

No. _____

IN THE
Supreme Court of the United States

LEJAMES NORMAN,
Petitioner,
v.
TEXAS,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

JASON D. HAWKINS
Federal Public Defender

Jeremy Schepers*
Supervisor, Capital Habeas Unit

Northern District of Texas
525 S. Griffin Street, Suite 629
Dallas, TX 75202
214-767-2746
214-767-2286 (fax)
jeremy_schepers@fd.org

Karl Schwartz
Wiseman, Schwartz,
Cisochi & Trama, LLP
718 Arch Street, Suite 718 N
Philadelphia, PA 19106
(215) 450 - 3391

**LeJames Norman is scheduled
for execution September
16, 2026**

**Counsel of Record*

Attorneys for Petitioner

**CAPITAL CASE
QUESTION PRESENTED**

Whether due process is violated when the State presents false evidence and argument that is materially inconsistent with evidence and argument presented at a co-defendant's trial to obtain a death verdict.

PARTIES BELOW AND RULE 29.6 STATEMENT

Petitioner is LeJames Norman.

Respondent is the State of Texas.

There are no corporate parties involved in this case.

LIST OF RELATED CASES

Norman v. State, No. AP-76,063, 2011 WL 1158574 (Tex. Crim. App. Feb. 16, 2011)

Ex parte Norman, No. WR-74,743-01 & WR-74,743-02, 2012 WL 3600318 (Tex. Crim. App. Aug. 22, 2012)

Norman v. Stephens, No. CV-12-054, 2015 WL 5732122 (S.D. Tex. Sept. 30, 2015)

Norman v. Stephens, No. 15-70034 817 F.3d 226 (5th Cir. March 18, 2016)

Norman v. Davis, 580 U.S. 1161 (Feb. 27, 2017) (Mem.)

Ex parte Norman, No. WR-74-743-03 (Tex. Crim App. Sept. 14, 2026)

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PETITION FOR A WRIT OF CERTIORARI

LeJames Norman petitions this Court for a writ of certiorari to review the judgment of the Court of Criminal Appeals of Texas.

OPINIONS BELOW

The September 14, 2026, order of the Court of Criminal Appeals of Texas is attached as Appendix A.

STATEMENT OF JURISDICTION

The Court of Criminal Appeals of Texas entered judgment on September 14, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution, which provides in relevant part: “nor shall any State deprive any person of life, liberty, or property, without due process of law.”

INTRODUCTION

At the penalty phase of LeJames Norman’s capital murder trial, the prosecutor violated his due process rights by presenting false and prejudicial evidence and argument. Much of the false evidence and argument was flatly contradicted by the evidence and argument that the very same prosecutor had offered and championed at the trial of Norman’s co-defendant, Ker’sean Ramey. At Ramey’s trial, held two years before Norman’s trial, the prosecutor relied upon Norman, who testified for the State. At Ramey’s trial the prosecutor extolled Norman’s candor, his service, and his courage. At Norman’s trial, the opposite occurred, and Norman’s actions were

transformed into deception and self-interest. Absent factual support for this transformation, the prosecutor had to invent false evidence. And he did. The false evidence related to issues that a penalty phase jury would be especially focused on, including Norman's role in the incident, his candor, his remorse, and his acceptance of responsibility. The false evidence corrupted and undermined Norman's penalty phase trial.

STATEMENT OF THE CASE

Norman and his co-defendant Ker'sean Ramey were indicted for murder and related offenses in an August 24, 2005, incident involving the shooting deaths of Celso Lopez, Tiffany Peacock, and Sam Roberts. After his arrest, Norman cooperated with law enforcement, giving three recorded statements, and testifying, at the State's request, before the grand jury. He pled guilty, and again at the State's request, testified for the State against Ramey.

The criminal incident involved Norman and Ramey breaking into Roberts' and Peacock's home, after their tenant, Lopez, answered the door. The men entered the home with the intention of stealing cocaine, which they believed was being stored there. Norman shot Lopez. Lopez then went into a back room. Subsequently, Roberts and Peacock arrived, and following a brief confrontation, Norman shot Peacock. He then began struggling with Roberts, at which point both Ramey and Norman shot him. Ramey then went into the back room and shot Lopez, killing him. Having found no cocaine, the men left the house. Ramey later returned to the house and shot the victims several more times.

On November 20, 2008, Norman entered a plea of guilty to all the counts in the indictment. On December 10, 2008, after the punishment phase, the jury rendered its verdict on the special issues and the court sentenced Norman to death. *Texas v. Norman*, No. 06-1H7346, 24th Judicial District, Jackson County, Texas.

Norman appealed the jury's verdict, and on February 16, 2011, the Court of Criminal Appeals of Texas ("TCCA") affirmed the conviction and sentence. *Norman v. State*, 2011 WL 1158574 (Tex. Crim. App. Feb. 16, 2011). Later, the TCCA denied Norman's initial state habeas application and dismissed a subsequent filing. *Ex parte Norman*, 2012 WL 3600318 (Tex. Crim. App. Aug. 22, 2012). Norman unsuccessfully pursued federal habeas relief. *Norman v. Davis*, 580 U.S. 1161 (2017) (Mem.); *Norman v. Stephens*, 817 F.3d 226 (5th Cir. 2016); *Norman v. Stephens*, 2015 WL 5732122 (S.D. Tex. Sept. 30, 2015).

