnax "has not recanted his own confessions" and instead "relies solely on a recent statement from his co-defendant" to argue the evidence is not credible. App. C at 5a. By their count, Mr. Broadnax waited "16 years and three prior habeas applications" to proffer evidence they claim was "ascertainable through the exercise of reasonable diligence." *Id.* at 5a, 10a.

Not so. First, there is no requirement that a defendant must formally recant a false confession—especially a confession made while in extreme distress and while under the influence of PCP and marijuana—in order to be entitled to the constitutional protections afforded by the Eighth and Fourteenth Amendments. *See, e.g., Floyd* v. *Vannoy*, 894 F.3d 143 (5th Cir. 2018) (Where defendant did not recant confession, but argued confession was false, court held that "in light of the newly-discovered evidence, no reasonable juror would determine the confession and alleged threat…were sufficient to establish [defendant's] guilt beyond a reasonable doubt.").

Moreover, it would have been futile for Mr. Broadnax to come forward years ago to "recant" and assert an innocence claim, without Mr. Cummings coming forward. Doing so earlier would have resulted in him asserting and losing that claim, possibly precluding him from asserting the claim later as *res judicata*. Additionally, Mr. Broadnax was "reasonably diligent" in pursuing this evidence. His counsel has been meeting with and discussing these issues with Mr. Cummings for more than a decade. And with respect to Mr. Broadnax himself, the record shows that his memory regarding the facts of the incident

was compromised as he was under the influence of PCP and marijuana and "blanked out" due to severe psychological distress. The inmate intake form completed at the time of arrest, which occurred within 12 hours of the offense, documented that Mr. Broadnax had been smoking "wet blunt," which is marijuana "laced with something like PCP or formaldehyde," around the time of the offense. 47 RR 23, 34. One of the news reporters who interviewed Mr. Broadnax stated 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." 45 RR 144. As well, University of Texas Professor of Psychiatry and Pharmacology John D. Roache, after reviewing the facts of Mr. Broadnax's mental state and drug consumption at the time of his media statements, 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. Appl. at Ex. B. Mr. Broadnax repeatedly asserted that he "blanked out" and he "do[es]n't even remember the day." 44 RR 143, 264; State Ex. 403 at 04:58; *see also, e.g.*, State Ex. 18 at 04:27, State Ex. 406 at 02:33. All of this evidence demonstrates that Mr. Broadnax's memory during and surrounding the underlying event would have made it difficult or impossible for Mr. Broadnax to "awaken" Mr. Cummings's conscience earlier by recanting. App. C at 10a.

Finally, it is noteworthy that the concurrence does not even mention that the only forensic evidence presented at trial that bears on this issue, the DNA evidence on the gun and the victim's pocket, corroborates this new evidence.

2. The question presented is of exceptional importance and warrants review in this case.

The question of whether and when the State can execute non-shooters without the relevant *Tison* finding of culpability is of exceptional importance to prevent the ultimate miscarriage of justice and given the importance of uniformity in interpretation of the Eighth Amendment. *See Roper* v. *Simmons*, 543 U.S. 551, 551 (2005) (Eighth Amendment analysis must be based on a "national consensus"); *Trop* v. *Dulles*, 356 U.S. 86, 101 (1958) (describing national standard under which the Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."); *Weems* v. *United States*, 217 U.S. 349, 388 (1910) (the Eighth Amendment is not stagnant and adapts to maturing society, setting a uniform standard for proportionality). It is important—obviously to Mr. Broadnax, but also to all persons facing the possibility of a death sentence—to ensure that criminal defendants are not sentenced to death and executed without a jury finding that they are sufficiently culpable under this Court's precedents to be sentenced to death.[3]

[3] A related question regarding the proper application of mitigating factors implicating proportionality under *Tison* v. *Arizona*, 481 U.S. 137 (1987), in cases involving defendants who did not actually kill has led to confusion among the lower courts. Specifically, courts remain divided on the issue of whether the Eighth and Fourteenth Amendments dictate that a codefendant's sentence be considered as mitigation in sentencing—an issue that is related to and especially salient where the codefendant's role in the crime implies greater culpability relative to the defendant's role. *See Frey* v. *Fulcomer*, 974 F.2d 348, 366 (3d Cir. 1992).

B. This Court should grant review to decide whether new evidence that exposes as pretextual the State's explanation for striking every Black juror establishes that those peremptory strikes violated the Equal Protection Clause.

1. The decision below is incorrect.

The TCCA in this case also dismissed Mr. Broadnax's renewed *Batson* claim, notwithstanding previously unavailable evidence demonstrating that a district attorney's office with a documented history of discriminatory practices improperly struck prospective jurors and then lied about it. Certiorari is appropriate to ensure this critical safeguard is meaningfully enforced. We note, to avoid any confusion, that the claim presented here is substantively the same as the claim presented in Case No. 25-938, currently pending before this Court. The State is asserting in response to that petition that this Court does not have jurisdiction to review the TCCA's denial of a Suggestion for Reconsideration. While Mr. Broadnax contends that there is no such jurisdictional impediment to review in Case No. 25-938, the *Batson* claim is re-presented here to ensure that the claim can be reviewed with no such impediment.

a. During Mr. Broadnax's trial, the State used its peremptory strikes to systematically strike every black juror, as confirmed by all six types of evidence identified under *Batson*.

i. Race-Annotated Juror Spreadsheet and the State's Concern with Race on Juror Questionnaire. During *voir dire*, the State created, used, modified, and printed a spreadsheet which listed each qualified prospective juror with a "Race/Sex" column, which marked each

juror as "B/M" (Black male), "B/F" (Black female), "W/M" (White male), or "W/F" (White female). This spreadsheet included the names of *every single* Black prospective juror, and *only* the Black prospective jurors, were bolded. Appl. at 51; 38 RR 1–86. Further, on the questionnaire of Mr. Curtis Riser, a Black prospective juror, the State wrote: "Seems okay. . . ***only concern*** . . . [Defendant]'s ***age + race*** w/ Juror's son ***age + race***." Appl. at 51. The State's racially marked juror spreadsheet and their handwritten remarks on Mr. Riser's questionnaire expressing concern with Mr. Riser's race illustrate a "persistent focus on race in the prosecution's file that "plainly belie[s] the State's claim that it exercised its strikes in a 'color-blind' manner." *Foster* v. *Chatman*, 578 U.S. 488, 512–13 (2016).