Norman filed a subsequent state habeas application on August 28, 2026. App. B. The TCCA dismissed that application on September 14, 2026. App. A.

Norman's execution date is set for September 16, 2026.

REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law justifying this Court's intervention. *See* Sup. Ct. R. 10. While the TCCA purported to resolve this case on state law grounds, its decision dismissing Norman's subsequent habeas application was interwoven with the federal due process violation. It also presents an important question on the limits of prosecutorial advocacy and the fairness of a prosecutor advancing arguments against a defendant at a capital penalty phase proceeding that

he knows to be false based on his argument and evidence he presented at a codefendant's trial.

I. Certiorari should be granted because the TCCA's ruling was not independent of the due process violation.

This Court does not review state court decisions that rest on adequate and independent state law grounds. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983). However, this doctrine is no barrier when the state court decision “appears to rest primarily on federal law, or to be interwoven with the federal law[.]” *Id.* Here, the decision below rests on or is at minimum interwoven with federal law, so this Court has jurisdiction to review the TCCA decision.

On its face, the decision below appears to rest on state law grounds. The TCCA's order states that “[w]e have reviewed the application and find that Applicant has failed to show that his allegations satisfy the requirements of Article 11.071 § 5.¹ Accordingly, we dismiss the application as an abuse of the writ without reviewing the merits of his claims. *See* Art. 11.071 § 5(c).” App. A 003.

But in operation, the TCCA's actual review of Norman's claim was not independent of the federal due process question. Norman sought authorization on the ground that he met the requirements of Article 11.071, § 5(a)(3). App. B 045-049; 053. Both on its face and in the TCCA's practice, such a determination is interwoven with the federal question. Article 11.071, § 5(a)(3) states that subsequent habeas

¹ Tex. Code Crim. Proc. art. 11.071 § 5.

applications may be authorized when the applicant shows that “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.” (emphasis added). Under the plain text of the statute, the TCCA was necessarily determining the strength of Norman’s federal due process claim.

TCCA decisions illustrate this in practice. In *Ex parte Speer*, the TCCA authorized a subsequent habeas application to proceed where there was an allegation that “trial counsel failed to investigate and present evidence during the sentencing phase of his trial related to his character, background, and moral culpability. Applicant contends that this failure deprived him of effective assistance of counsel.” 2025 WL 2151382, *1 (Tex. Crim. App. July 30, 2025) (citing *Wiggins v. Smith*, 539 U.S. 510 (2003); *Rompilla v. Beard*, 545 U.S. 374 (2005)). The TCCA held that the “Applicant has alleged sufficient specific facts in this claim” to justify authorization, *id.*, which plainly is a review of the federal question.

The Fifth Circuit has recognized that when the TCCA reviews a claim under Article 11.071, § 5(a)(3), that review is not independent of the federal question. *Busby v. Davis*, 925 F.3d 699, 706–10 (5th Cir. 2019). In *Busby*, the petitioner raised a claim under Article 11.071, § 5(a)(3) that his execution would violate *Atkins v. Virginia*, 536 U.S. 304 (2002). There, just as here, the TCCA claimed that the application was dismissed without considering its merits. *Busby*, 925 F.3d at 706. However, based on Texas law the Fifth Circuit held that the TCCA had actually reviewed the merits of

the federal claim, and that “[t]he state court’s decision regarding the *Atkins* claim was not independent of the federal question, and it necessarily entailed an assessment of the facts presented in support of the *Atkins* claim.” *Id.* at 706–07. The same is true here.

Texas law required the TCCA to consider the merits of Norman’s due process claim, so its dismissal of Norman’s filing was not independent of the federal question and this Court has jurisdiction to review Norman’s petition.

II. Certiorari should be granted because due process is violated when the State presents false evidence and argument that is materially inconsistent with evidence and argument presented at a co-defendant’s trial to obtain a death verdict.

In violation of the Due Process Clause, the prosecutor presented false and prejudicial evidence and arguments at Norman’s penalty phase. Most, but not all, of the prosecutor’s mendacity was revealed through the documented history of his involvement in the trial, two years earlier, of Norman’s co-defendant Ramey. Accordingly, for most of the false evidence and argument he presented, the prosecutor knew of its falsity, because it contradicted the evidence and argument that he presented to the grand jury and to Ramey’s jury. He urged both former juries to accept that evidence and argument.

A. The prosecutor violated due process by presenting false evidence and argument.

The prosecutor violated due process by presenting Norman’s jury with argument and evidence he knew to be false. *Mooney v. Holohan*, 294 U.S. 103, 112 (1935); *Napue v. Illinois*, 360 U.S. 264, 265, 269 (1959). Such deliberate deception is

incompatible “with rudimentary demands of justice.” *Mooney*, 294 U.S. at 112. The knowing use of false testimony “involves prosecutorial misconduct and a corruption of the truth-seeking function of the trial.” *United States v. Bagley*, 473 U.S. 667, 680 (1985) (quoting *United States v. Agurs*, 427 U.S. 97, 104 (1976)); see also *Banks v. Dretke*, 540 U.S. 668, 694 (2004) (“It has long been established that the prosecution’s ‘deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.’”).