ii. Disparate Questioning. The disparate questioning by the State in this case occurred along the same lines—and was conducted by the same prosecutor's office—as what this Court determined in *Miller-El I* was clear indicia of discriminatory intent. 537 U.S. 322, 332–33 (2003). For five of the seven Black prospective jurors, the State gave graphic descriptions of the execution process or directed them to look at Mr. Broadnax as the State asked whether they could sentence him to death. *See, e.g.*, 10 RR 23; 11 RR 123; 13 RR 90; 30 RR 36–37; 34 RR 21–22. The State did not give this treatment to most of the White prospective jurors, including three who confessed nervousness about participating in a capital case. 10 RR 96; 13 RR 70. The State also directed to the Black prospective jurors questions which explicitly invoked race as a basis for doubting their ability as a juror. The State asked Mr. 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?" Although Mr. Riser answered unequivocally, "No," the State pressed: "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?" 13 RR 251–52.

iii. Statistics. The racial disparity in the number of jurors struck by the State in Mr. Broadnax's case is more pronounced than in prior cases finding *Batson* violations. In Mr. Broadnax's case, the State used peremptory strikes on only 18% of eligible White jurors, but struck ***100%*** of eligible Black jurors in the same pool. *See, e.g.*, *Snyder*, 552 U.S. at 476 (finding a *Batson* violation where "all 5 of the prospective black jurors were eliminated by the prosecution"); *Foster*, 578 U.S. at 493 (same where the State "remov[ed] all four of the remaining black prospective jurors"); *Flowers*, 588 U.S. at 287 (finding a *Batson* violation where the State "struck five of the six [or 83%] black prospective jurors").

iv. Relevant History. The Dallas County District Attorney's Office has a long-standing history of *Batson* violations, including the consistent use of race-based jury selection practices. *See, e.g.*, *Reed* v. *Quarterman,* 555 F.3d 364, 365–68 (5th Cir. 2009) (the same office violated *Batson* by striking all five Black prospective jurors during a 1983 trial); *Miller-El I*, 537 U.S. at 347; *Miller-El II*, 545 U.S. 231, 266 (2005) (the same office violated *Batson* during Miller-El's 1986 jury selection, where the prosecutors had "marked the race of each prospective juror" on their respective juror cards and found that "the prosecutors' own notes proclaim[ed] that . . . race was on their minds when they considered every potential juror."); *Ex parte Robertson*, 603 S.W.3d 427, 428 (Tex. Crim. App. 2020) (TCCA granted relief based on petitioner's *Batson* claim that this office engaged in racially discriminatory jury selection practices in a 1991 trial); *Watkins* v. *State*, 245 S.W.3d 444, 454–55 (Tex. Crim. App. 2008) (TCCA found

this office still engaged in improper race-based jury selection practices in a 2005 trial).

That the State continued its race-based practices, despite repeated admonishments over multiple decades from various courts, supports Mr. Broadnax's claim that the State's unconstitutional practices were intentional and systematic in Mr. Broadnax's case.

b. The newly disclosed jury selection chart confirms that the State engaged in a systematic practice of race-based jury selection. Mr. Cummings's trial took place in January 2010, less than five months after Mr. Broadnax's trial concluded in August 2009, and 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* 4 RR 2, *State* v. *Cummings*, No. F08-24666-Y (appearances for the State during Mr. Cummings's trial). The fact that the juror chart from Mr. Cummings's trial includes racial markings identical to the ones in Mr. Broadnax's spreadsheet directly undermines the State's refrain throughout Mr. Broadnax's appeals that it only created the race-marked spreadsheet in Mr. Broadnax's case to *prepare* for a *Batson* hearing. In Mr. Cummings's case, no *Batson* objection was made. This makes clear that, at the time of Mr. Broadnax's trial, the State was engaging in a systematic and intentional practice of considering race during jury selection.

Despite Mr. Broadnax's prior argument that metadata associated with the spreadsheet showing that the spreadsheet was created and accessed ***during*** jury selection, the State has consistently asserted that the racially marked spreadsheet was created in preparation for a *Batson* hearing. *See, e.g*, Resp't's Answer with Br. in Supp. at 71, *Broadnax* v. *Davis*, No. 3:15-cv-01758-N (N.D. Tex. June

26, 2017), ECF No. 63 ("The fact that this list was created *after* the state had exercised its strikes . . . demonstrates that the list was created in preparation for the State's response brief and the subsequent *Batson* hearing.") (emphasis added in original). And, in denying relief to Mr. Broadnax, the Fifth Circuit explicitly relied on the State's misrepresentation that it only marked the prospective jurors' races "when preparing to defend its use of peremptory challenges." *Broadnax* v. *Lumpkin*, 987 F.3d 400, 410 (5th Cir. 2021).

Mr. Cummings's jury chart now conclusively resolves this disagreement. *See Foster*, 578 U.S. at 493, 501, 513–14 (recognizing that prosecutors' list of all prospective jurors where names of Black prospective jurors were highlighted was convincing evidence of *Batson* violation); *see also Miller-El I*, 537 U.S. at 346–47 (condemning the State's practice of marking race of all venire members). The Court has made clear that 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 (internal citations omitted). The markings on Mr. Cummings's juror chart expose the State's pretext for its markings on Mr. Broadnax's juror spreadsheet and confirms that the State engaged in, and repeatedly attempted to cover up, its *Batson* violations against Mr. Broadnax.

c. Declarations from Black venire members further confirm that the State struck qualified jurors based on their race. Mr. Broadnax's counsel has recently obtained statements from three of the Black prospective jurors who were peremptorily struck by the State in Mr. Broadnax's trial. These three declarations show that the

State engaged in impermissible race-based use of peremptory strikes, once again making clear that the State's purported reasons for striking the prospective jurors were pretextual. Each of the three struck prospective Black jurors affirms that at the time of Mr. Broadnax's trial, they generally supported the death penalty, and that they would have followed the law and the court's instructions in rendering a verdict. Appl. at Ex. D ¶¶ V–VII, Ex. E ¶¶ IX–XI, Ex. F ¶¶ VII–X.

i. Mr. Curtis Riser. With regard to Mr. Riser, the State's proffered reasons for why it excluded him from the panel simply do not track, as multiple White jurors who raised similar concerns about wrongful convictions were not struck by the State. 55 RR 124, 181; 57 RR 144, 277.