It is equally incompatible with due process when the prosecutor’s deception is accomplished by false representations to the jury. *United States v. Alzate*, 47 F.3d 1103, 1110 (11th Cir. 1995) (“[False] explicit factual representations by the prosecutor at a side bar and [false] implicit factual representations to the jury during cross-examination of the defendant . . . corrupt[ed] the truth-seeking function of the trial[.]”); *United States v. Pariente*, 558 F.2d 1186, 1190 (5th Cir. 1977) (holding that the prosecutor’s unsupported representations about a statement by a co-defendant during prosecutor’s cross-examination of defendant violated due process). Thus, when the State presents at a subsequent penalty phase trial evidence and argument that it knows is false and which contradicts evidence and argument the State relied on during an earlier proceeding for a codefendant, due process is also violated. See *Mooney*, 294 U.S. at 112; *Napue*, 360 U.S. at 269 *Alzate*, 47 F.3d at 1110; *Pariente*, 558 F.2d at 1190.

B. The prosecutor's conduct that violated due process.

i. Telling the jury that Norman told Ramey to "finish off" the victims.

During the *Ramey* trial, the prosecutor presented evidence that after the three victims had been shot, and after Norman and Ramey left the residence, they realized that they had left a scanner in the residence. 1/9/07 *Ramey* Tr. 159. Ramey returned to the residence to retrieve the scanner. *Id.* According to State's evidence, when Ramey returned to the residence, he shot victims Lopez and Peacock once more, each in the head. 1/16/07 *Ramey* Tr. 127-32.

In closing the prosecutor argued that Norman did not know about Ramey's intentions or that he had shot the victims upon his return. The prosecutor told the *Ramey* jury that based in part on an off-the-record conversation (which he related to the jurors) that he had with Norman, he believed that Norman did not know that Ramey intended to shoot the victims upon his return to the residence, or that Ramey had actually done so. 1/16/07 *Ramey* Tr. 127-28. Accordingly, the prosecutor argued to the *Ramey* jury that because the final fatal shot to Lopez administered by Ramey upon his return (and the two earlier fatal shots Lopez suffered), could only be attributed to Ramey, "Ramey alone, is guilty of killing Lopez." *Id.* at 132-33.

The prosecutor at the *Ramey* trial went to great effort to impress upon the jury that his position that Norman did not know that Ramey returned to shoot the victims was not just a theory; it was fact. *See* 1/16/07 Tr. 129. ("You say, well, that's just a theory. [But I] look at the medical report.").

Nevertheless, at Norman's trial, absent a shred of evidence, the prosecutor told the jury that Norman *ordered* Ramey to return to the residence to "finish off" the victims, and "make sure everybody is dead." Directly contradicting the evidence he had presented the *Ramey* jury, the prosecutor spun the following fictional scenario as fact:

[LeJames] turns to [Ramey] and says, ["]hey, Sean, I'm out of bullets. That Mexican dude ain't dead. Get in there and finish him off. I'm not going to leave any witnesses. [] Get in there and I'm out of bullets.["] I'll guarantee you he's the man. He was planning it. [] Do you think for a minute he didn't tell Kersean to go in there and shoot Celso? Yeah, right. And the only reason he told Kersean to do it is because he's out of bullets. [] He's out of bullets or he'd have been doing it. And I can just hear him when they get to LeJames' house. Hey, man, I left that police scanner in there. [] Kersean, go get that scanner. Oh, and by the way, make sure everybody is dead.

12/10/08 Tr. 99-100.

The prosecutor violated due process when, after presenting evidence demonstrating that Norman did not know about the later shootings, and assuring the *Ramey* jurors he was giving them facts not theories, he told Norman's jury that Norman had actually ordered Ramey to shoot the victims. There was no truth to the prosecutor's new theory, nor was there any evidentiary support for it. Yet, the suggestion that Norman ordered Ramey to "finish off" the victims added an entirely new and distinct layer of depravity to the incident and to Norman's actions during it. It rendered Norman's penalty phase fundamentally unfair.

ii. Arguing a provably false and prejudicial account of the murder of Sam Roberts.

In the prosecutor's opening statement in the *Ramey* trial, he told the jury that

Ramey had twice shot Sam Roberts, with one of the bullets piercing his neck. 1/4/07 *Ramey* Tr. 62. The prosecutor told the jury that Norman then shot Roberts when he was “already, for all practic[al] purposes, dead[.]” 1/4/07 *Ramey* Tr. 63. Consistent with this argument, and according to the medical examiner’s testimony, Ramey’s shot to Roberts’ neck severed his carotid artery, fractured his spine, and caused rapid, immediate, death. 1/10/07 *Ramey* Tr. 21-22. The prosecutor reaffirmed this point in closing, describing Roberts’ final moments as “[b]ang, bang, severed his carotid artery. He’s dead.” 1/16/07 *Ramey* Tr. 127.

Thus, the prosecutor knew, as demonstrated by the uncontested, incontrovertible evidence he presented at Ramey’s trial, that one of Ramey’s shots to Roberts was immediately fatal. However, to increase Norman’s moral culpability during his penalty phase trial, the prosecutor reversed course as to how Roberts died. In cross-examining Norman, the prosecutor assured Norman (and the penalty phase jury) that Roberts was on his knees after Ramey shot him (presumably begging for his life), when Norman shot him. 12/5/08 Tr. 34-35. It was a theory, spun from whole cloth, which contradicted the facts the prosecutor had adduced – and argument he made based on those facts – at the *Ramey* trial. But the prejudicial impact of this confabulation cannot be overstated. Now, far from being “already, for all practice[al] purposes, dead,” Roberts was alive and suppliant just before Norman shot him. *Id.* In cross-examining Norman, the prosecutor presented this horrifically prejudicial scenario as a matter of fact:

[Sam Roberts] goes to the ground, boom, on his knees. I can't do that, but just imagine him on his knees.

And now you fire at him. How do we know that? Because Mr. Norman, there is a bullet in the floor right there close to where his feet are where if he went to his knees it would be, right there. And then he puts his hands to the back of his head trying to keep people from shooting him.

Id. Norman denied that Roberts was ever on his knees. *Id.* at 35. However, even though what the prosecutor insisted was true was flatly contradicted by the uncontested medical evidence he had presented to the *Ramey* jurors, the prosecutor insisted before the *Norman* jury that Norman shot Roberts while he was vulnerable and defenseless on his knees. *See* 12/5/08 Tr. 39.

The prosecutor violated due process when he pressed a theory of the facts that directly contradicted the evidence he had previously presented and advocated. The image of Norman executing a man, presumably begging on his knees – an image without any basis in fact – rendered Norman penalty phase trial fundamentally unfair.

iii. The prosecutor lied to the *Norman* jury when he assured them that he never sought Norman's assistance.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Consistent with that testimony, during closing argument Norman's trial lawyer argued his cooperation as a mitigating circumstance. *See, e.g.*, 12/10/08 Tr. at 37. The extent of his cooperation, as well as the peril in which it placed him, were offered to demonstrate the genuineness of Norman's expressions of remorse and regret. It showed that he was willing to try to right his wrongs even though doing so put him at risk.

However, in response to the defense argument, the prosecutor in his closing, told the jury that the "State didn't ask for [Norman's] cooperation[.]" 12/10/08 Tr. 49.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] After seeking and obtaining Norman's assistance, the prosecutor debriefed and prepped him, and his testimony was the central piece of its trial presentation against Ramey (the only defendant to proclaim his innocence and insist on a trial). The prosecutor also trumpeted Norman's candor and courage to Ramey's jurors. It was Norman, and Norman alone, who told them "exactly how the triple homicide occurred." 1/4/07 *Ramey* Tr. 75.

It was simply false for the prosecutor to assert that the State did not seek his assistance. [REDACTED]

[REDACTED] But the State's request for his cooperation, its pretrial engagement with Norman, and his candid detailed testimony, demonstrated the importance the State attached to his cooperation. Denying those truths at Norman's trial made a death verdict more likely.

The prosecutor's false denial that the State never sought Norman's cooperation is a due process violation. The prosecutor misrepresented and undermined a significant component of Norman's mitigation defense: his cooperation in the case.

iv. The prosecutor's falsehood that co-defendants who cooperate face no peril in prison.

At the guilt phase of the *Ramey* trial, the State called Kevin Childs. 1/11/07 *Ramey* Tr. 157. Childs was Ramey's cellmate following Ramey's arrest. *Id.* at 159-60. Childs testified that he overheard Ramey accusing Norman of "snitching" on him. *Id.* at 161-62. At the *Ramey* trial the prosecutor asked Childs if Ramey "was saying [to

Norman] you're the one that snitched; I have statements to prove it." *Id.* at 162. Childs answered "[y]es, sir." *Id.* The prosecutor then asked Childs if he overheard a later telephone conversation between Ramey and a "crazy person" plotting how to "get the person that snitched [i.e., Norman]." *Id.* Childs testified that Ramey said, "I'll give you the word." *Id.* In closing at the guilt phase of the trial, the prosecutor reminded the jury of Ramey's threat to retaliate against Norman:

Do you remember that one thing that he said that I think is pretty important? It shows you his intent and it shows you the mark of the man. He was on the phone with a crazy guy. Remember that? And Kersean Ramey told – who wanted to do something right then, the crazy guy – and Kersean said, don't do anything yet. Let's see what happens. I'll give you the word on what to do. Coming from the jail cell. Wow.

1/16/07 *Ramey* Tr. 112-13. At the penalty phase of the *Ramey* trial, the prosecutor again reminded the jury of the peril Norman faced by coming forward:

How about that telephone conversation as far as killing people? [Ramey's] in jail, waiting to go on trial for capital murder, killing three people, and he's on the phone with a crazy dude who wants to do something to the people who **snitched** him off. And what does Kersean Ramey say? Don't do it yet, not yet. Let's see what happens with you folks. That's what he's waiting to see. You know, if it doesn't go right, I'll give you the word on what to do.

1/23/07 *Ramey* Tr. 42 (emphasis added). Thus, the prosecutor presented evidence and argument that Norman had reason to fear being killed for his cooperation, since Ramey knew that Norman had cooperated, and Ramey would "give the word" on what to do with Norman. Emphasizing this point demonstrated to the jury the genuine peril Norman faced in testifying, peril that buttressed his credibility before the *Ramey* jury and increased the likelihood of a death verdict for Ramey.