The State also noted on Mr. Riser's jury questionnaire that this juror "Seems okay . . . hardworking, smart. ***Only concern . . .*** [Defendant]'s ***age + race*** w/ Juror's son ***age + race***, as mentioned." Appl. at Ex. B (emphasis added). Mr. Riser's declaration now confirms that he "could invoke the death penalty under the proper set of circumstances" and "would have been able to return a verdict in compliance with the law." Appl. at Ex. F ¶ V. He reaffirmed that he had no "moral or religious views that would have stopped me from being able to return a verdict of death." *Id.* ¶ IX.

ii. Ms. Aqwana Long. Ms. Long's declaration also confirms the pretextual nature of the State's proffered reason for striking her—that Ms. Long "ha[d] mixed feelings about the death penalty." 38 RR 45. However, Ms. Long clarified during *voir dire* 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. The State

accepted multiple White jurors who 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 rated herself a seven out of 10 on a scale in favor of the death penalty, higher than some White jurors found acceptable by the State. *Compare* 57 RR 106 *with, e.g.*, 55 RR 124, 276. Ms. Long reiterated her beliefs in her declaration, stating 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." Appl. at Ex. D ¶ V.

iii. Mr. Dedric Morrison. Mr. Morrison's declaration also confirms that the State's reasons for striking him were pretextual. The State claimed to strike him because he was "not in favor of the death penalty" and seemingly showed some sympathy to the defense's intoxication argument. 38 RR 72–73. However, on his jury questionnaire, Mr. Morrison selected: "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." 57 RR 198. The State accepted multiple White jurors who selected the same option. *Compare* 55 RR 178, 273 *with* 57 RR 198. The State also accepted White jurors who similarly acknowledged intoxication as a potential mitigating factor. *See, e.g.*, 27 RR 134, 169–70; 57 RR 51.

Consistent with his responses during *voir dire*, in his declaration, Mr. Morrison stated: "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." Appl. at Ex. E ¶ XVI.

These three declarations demonstrate that the State's reasons for excluding Black prospective jurors were pretextual and impermissibly motivated by the desire to keep prospective Black jurors off of the jury.

d. "When the government's choice of jurors is tainted with racial bias, that overt wrong . . . casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law." *Miller-El II*, 545 U.S. at 238 (internal quotations and citations omitted). The responses of the excluded jurors echo this precise concern and highlight the need to correct the State's *Batson* violations. *See, e.g.,* Appl. at Ex. D ¶ XII; Ex. E ¶ XIV (Ms. Long and Mr. Morrison expressing that it appeared that the prosecution struck them because they were Black and therefore, they "do not believe James Broadnax was given a fair trial."); *id.* at Ex. 4 ¶ XVII (Mr. Riser stating that he was "upset that race had played a part in who was part of the jury.").

2. The question presented warrants review in this case.

This case presents a timely opportunity to consider the question presented on a well-developed record. The question presented was preserved at each stage of the proceedings below. The trial court conducted a *Batson* hearing at which Mr. Broadnax made numerous objections concerning the racially discriminatory manner in which the State exercised its peremptory challenges, and Mr. Broadnax has diligently pursued relief on appeal. The claim provides the Court with an opportunity to compel compliance with *Batson* by a district attorney's office that repeatedly attempted to evade it.

Failure to review the claim would also risk incentivizing prosecutors to conceal evidence of potential *Batson* violations. Correcting the error in this case is all the more important so as not to signal to state prosecutors that they can withhold critical *Batson* evidence until direct appeal and state habeas proceedings are concluded, and thus shield such *Batson* evidence—and potential *Batson* violations—from ever being considered or reviewed.

C. The Court has jurisdiction to review both questions presented.

1. A procedural bar arises only when it is clear from the face of a ruling that the state court decision was in no way intertwined with the merits of the claim, and also is not intertwined with questions of federal law. *Glossip* v. *Oklahoma*, 604 U.S. 226, 242 (2025); *Michigan* v. *Long*, 463 U.S. 1032, 1040–41 (1983). Under this Court's holding in *Glossip*, this analysis considers the language of the order, the state court's authoritative construction of the state rule, and the state court's practice when applying its rule. That analysis demonstrates that there is no procedural bar to this Court's review of Mr. Broadnax's claims.

The TCCA will bar review of a claim pursuant to Article 11.071 §5(a) if the applicant fails to show both that the claim was previously unavailable and that the prima facie claim has merit. *Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007). Here, it is clear that the factual bases for both of the claims at issue were previously unavailable. Mr. Cummings's confession was clearly unavailable, as Mr. Broadnax's counsel had repeatedly visited with Mr. Cummings over the past ten years, yet Mr. Cummings was unwilling to previously acknowledge that he, and not Mr. Broadnax, shot the two victims. It was only after Mr. Broadnax's execution date was set, and Mr.

Cummings's spiritual evolution moved him to take responsibility for his actions, that he was willing to come forward. App. E at 23a–24a. The new evidence supporting Mr. Broadnax's *Batson* claim was also previously unavailable, as the District Attorney's office had denied Mr. Broadnax's request for access to those materials on the purported ground that they were subject to the work product privilege. Appl. at 50–51. Both of the claims before the Court thus satisfy the requirement of Article 11.071 §5(a) that they be previously unavailable, because the factual basis for each was unavailable.

As the Fifth Circuit has recognized, the second element of Art. 11.071, § 5(a) necessarily "entail[s] a prima facie review of the substantive merits of each applicant's" constitutional claim. *Rocha* v. *Thaler*, 626 F.3d 815, 831 (5th Cir. 2010). Dismissals pursuant to this prima facie review are "not independent of federal law, and [this Court's] jurisdiction is not precluded." *Ake* v. *Oklahoma*, 470 U.S. 68, 75 (1985). The fact that the TCCA's Order dismissing Mr. Broadnax's third subsequent application states that the court "dismiss[es] the application as an abuse of the writ without considering the merits of the claims," App. B at 4a, is not dispositive. The TCCA has a documented history of including this language as a matter of course, regardless of whether an underlying decision is based on a procedural or substantive ground. *See, e.g., Ex parte Davila*, 2018 WL 1738210, at *1 (Tex. Crim. App. Apr. 9, 2018) (dismissing subsequent application "as an abuse of the writ without reviewing the merits of the claims raised" after concluding that "Applicant has failed to make a *prima facie* showing of a *Brady* violation").

Indeed, the Fifth Circuit has repeatedly warned that the "boilerplate dismissal by the [TCCA] of an application

for abuse of the writ" is frequently "uncertain" and "unclear" about "whether the [TCCA] decision was based on . . . a question of federal constitutional law," and that a closer look at the underlying record is required to determine whether there is federal jurisdiction or not. *Ruiz* v. *Quarterman*, 504 F.3d 523, 527 (5th Cir. 2007); *id.* at 527–28 (finding federal jurisdiction despite "[t]he boilerplate dismissal by the [TCCA] of an application for abuse of the writ"); *Rocha*, 626 F.3d at 836 (same); *see also Busby* v. *Davis*, 925 F.3d 699, 707 (5th Cir. 2019) ("On its face, the TCCA's order states that i[t] has denied the application as an abuse of the writ without considering the merits of the claims . . . [but] [t]hat determination is necessarily dependent on a substantive analysis of the Eighth and Fourteenth Amendments as applied to the factual allegations."); *In re Davila*, 888 F.3d at 187–89 ("[W]e are unpersuaded by Texas's argument that the language provided at the end of the paragraph"—stating that the TCCA "dismiss[es] this application as an abuse of the writ without reviewing the merits of the claims raised"—"controls over what common sense would indicate.").

2. This Court has jurisdiction to review a state court's decision when there is a federal law question that is "integral to the state court's disposition of the matter," and the holding of the state court "depends on the court's federal-law ruling and consequently does not present an independent state ground for the decision rendered." *Ake*, 470 U.S. at 75. That is the case regarding both claims Mr. Broadnax asserts here, which involve Mr. Broadnax's rights to due process and fundamental fairness, and equal protection under the Eighth and Fourteenth Amendments to the U.S. Constitution, and which are necessarily the grounds upon which the TCCA's decision was predicated.

Mr. Broadnax's claims are therefore properly presented for this Court's review. *See, e.g., Smith* v. *Texas*, 550 U.S. 297, 313–15 (2007) (holding that this Court had jurisdiction to review the TCCA's order denying relief upon the second state habeas application because "the predicate finding of [the state law] procedural failure . . . is based on a misinterpretation of federal law."); *Foster*, 578 U.S. at 498 (the question of whether new evidence constitutes a "sufficient 'change in the facts'" under state law necessarily implicates the merits of petitioner's *Batson* claim, justifying review).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

AMANDA VALERIO-ESENE
SRAAVYA POONUGANTI
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006

STEVEN C. HERZOG
PIETRO J. SIGNORACCI
JENNIFER R. KIM
SOPHIA CHUNG
JULIE J. CHANDLER
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
sherzog@paulweiss.com

APRIL 20, 2026

APPENDIX

APPENDIX TABLE OF CONTENTS

APPENDIX A

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

Writ No. W08-24667-D

Trial Court Cause No. F08-24667

EX PARTE JAMES GARFIELD BROADNAX,

Applicant

NOTATION OF SUBSEQUENT WRIT APPLICATION

The undersigned Judge of the Criminal District Court No. 7 of Dallas County, Texas, enters this Notation of a Subsequent Writ Application, in the above-styled cause pursuant to Article 11.071, §5 of the Texas Code of Criminal Procedure.

Applicant is confined pursuant to the judgment and sentence of the Criminal District Court No. 7 of Dallas County, Texas, in Cause No. F08-24667-Y, wherein the defendant was convicted of the offense of Capital Murder and sentenced to Death.

Applicant filed his initial application for writ of habeas corpus on December 20, 2011. Applicant filed a subsequent Writ of Habeas Corpus pursuant to Article 11.071 of the Texas Code of Criminal Procedure on January 30, 2023. Applicant filed a second subsequent Writ of Habeas Corpus pursuant to Article 11.071 of the Texas Code of Criminal Procedure on August 20, 2024. Applicant has filed this subsequent Writ of

Habeas Corpus pursuant to Article 11.071 of the Texas Code of Criminal Procedure on[1]

IT IS THEREFORE ORDERED that the Clerk of this Court assign an ancillary file number to this subsequent writ application, attach this notation to the subsequent writ application, and immediately forward to the Court of Criminal Appeals in Austin, Texas, certified copies of the subsequent writ application and this notation.

IT IS FURTHER ORDERED that the Clerk of this Court send a copy of this notation to Applicant's counsel, Camille M. Knight, and to counsel for the State, Shelly Yeatts, Dallas County District Attorney's Office.

SIGNED this the 23rd day of March, 2026.

/s/ Chika Anyiam
JUDGE CHIKA ANYIAM
CRIMINAL DISTRICT COURT NO. 7
DALLAS COUNTY, TEXAS

[1] The text of this sentence is truncated in the original.

APPENDIX B

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

No. WR-81,573-04

EX PARTE JAMES GARFIELD BROADNAX,

Applicant

ON APPLICATION FOR POST-CONVICTION
WRIT OF HABEAS CORPUS AND
MOTION TO STAY EXECUTION
FROM CAUSE NO. W08-24667-D
IN CRIMINAL DISTRICT COURT NO. 7
DALLAS COUNTY

Per curiam. PARKER, J., filed a concurring opinion in which FINLEY, J., joined.

ORDER

We have before us a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5 and a motion to stay Applicant's execution.[1]

In August 2009, a jury convicted Applicant of capital murder for the 2008 murder of Stephen Swan committed in the course of committing robbery. *See* TEX. PENAL CODE § 19.03(a)(2). Based on the jury's answers to the special issues submitted under Article 37.071, the trial court sentenced Applicant to death. This Court affirmed Applicant's conviction and sentence on

---

[1] All references to "articles" in this order refer to the Texas Code of Criminal Procedure unless otherwise specified.

direct appeal. *Broadnax v. State,* No. AP-76,207 (Tex. Crim. App. Dec. 14, 2011) (not designated for publication).