Ramey's incentive to retaliate was only heightened by Norman's testimony against him at both the guilt and penalty phases of the *Ramey* trial. At the guilt phase, Norman gave a detailed account of Ramey's involvement in the incident, including Ramey's shooting and killing two of the three decedents. 1/9/07 *Ramey* Tr. 158. At the penalty phase of Ramey's trial, Norman was recalled. 1/22/07 *Ramey* Tr. 9. He testified that Ramey admitted to him that on an earlier, unrelated occasion Ramey had killed someone with a high-powered rifle during a home-invasion robbery. *Id.* 9-10. In closing at the penalty phase of the trial, the prosecutor relied upon that testimony in seeking a death sentence for Ramey. 1/23/07 *Ramey* Tr. 40.

However, at Norman's trial, the prosecutor painstakingly disputed what he had presented and argued to the jury at the *Ramey* trial. During the *Norman* trial, Norman's trial counsel elicited testimony from the State's prison-expert A.P. Merillat, that cooperation presented a risk to the cooperator's safety, in this case to Norman. 12/9/08 Tr. 111-13. Trial counsel's point was that a person like Norman who "snitched," would be retaliated against in prison. In fact, that was the term – "snitched" – that the prosecutor had elicited from Childs at the earlier *Ramey* trial to describe Ramey's characterization of Norman and his cooperation. Merillat testified that inmates who snitch suffer abuse from other inmates and guards and often end up in administrative segregation. *Id.* at 112-13. In administrative segregation an inmate is locked down twenty-three hours a day, and when the inmate leaves his cell, he is handcuffed and escorted. *Id.* at 114. This evidence was mitigating. It not only brought home to the jury that serving a life sentence would be more onerous for

Norman who assisted the State, but that his cooperation demonstrated his courage and integrity since he must have known what would be in store for him in prison.

But when it was Norman on trial, the prosecutor did another about-face. In front of the *Norman* jury, according to the prosecutor Norman had nothing to worry about in prison. On redirect examination of Merillat, the prosecutor set out to refute the favorable testimony trial counsel had elicited (and that the prosecutor had elicited on behalf of his cooperator Norman in the *Ramey* trial):

Prosecutor: Let me draw the distinction between a snitch –

Merillat: Yes, sir.

Prosecutor: – and somebody who testifies against themselves, because we're talking about this defendant now.

Merillat: I didn't know he testified.

Prosecutor: Well, in this case this Defendant testified at a previous trial.

Merillat: Oh.

Prosecutor: Now, let me tell you this. There were three people killed. Okay?

Merillat: Yes, sir.

Prosecutor: This Defendant testified that he murdered two of those three.

Merillat: Oh, okay.

Prosecutor: He's not what you call a snitch, is he?

Merillat: Right. He didn't say somebody else killed them.

Prosecutor: Right. He's not laying it off on somebody else.

Merillat: Okay. That's not a snitch.

Prosecutor: And would that information get out in the prison that he's not somebody who's trying to put it on somebody else, but he accepted his own responsibility?

Merillat: Right. He might be thought of as stupid by the other inmates, like why did you do that.

Prosecutor: Right.

Merillat: But he's not a snitch.

Prosecutor: He's not going to be someone they're going to target to kill?

Merillat: Right.

Prosecutor: And is that distinction made in the prison world?

Merillat: Well, we don't hear much about inmates who testify against themselves. I really can't compare it to anybody.

Prosecutor: But that wouldn't be what they classify as a snitch, would it be?

Merillat: No. That's not a snitch.

Id. at 115-16. However, unbeknownst to Merillat, Norman had testified that his co-defendant had also been involved in the incident, had shot all the victims, and that it was the shots from his co-defendant that killed two of the three victims. Further, and unknown to Merillat, the prosecutor presented evidence to the *Ramey* jury that Ramey regarded Norman as a "snitch" and had even discussed killing Norman for "snitching."

Merillat's testimony, based on incomplete information from the prosecutor, allowed the State to put forth the theory in closing that was opposite to its theory presented at the *Ramey* trial regarding what was in store for Norman:

Let me tell you what a snitch is so we're all clear about it from the prison people. A snitch isn't somebody who confesses to a crime. He might be called a whole bunch of things in prison, but it isn't a snitch. A snitch is somebody who rats on somebody else to avoid consequences of their own conduct. [Norman] is not for one minute going to be considered a snitch. [] He's not going to be preyed upon.

12/10/08 Tr. 107. The prosecutor understood the power of Norman coming forward and assisting the State despite the attendant risks, as mitigating evidence. Consequently, he repeatedly emphasized to the jury that Norman faced no risks at all. *See, e.g.*, 12/10/08 Tr. 98 ("He ain't even considered a snitch."); 106 ("And, folks, I am here to tell you he is not a snitch."); 107 ("he is not for one minute going to be considered a snitch.").

Beyond the fact that the prosecutor's fabrication about the safety in prison for a defendant who cooperates against a co-defendant was contradicted by the evidence he presented through Childs at the *Ramey* trial, it is also unsupported in law, logic, or practice. *See, e.g.*, Simons, Michael A., *Retribution for Rats: Cooperation, Punishment, and Atonement*, Vanderbilt Law Review, Vol. 56, No. 1., Jan. 2003 at 2 (describing as a "rat" or "snitch," "criminal defendants [who] have received leniency in return for testimony incriminating accomplices . . ."). It was thus nothing more than a false spin to strip Norman of the benefit of his acceptance of responsibility and the risks he faced by testifying against Ramey.

The prosecutor violated due process when at the *Ramey* trial he presented evidence that Ramey intended to kill Norman because he “snitched” – when doing so was beneficial to the State – and then at Norman’s trial insisted that he was not a “snitch” at all, and had nothing to fear, when it was served the prosecutor’s interest in obtaining a death sentence. It served to negate the credible mitigating evidence that, at great personal risk, Norman assisted the State.

v. The prosecutor’s decision to make from whole cloth inflammatory testimony and attribute it to Norman.

The prosecutor also misquoted and mischaracterized Norman’s own testimony to undercut his remorse. Norman testified at the penalty phase. During his testimony, Norman told the jury that he was “in pieces” after the shooting. 12/04/08 Tr. 151. However, on cross-examination, the prosecutor alleged that Norman claimed to have said he “was at peace.” 12/05/08 Tr. 118. Norman, plainly confused, asked “[d]id I say that,” to which the prosecutor claimed “[y]eah, you did.” *Id.* In fact, nowhere in his testimony did Norman say he was at peace after the offense.

Of course, being “in pieces” is the opposite of being “at peace.” The phrase inspired the prosecutor to suggest that anyone who could be “at peace” over what he did must be “rotten to the core,” a horrific image particularly prejudicial in a penalty phase trial. The fact that it was the prosecutor who pressed this false spin upon the jurors exacerbated the prejudice. *See United States v. Young*, 470 U.S. 1, 18-19 (1985) (“[T]he prosecutor’s opinion carries with it the imprimatur of the Government and

may induce the jury to trust the Government's judgment, rather than its own view of the evidence.") (citing *Berger v. United States*, 295 U.S. 78, 88-89 (1935)).

The prosecutor's misrepresentation of Norman's statement of being "in pieces" to him being "at peace" turned into a major theme of the State's closing argument:

And what did he testify just a couple of days ago to you? What was his words? He was at peace. Does that sound like remorse? Excuse me. I don't think that sounds like remorse.

You got to be kidding me. He's at peace after having executed these beautiful people. And you want to believe he's not rotten to the core? My goodness.

Well, we know that it didn't -- it didn't get under his skin. We know it didn't bother him. You heard what he did. I didn't have to keep reiterating. He was at peace. I listened to that and trembled when I heard it. How could you get on that stand after you killed three people in cold blood and say I was in peace.

12/10/08 Tr. 48, 58, 98.

If even one juror trusted the prosecutor's perceptions and firmly expressed conviction, the impact was catastrophic to Norman's claim of remorse.

- vi. **Before the *Ramey* jury the prosecutor declared he believed Norman when he said he was going to turn himself in. Before the *Norman* jury he argued that any such notion was "Bull."**

A major theme of the defense penalty phase presentation was Norman's acceptance of responsibility. Following the criminal incident, Norman fled to Mexico, where he lived with his girlfriend Daisy Torres. 11/24/08 Tr. 123-28. In Mexico, Norman was safe from extradition since Mexico would not permit a person to be sent

back to the United States to face a death penalty prosecution. Thus, a centerpiece of the defense penalty phase theory was that considering the sanctuary Mexico offered him, Norman's return to the United States demonstrated both his intention to face the consequences of his actions and to spare Torres the hardship of having to remain in Mexico with him and taking her "life away from her." 12/10/08 Tr. 32. During his penalty phase testimony, Norman confirmed that it was his "intention" to turn himself in. 12/05/08 Tr. 21.

During the *Ramey* trial the prosecutor made the very same argument that Norman's counsel later made – that Norman had every reason to stay in Mexico but instead came back to the United States with the intention of turning himself in. During the *Ramey* trial, when the prosecutor examined Norman, the prosecutor stressed that had he remained in Mexico, Norman would have remained a "free man." 1/10/07 *Ramey* Tr. 201. The prosecutor, emphasizing the voluntariness of Norman's return, provided the jury with a snapshot of the free life that Norman relinquished by coming back to the United States:

Q: And for that matter, Mr. Norman, when you were in Mexico, and I'm going to put quotes around this, you were a free man, weren't you?

A: Yes, sir.

Q: You could get up in the morning; you could go down to the store; you could buy all the beer you wanted; you could go get you something to eat. Nobody told you when to get up and you weren't incarcerated, were you?

A: No, sir, I was not.

Q: And from the time you got caught coming across the border until today, you've been locked up, haven't you?

A: Yes, sir, I have.

Q: If you really didn't intend to accept responsibility, you remember Mr. Evans[, Mr. Ramey's lawyer] said, well, you say you were going to turn yourself in, but the fact of the matter is you didn't. You got caught. If you really never intended to turn yourself in, today, what's today – January the 10th, January the 10th of 2007, today you could still be in Mexico.

A: Yes, sir.

Q: If you never intended to accept responsibility, you could have stayed there couldn't you?

A: Yes, sir.

1/10/07 *Ramey* Tr. 202.