This Court subsequently denied Applicant relief on his initial Article 11.071 writ application and dismissed two subsequent applications as abuses of the writ. *Ex parte Broadnax,* No. WR-81,573-01 (Tex. Crim. App. May 20, 2015) (not designated for publication); *Ex parte Broadnax,* No. WR-81,573-02 (Tex. Crim. App. June 7, 2023) (not designated for publication); *Ex parte Broadnax*, No. WR81,573-03 (Tex. Crim. App. Nov. 6, 2025) (not designated for publication). In July 2025, Applicant asked this Court to reconsider its resolution of the *Batson* claim he raised in his -02 writ application, based on "new evidence" he obtained by reviewing the jury selection of co-defendant Demarius Cummings's trial. We declined the invitation on November 6, 2025.

On March 23, 2026, Applicant filed in the trial court this, his third subsequent writ application. Therein, he raises five claims, alleging that: (1) the State secured his conviction and sentence using false evidence; (2) he is actually innocent; (3) he was not eligible for the death penalty; (4) his death sentence was not individualized; and (5) the State's exercise of certain peremptory challenges violated *Batson v. Kentucky*, 476 U.S. 79 (1986).

We have reviewed the application and find that Applicant has failed to show that his allegations satisfy the requirements of Article 11.071 § 5. Accordingly, we dismiss the application as an abuse of the writ without reviewing the merits of his claims. *See* Art. 11.071 § 5(c). We deny Applicant's motion to stay his execution.

IT IS SO ORDERED THIS THE 7th DAY OF APRIL, 2026.

Publish

APPENDIX C

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

No. WR-81,573-04

EX PARTE JAMES GARFIELD BROADNAX,

Applicant

ON APPLICATION FOR POST-CONVICTION
WRIT OF HABEAS CORPUS AND
MOTION TO STAY EXECUTION
FROM CAUSE NO. W08-24667-D
IN CRIMINAL DISTRICT COURT NO. 7
DALLAS COUNTY

PARKER, J., filed a concurring opinion in which FINLEY, J., joined.

CONCURRING OPINION

In front of a friend of the family and to and the media, Applicant confessed to killing two people during a robbery. After 16 years and three prior habeas applications, Applicant now contends that those confessions were lies. But Applicant has not recanted his own confessions; he relies solely on a recent statement from his co-defendant (Demarius Cummings) claiming responsibility as the triggerman (for personally killing the victims). I am unwilling to hold that Applicant's confessions were false when Applicant hasn't bothered to recant them. And even if he had recanted, I find problematic the notion that he caused

his own due-process violation by making voluntary inculpatory statements. If he could show that he was actually innocent, or that he was "innocent of the death penalty" (conclusively did not possess the culpability required for a death sentence), then I could find a due-process violation. But even if the co-defendant's statements were accepted, Applicant was guilty at least as a party, and a rational jury could find that he had the requisite culpability (anticipating that a human life would be taken). Moreover, if Applicant's confessions were lies, he knew that at the time he made his confessions, and he has had 16 years and 3 prior applications in which he could have recanted those confessions and argued that they were false. Consequently, I agree that Applicant's claims are barred as subsequent by Article 11.071, Section 5.

1. False Evidence Claim

In his first ground, Applicant claims that admission at trial of his confessions violated due process because those confessions were false evidence. To raise this claim in a subsequent habeas application, he must satisfy an exception to the general subsequent-application prohibition.[1] He argues that he satisfies the "new facts," "innocence gateway," and "punishment gateway" (innocence of the death penalty) exceptions.

The United States Supreme Court has recognized that a due process violation occurs if the State knowingly solicits false evidence or knowingly allows false evidence to go uncorrected when it appears.[2] However, "[t]he Supreme Court has never held that [the State's] *unknowing* use of false evidence violates

---

[1] TEX. CODE CRIM. PROC. art. 11.071, § 5.

[2] *Glossip v. Oklahoma*, 604 U.S. 226, 246 (2025).

due process."[3] This Court, however, has "expanded" federal due-process protections to encompass "unknowing use" claims.[4] But I am unaware of a prior case raising an "unknowing use of false evidence" claim based on the defendant's *own* false statements. There is a point at which an envisioned expansion of due process goes too far.

For starters, the only evidence Applicant offers to prove that his confessions were false is Cummings's recent claim of responsibility as the triggerman. But Applicant has not recanted his own statements, and he has not shown any legitimate impediment to executing an affidavit doing so. If Applicant is unwilling, under the penalty of perjury, to recant his confessions, we should not be willing to countenance a challenge to their truth.

And significantly, he made numerous damning statements inculpating himself as the shooter: A friend of his aunt testified that, after coming back from the robbery, Cummings had the "big gun" and Applicant had a "pistol." The friend also testified about Applicant that,"the last thing he said was that if it comes out, he did it."

In an interview with the local Channel 4, Applicant described the shootings, essentially bragging about his

---

[3] *Ex parte Warner*, 721 S.W.3d 436, 443 (Tex. Crim. App. 2025) (Finley, J., concurring); *see also Cash v. Maxwell*, 565 U.S. 1138, 1145 (2012) (Scalia, J., dissenting to refusal to grant certiorari) ("To make matters worse, having stretched the facts, the Ninth Circuit also stretched the Constitution, holding that the use of Storch's false testimony violated the Fourteenth Amendment's Due Process Clause, whether or not the prosecution knew of its falsity. We have never held that, and are unlikely ever to do so.").

[4] *Ex parte Carter*, 721 S.W.3d 341, 360 (Tex. Crim. App. 2025).

conduct. In describing one of the shootings, he said that he was sure the victim would've died, but he "shot his bitch ass again" just to make sure. When asked whether he was worried about getting caught later, Applicant said, "I got nothin' to live for." He also said he "kinda" regretted what he did. When asked what he would like to say to the families, Applicant looked directly into the camera and said, "Fuck 'em…Straight up." When the interviewer asked what was going through Applicant's head "right now," Applicant hung up the phone and walked away. As he was walking away, he said, "tell 'em I said fuck 'em."

In an interview with the local Channel 5, Applicant gave the exact story he told Channel 4 and added that he wanted the death penalty. He further said that if he gets life, he will go crazy and kill someone else. And when asked what he would say to the people who find his conduct reprehensible, he said "Fuck em, fuck em, fuck em, even if they celibate." Applicant also made the following statements:

> I pulled the trigger, he was just there.
>
> We robbed them. I killed them.
>
> I popped they bitch ass, you know what I'm sayin'.
>
> Fuck his family too. Both of them.

Applicant's confessions were not half-hearted. They were detailed and showed a lack of remorse. And he has not recanted any of them.

Cummings's recent claim of responsibility as the triggerman would be relevant to a false-testimony claim that involved *Cummings's* testimony. But Cummings did not testify at Applicant's trial, nor were any

hearsay statements by Cummings used against Applicant.

Moreover, it seems problematic to claim that Applicant violated his own due-process rights by making false inculpatory statements. Had Applicant testified at trial that he was the shooter, would anyone seriously claim that his due-process rights would be violated if the testimony were false? Obviously not. The only difference here is that the State introduced hearsay statements by Applicant. But those statements were unquestionably voluntary. They were not the result of custodial interrogation and were made to a family friend and to the media. Applicant did not have to confess. He *chose* to. If the State knew that Applicant confessed falsely at the time it introduced the evidence, there would be a due process violation. But if only Applicant knew, he has suffered no due-process violation. He has just suffered the consequences of his own voluntary conduct.

If Applicant could meet the standard for establishing "actual innocence"—based partly on a conclusion that his confessions were false—I could see a due-process violation. But as I will address later, he doesn't establish a prima facie case of "actual innocence." And as I will also address later, although the innocence inquiries are not identical, his reasons for failing to meet the substantive standard of "actual innocence" also means that he fails to satisfy the innocence-gateway or punishment-gateway standards as well.

And Applicant does not meet the "new factual basis" for filing a subsquent application.[5] He has had three

---

[5] *See* TEX. CODE CRIM. PROC. art. 11.071, § 5(a)(1) (requiring the application to "contain[] sufficient facts establishing that . . . the current claims and issues have not been and could not have

prior habeas applications in which he could have presented his claim that his own confessions were false. He could easily have executed an affidavit recanting his confessions. He did not and still has not.

It is true that Cummings's statement that he was the triggerman would be significant evidence buttressing a claim that Applicant's confessions were false. But "new facts" excuse the failure to file a previous application only if "the factual basis was not ascertainable through the exercise of reasonable diligence on or before" the date of a prior habeas application.[6] Even if we assume that Cummings's conscience was awakened only on the eve of execution—a highly questionable proposition given that Applicant's third habeas application was filed in 2025—it might still have been true that Cummings's conscience would have been awakened earlier if Applicant had recanted his confessions much earlier and made known that he did not want to be put to death on the basis of them. Applicant has not shown diligence.

2. Actual Innocence and Innocence Gateway

In his second ground, Applicant alleges that he is actually innocent. He argues that he meets the "new facts" and "innocence gateway" exceptions to the subsequent-application prohibition.

To make a substantive showing of actual innocence, a habeas applicant must show "by clear and convincing evidence that, despite the evidence of guilt that

---

been presented previously in a timely initial application or in a previously considered application . . . because the factual . . . basis for the claim was unavailable on the date the applicant filed the previous application.").

[6] TEX. CODE CRIM. PROC. art. 11.071, § 5(e).

supports the conviction, no reasonable juror could have found the applicant guilty in light of the new evidence."[7] The habeas applicant must also show that this standard is met as a result of newly discovered or newly available evidence.[8] The innocence-gateway exception does not require newly-discovered or newly-available evidence, but it does require a showing that "by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt."[9]

I would observe that the "but for a violation of the United States Constitution" language in the innocence-gateway provision suggests that there must be a constitutional violation *in addition to* the alleged innocence. When "actual innocence" is the substantive constitutional claim, such an additional constitutional claim is absent. In fact, in dealing with the federal doctrines on which our subsequent-application prohibition is based, the Supreme Court explicitly said that a freestanding claim of innocence cannot meet the innocence-gateway standard:

> For he does not seek excusal of a procedural error so that he may bring an independent constitutional claim challenging his conviction or sentence, but rather argues that he is entitled to habeas relief because newly discovered evidence shows that his conviction is factually incorrect. The fundamental mis-

---

[7] *Ex parte Kussmaul*, 548 S.W.3d 606, 636 (Tex. Crim. App. 2018) (quoting *Ex parte Brown*, 205 S.W.3d 538, 545 (Tex. Crim. App. 2006)).

[8] *Brown*, *supra*.

[9] TEX. CODE CRIM. PROC. art. 11.071, § 5(a)(2).

> carriage of justice exception is available "only where the prisoner *supplements* his constitutional claim with a colorable showing of factual innocence." We have never held that it extends to freestanding claims of actual innocence. Therefore, the exception is inapplicable here.[10]

I recognize that this Court has held in *Ex parte Blue* that a claim of intellectual disability can, without an additional constitutional violation, satisfy the punishment-gateway ("innocence of the death penalty") exception[11] and that a concurring opinion disagreed, claiming that this amounted to improperly allowing a freestanding "innocence" claim to satisfy a gateway exception.[12] But I would limit *Blue* to claims that a person, by status of being intellectually disabled or under age 18, is automatically exempt from the death penalty. I would not extend this holding to "innocence" inquiries that depend on what a juror would believe about the actions of the defendant or his culpable mental state at the time of the offense.

And Applicant does not meet the "new facts" exception for the reasons stated in connection with ground 1. He hasn't shown diligence in trying to elicit Cummings's statement of responsibility by at least his third habeas application, filed in 2025.

But even if we conceive that he has shown new facts, or that a substantive showing of actual innocence can meet the innocence gateway exception, he fails to

---

[10] *Herrera v. Collins*, 506 U.S. 390, 404-405 (1993) (emphasis in *Herrera*) (citations omitted).