Then in closing to the *Ramey* jury the prosecutor personally vouched for Norman's account, exhorting the jurors to believe Norman when he testified that he was going to turn himself in. *See* 1/16/07 *Ramey* Tr. 110-11 (“**I believe him** when he said I was going to turn myself in.”) (emphasis added). The prosecutor's vouching for Norman's honesty and his “accept[ance of] responsibility,” gave the co-defendant's jury a compelling reason to believe Norman when he implicated the co-defendant.

Yet, at Norman's trial the same prosecutor vehemently denied the evidence and theory he had championed at Ramey's trial. At Norman's trial – instead of exhorting the jurors to believe what he believed – that Norman was being truthful when he said he intended to turn himself in – he told the jury Norman was lying. The

prosecutor ridiculed trial counsel's argument that Norman was planning to turn himself in – the same argument the same prosecutor had made to the *Ramey* jury:

[H]e is coming back from Mexico. He made the statement, [defense counsel] did, that he was going to turn himself in. **Bull. He was going to turn himself in when we caught him.**

12/10/08 Tr. 79. (emphasis added).

Contradicting his argument in the *Ramey* trial, that Norman had demonstrated his intent to surrender because “[h]e could have stayed in Mexico” (1/16/07 Tr. 110-11), the prosecutor told Norman's jury that Norman never intended to surrender. Indeed, not only did the prosecutor refute the position that he had earlier taken, in doing so, he also made the precise argument that he had urged the *Ramey* jury to reject.

Nobody forced the prosecutor to express his personal belief to the jury about Norman's intention to surrender. Nevertheless, the prosecutor decided that the *Ramey* jury needed to know that this was *his* belief, and he made sure it was presented as such. It meant that later, for the purpose of obtaining a death verdict against Norman, the prosecutor was telling Norman's jury to reject what he believed to be a true fact and instead find a fact that he believed to be false.

The prosecutor violated due process when, in his quest for a death sentence, he told the co-defendant's jury, “I believe [Norman's testimony] when he says I was going to turn myself in;” and then at Norman's trial characterized that testimony as “bull.” The prosecutor's reversal of position undermined powerful mitigating evidence

that Norman returned to Texas to take responsibility for his actions and face the serious consequences of admitting his guilt.

vii. At the *Ramey* trial according to the prosecutor Norman's account was entirely accurate. At the *Norman* trial Norman's account was false.

During the *Ramey* trial the prosecutor endorsed the accuracy of Norman's account of the incident. In his opening statement, the prosecutor assured the jury that "the ballistics and medical evidence bears out exactly what LeJames Norman says." 1/4/07 *Ramey* Tr. 72. The account the jurors would hear from Norman would be "exactly how the triple homicide occurred." *Id.* at 75. And again in closing, the prosecutor vouched for Norman's testimony, telling the jury, "I believe LeJames Norman was telling you the truth." 1/16/07 *Ramey* Tr. 110-11. He urged the jury to compare "Norman's testimony" with the "physical facts," because he wanted to show that it "makes sense." *Id.* at 111. He took the jurors "through how LeJames Norman said this triple homicide was committed[, and then showed them] how the ballistics and the medical evidence say [Norman's] right." *Id.* at 113. The prosecutor argued that "the ballistics and the medical examiner verify every single thing that [LeJames Norman] told to you." *Id.* at 122. He even ridiculed Ramey's attorneys' argument that Norman was a "self-professed liar." *Id.* at 70.

Norman's testimony at his own penalty phase regarding these issues was identical to his testimony at the *Ramey* trial. 1/9/08 Tr. 159, 174, 196. Despite telling the *Ramey* jury that "the ballistic and medical evidence says [Norman's] right," 1/16/07 *Ramey* Tr. 113, the prosecutor at the *Norman* trial described Norman's

testimony as fabricated, and inconsistent with the medical and ballistic testimony. 12/10/08 Tr. 104. Notably, the prosecutor in his examination of the medical examiner at Norman's trial selectively *omitted* details that the same prosecutor had *elicited* at the *Ramey* trial to corroborate Norman's testimony about the range from which two of the victims had been shot. Those additional details supported Norman's account of the shooting and proved that it was consistent with the medical evidence. See 11/24/08 Tr. 19-22, 12/5/08 Tr. 40-44; 1/4/07 *Ramey* Tr. 74; 1/10/07 *Ramey* Tr. 24; 1/16/07 *Ramey* Tr. 126; 1/16/07 *Ramey* Tr. 130.

In closing to the *Norman* jury, the prosecutor used this distortion of the evidence to argue that Norman could not tell his jury "that he's less morally to blame when he still won't admit how he shot" the decedents. 12/10/09 Tr. 104. The prosecutor then used Norman's purported lack of honesty about how the shootings occurred to argue the jury should not believe that Norman was remorseful: "Don't you have to be at least honest about how you kill people before you can ask a jury to consider me having remorse or being sorry?" *Id.*

Only by concealing critical ballistic and medical evidence from Norman's jury that was presented to the *Ramey* jury, was the prosecutor able to argue at the *Norman* trial that Norman's testimony should be rejected. At the *Ramey* trial he argued it should be fully credited, but when doing so no longer suited his interest in obtaining a death sentence for Norman, the prosecutor made a 180-degree pivot to undermine the credibility of Norman's expression of remorse. It was contrary to the

evidence, contrary to the position that the prosecutor had forcefully argued in the *Ramey* trial, and contrary to his obligation under the due process clause.

viii. The prosecutor told the *Ramey* jury that Norman had accepted responsibility; he told Norman’s jury he had not.