[11] 230 S.W.3d 151, 161 (Tex. Crim. App. 2007).

[12] *See id.* at 168-70 (Keller, P.J., concurring).

make a prima facie case for his substantive claim of innocence or for meeting the innocence gateway. The substantive standard for an actual innocence claim differs in some respects from the procedural innocence-gateway standard, but both standards focus on whether a rational juror could still find the defendant guilty in light of the new evidence. Ultimately, Applicant cannot show that no rational juror could find him guilty in light of the new evidence (Cummings's claim of responsibility) because Applicant's confessions, *which have not been recanted*, are enough to rationally support a finding of guilt. A rational jury would not have to believe Cummings's claim of responsibility. And without a recantation of Applicant's own confessions, there is absolutely no basis for discounting them.

But even if one did discount Applicant's confessions, he still could not prevail on actual innocence. No one disputes that Applicant participated in a robbery with Cummings. Under the law of parties, a person can be liable as a conspirator:

> If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy. In this subsection, "conspiracy" means an agreement between two or more persons to commit a felony.[13]

---

[13] TEX. PENAL CODE § 7.02(b).

Certainly, a rational juror could infer that Applicant was part of a conspiracy to commit robbery, that the murder of Swan (the indictment victim) was committed in furtherance of the robbery, and that the murder at least "should have been anticipated" by Applicant.

It is true that Applicant's jury charge did not contain the law of parties. But our substantive actual-innocence jurisprudence is "fact- and conduct-centric" and requires a showing of "factual" innocence rather than "legal" innocence.[14] And we have pointed to the "traditional hallmarks of actual innocence claims" as showing "that the defendant is being wrongfully imprisoned for a crime that he did not commit."[15] And even in the procedural innocence-gateway context, we have held that innocence means "factual innocence, not mere legal insufficiency."[16]

And we should keep in mind that the absence of the law of parties in the jury charge was largely Applicant's fault. Submitting the law of parties at the guilt stage of trial came with a cost: an anti-parties punishment issue would also have to be submitted at the punishment stage.[17] Applicant's confessions gave the State a strong incentive to avoid that cost. It was a perfectly legitimate strategy for the State to decide

---

[14] *Ex parte Fournier*, 473 S.W.3d 789, 792 (Tex. Crim. App. 2015).

[15] *Id.* (quoting *Ex parte Rich*, 194 S.W.3d 508, 515 (Tex. Crim. App. 2006)).

[16] *Ex parte Reed*, 670 S.W.3d 689, 745 (Tex. Crim. App. 2023).

[17] *See* TEX. CODE CRIM. PROC. art. 37.071, § 2(b)(2) ("in cases in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code," specifying the anti-parties special issue to be submitted).

to pursue only primary-actor liability to ensure that all necessary findings of death-eligible participation and culpability for the charged offense were made at the guilt stage of trial. But if Applicant had not confessed, the State almost certainly would have included the law of parties in the jury charge. It would distort our jurisprudence to allow this actually guilty defendant to prevail on a claim of actual innocence based solely on the absence of a theory of party liability that his own conduct helped bring about.[18]

3. Innocence of the Death Penalty and Punishment Gateway

In his third and fourth grounds, Applicant alleges innocence of the death penalty. His third ground claims that no juror could rationally find against Applicant on the anti-parties and future dangerousness special issues. In passing, Applicant also points out that the anti-parties special issue was not submitted. His fourth ground focuses on Supreme Court precedent regarding the kind of participation and culpability needed to support the death penalty.[19] The anti-parties special issue satisfies this Supreme Court precedent,[20] so his fourth ground really collapses into his third ground, with the anti-parties special issue posing the question of "whether the defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the

---

[18] *Cf. Prystash v. State*, 3 S.W.3d 522, 529-32 (Tex. Crim. App. 1999) (The defendant was barred from complaining about omission of the anti-parties special issue because trial defense counsel invited error by requesting that the issue be omitted.).

[19] *See Tison v. Arizona*, 481 U.S. 137, 157 (1987); *Enmund v. Florida*, 458 U.S. 782, 798 (1982).

[20] *Ladd v. State*, 3 S.W.3d 547, 573 (Tex. Crim. App. 1999).

deceased or another or anticipated that a human life would be taken."[21] Applicant claims that these grounds meet the "new facts" and "punishment gateway" exceptions.

For reasons addressed earlier, these claims fail to satisfy an exception to the subsequent-application prohibition. He does not meet the "new facts" exception for the reasons stated in connection with ground one because he hasn't shown diligence in trying to elicit Cummings's statement of responsibility. He also fails to meet the punishment-gateway exception because his freestanding claim of innocence of the death penalty does not satisfy the requirement that the showing of "innocence" supplement a separate constitutional claim. The punishment-gateway provision parallels the innocence-gateway provision in requiring a separate constitutional violation: "by clear and convincing evidence, *but for a violation of the United States Constitution* no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial under Article 37.071."[22]

But even if he overcame those hurdles, he would still fail to establish that "no rational juror" could or would answer one or more of the special issues in the State's favor. Again, because he has not recanted his confession, we should not discount it, which means he cannot show that no rational jury would believe he was the shooter. But even if we could discount his confession, his claim would still fail. Given the evidence at trial that each conspirator carried a

---

[21] *See* TEX. CODE CRIM. PROC. art. 37.071, § 2(b)(2).

[22] TEX. CODE CRIM. PROC. art. 37.071, § 5(a)(3) (emphasis added).

firearm to the robbery, a rational juror could believe that Applicant at least "anticipated that a human life would be taken." And as for future dangerousness, the Federal District Court for the Northern District of Texas outlined evidence of numerous instances in which Applicant committed bad acts in jail, including:

- During a jailhouse phone call, Applicant said he had been in a fight with a Special Response Team during a shakedown of his cell.
- During a shakedown, officers found a blade from a disassembled razor hidden in his cell.
- Applicant refused directives from an officer supervising a shakedown, spoke aggressively to her, and had to be taken down by multiple officers.
- A detention officer broke up a fight between Applicant and another inmate. When the two were separated, Applicant was still trying to get to the other inmate. State's Exhibits 574 and 575 showed wounds from the fight.
- During a phone call with his mother, Applicant said his hand was swollen from a fight.
- A detention officer escorted Applicant and another inmate to court when Applicant suddenly turned around and struck the other inmate. The assault was unprovoked, and Applicant never explained his motive.
- That same inmate testified that Applicant and another inmate often yelled at each all night long. This inmate would not go to recreation out of fear of Applicant assaulting him for not giving up his prescription medication. He called Applicant the "baddest" person in the area of the jail.

- Applicant used gang-related slang in jailhouse phone calls.[23]

Applicant also claims that he should obtain relief because an anti-parties issue was not submitted. He does not provide a legal basis for his claim. He was not entitled to the submission of an anti-parties special issue because the law of parties was not submitted at the guilt stage,[24] and the evidence was, at the time of trial, sufficient to convict him as the primary actor. Moreover, to the extent his own voluntary conduct caused him to lose the submission of the law of parties, and hence, the anti-parties special issue, he should not be heard to complain.[25]

4. Conclusion

Applicant's claim that he lied when he confessed must fail. He hasn't recanted his confessions, his own lies—if that's what they are—do not give rise to a due-process violation, he is not actually innocent or innocent of the death penalty, and his claims are barred because they do not fall within an exception to the subsequent-application prohibition. I concur in the Court's decision to dismiss his application under Section 5.

Filed: April 7, 2026

Publish

---

[23] *Broadnax v. Davis*, Civil Action No. 3:15-CV-1758-N, 2019 U.S. Dist. LEXIS 122312, at *173-81 (N.D. Tex., Dallas Div. July 23, 2019) (not designated for publication).

[24] *See supra* at n.17.

[25] *Cf. supra* at n.18.

APPENDIX D

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

Cause No. F08-24667-Y

THE STATE OF TEXAS

v.

JAMES GARFIELD BROADNAX

EXECUTION ORDER

You, James Garfield Broadnax, were indicted by the Grand Jury of Dallas County, Texas, and charged with the offense of capital murder in cause number F08-24667-Y. A jury in this Court returned a verdict finding you guilty of the offense of capital murder on August 12, 2009, in cause number F08-24667-Y. On August 20, 2009, the same jury in this Court returned answers to the special issues, submitted to the jury at punishment pursuant to Article 37.071 of the Texas Code of Criminal Procedure, and this Court, in accordance with the jury's findings at punishment, assessed your punishment at death. The judgment of this Court was reviewed by the Texas Court of Criminal Appeals on direct appeal, and it was affirmed by that court on December 14, 2011, with mandate issued on January 9, 2012. The United States Supreme Court denied your petition for writ of certiorari on October 1, 2012. Subsequently, on May 20, 2015, the Court of Criminal Appeals denied your initial application for writ of habeas corpus, and the

United States Supreme Court denied your petition for writ of certiorari on October 5, 2015.

The District Court for the Northern District of Texas, Dallas Division, denied your federal petition for writ of habeas corpus on July 23, 2019, and the United States Court of Appeals for the Fifth Circuit granted your application for a Certificate of Appealability on July 24, 2020. The United States Court of Appeals for the Fifth Circuit affirmed the judgment of the district court on February 8, 2021. Afterwards, the United States Supreme Court denied your petition for writ of certiorari on January 18, 2022. The Court of Criminal Appeals dismissed your second application for writ of habeas corpus on June 7, 2023, and the United States Supreme Court denied your petition for writ of certiorari on June 24, 2024. The Court of Criminal Appeals also dismissed your third application for writ of habeas corpus on November 6, 2025. This Court now proceeds with the judgment and sentence in your case and enters the following Order:

IT IS HEREBY ORDERED by this Court that you, James Garfield Broadnax, having been adjudged guilty of capital murder and having been assessed punishment at death, in accordance with the findings of the jury and the judgment of this Court, shall at some time after the hour of 6:00 p.m. on the 30th day of April, 2026, be put to death by an executioner designated by the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, who shall cause a substance or substances in a lethal quantity to be intravenously injected into your body sufficient to cause your death and until your death, such execution procedure to be determined and supervised by the said Director of the

Correctional Institutions Division of the Texas Department of Criminal Justice.

Within 10 days of the signing of this Order, the Clerk of this Court shall issue and deliver to the Sheriff of Dallas County, Texas, a Warrant of Execution in accordance with this Order, directed to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, at Huntsville, Texas, commanding him, the said Director, to put into execution the Judgment of Death against the said James Garfield Broadnax.

The Sheriff of Dallas County, Texas is hereby ordered, upon receipt of said Warrant of Execution, to deliver said Warrant to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, Huntsville, Texas.

The Clerk of this Court is ordered to forward a copy of this Order to Defendant's counsel, Camille M. Knight, to counsel for the State, Shelly Yeatts, and to the Director of the Office of Capital and Forensic Writs, Benjamin Wolff.

ENTERED THIS 17th day of December 2025.

/s/ Chika Anyiam [Digitally Signed by Judge Chika Anyiam Date: 2025.12.17 13:28:25 -6'00']

Honorable Chika Anyiam
Presiding Judge
Criminal District Court No. 7
Dallas County, Texas

APPENDIX E

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

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

EX PARTE

JAMES GARFIELD BROADNAX,

Applicant

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.

* * *

EXHIBIT A

DECLARATION OF DEMARIUS CUMMINGS

1. My name is Demarius Cummings. I currently reside in the Coffield Unit in Tennessee Colony, Texas.

2. 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. In 2011, I was convicted of capital murder and sentenced to life in prison for this crime.

3. At 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. 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.

4. 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. Later, we both gave statements to the media. In James' 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.

5. These statements were not accurate. In fact, I was the one who shot the two victims, not James. This is confirmed by the fact that my DNA, and not James' DNA, was found on the pistol.

6. I have met with James' 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.

7. 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.

8. 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.

9. My name is Demarius Cummings, my date of birth is November 11, 1988, and my inmate identifying number is 01695832. I am currently incarcerated in the Coffield Unit, Tennessee Colony, Anderson County, Texas 75884. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Anderson County, Texas on the 11th day of March, 2026.

/s/ Demarius Cummings
Demarius Cummings