During the *Ramey* trial, the prosecutor repeatedly urged the jury to find that Norman accepted responsibility for his criminal conduct. In his opening statement, the prosecutor told the jury that Norman was getting nothing out of his testimony, and that he had no expectation that his cooperation would be of any help to him. *See* 1/4/07 *Ramey* Tr. 42 (“LeJames Norman will tell you that he has no deal. [] He’ll tell you that he fully expects when this trial is over to be [] tried for capital murder and facing the same death penalty that Kersean Ramey is facing.”). In the prosecutor’s opening statement in the *Ramey* trial, his promotion of Norman’s acceptance of responsibility was unequivocal:

I’m going to tell you that the testimony is going to show that from the very moment LeJames Norman was captured, he confessed. He gave a detailed statement, but I will tell you this, each of the statements he gave and this was statements – every one of the statements was enough about his involvement.

1/4/07 *Ramey* Tr. 49-50. The prosecutor then called Norman as a witness, and offered unsolicited praise for his character, describing his post-incident conduct as “stepp[ing] up to the plate [] and [taking] responsibility” for his role in the offense:

Q: Each step of the way, you’ve accepted more and more responsibility for this triple homicide have you not?

A: Yes, sir.

Q: Did you ever have anybody at your side to give you counsel, to give you counsel, to give you advice, to assist you in this legal maze of statements? Did you have the benefit of that when you were giving these statements?

A: No, sir.

Q: You were accepting responsibility without anybody helping you in the legal process; were you not?

A: Yes, sir.

Q: And you knew when you stepped up to the plate each time and took responsibility, albeit a little at a time, that by accepting that responsibility, you could possibly be facing the death penalty; did you not.

A: Yes, sir.

1/10/07 *Ramey* Tr. 201.

At the conclusion of the prosecutor's direct examination of Norman in the *Ramey* trial, the prosecutor elicited from Norman that he was sorry for what he did.

1/9/07 *Ramey* Tr. 178.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In both prior proceedings, the prosecutor elicited and praised Norman's expression of remorse, acceptance of responsibility, and honesty. But this was all undone when the prosecutor fiercely disputed all of what he had earlier championed.

At his own trial, Norman again expressed remorse for his role in the criminal incident. 12/4/08 Tr. 107. Although the prosecutor had earlier solicited and endorsed Norman's expressions of remorse, he now dismissed, derided, and dismantled them. On cross-examination he (falsely) suggested that this was the first and "only time" Norman had "ever made this apology," 12/5/08 Tr. 48-49, despite Norman's similar statements elicited by the same prosecutor at both the *Ramey* trial [REDACTED]

[REDACTED]

Moreover, the prosecutor misled Norman's jury about his acceptance of responsibility by describing it as "self-serving." 12/10/08 Tr. 104. He told the jurors that "the only reason [Norman] testified or gave any statements was only to self-serve, to help himself." 12/10/08 Tr. 49. The prosecutor never disclosed to the *Norman* jurors his exhortation to the *Ramey* jury that Norman was getting nothing for his testimony even when he knew that he would still face death. 1/4/07 *Ramey* Tr. 42.

The prosecutor violated due process when he presented stark and shockingly different accounts – from one trial to the next – of Norman’s assistance to the State and expression of remorse. The prosecutor’s eviscerating the good will that Norman earned by cooperating – a fact that he had earlier acknowledged and lauded to the jury – undermined the fundamental fairness of Norman’s trial, by eliminating powerful mitigation that Norman had presented during the penalty phase.

C. The false evidence and argument severely undermined Norman’s defense.

There is a reasonable likelihood that, had Norman’s jury known the true facts which the prosecutor had endorsed, i.e., Norman’s credible account of the incident, the importance of his cooperation, the sincerity of his remorse and expressed intention to surrender, and the courage of his commitment to assist the State notwithstanding the significant risk; it would have affected the judgment of the jury. Consequently, Norman suffered a due process violation through the State’s use of false evidence and argument. The beneficiary of that false testimony—the State—cannot show beyond a reasonable doubt that there is no reasonable likelihood that the false evidence and argument contributed to Norman’s conviction. *See Glossip v. Oklahoma*, 604 U.S. 226 (2025); *Napue*, 360 U.S. at 269; *Mooney*, 294 U.S. at 112; *Alzate*, 47 F.3d at 1110; *Pariente*, 558 F.2d at 1190.

III. Conclusion.

The petition for writ of certiorari should be granted.

Respectfully submitted,

JASON D. HAWKINS
Federal Public Defender

/s/ Jeremy Schepers
Jeremy Schepers*
Supervisor, Capital Habeas Unit

Office of the Federal Public Defender
Northern District of Texas
525 S. Griffin St., Ste. 629
Dallas, TX 75202
214-767-2746
214-767-2286 (fax)
jeremy_schepers@fd.org

/s/ Karl Schwartz
Karl Schwartz
Wiseman, Schwartz,
Cisochi & Trama, LLP
718 Arch Street, Suite 718 N
Philadelphia, PA 19106
(215) 450 – 3391

**Counsel of Record*

Attorneys for Petitioner