The Incredible Mind of Jamaal Howard

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Essays From His Final Days

Jeff Hood

Complicit Press

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Published by Complicit Press
A project of the Execution Intervention Project
executionintervention.org

Several of these pieces first appeared, in slightly different form, on the author's Substack between September 1 and October 11, 2026.

Scripture quotations in "The Former Things" are from the King James Version.

First edition
Printed in the United States of America

For Jamaal.

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Foreword

The first thing I learned about Jamaal Howard was the glass. Texas does not let you touch the men it plans to kill. You sit. He sits. A pane sits between you. Everything that passes from one of you to the other has to pass through it. For a long time, that is how I knew him. Two hours at a stretch, his face on the other side, a hand flat against the glass. We talked about the ins and outs of life. We talked about loss. In the middle of it, he would point at a corner of the room. He would gesture at something standing there. Nothing stood there. He kept talking to it. That was not unusual with Jamaal.

A conversation with Jamaal was a bucket with holes in it. You poured. It ran out the bottom. You poured again. Sentences did not hold together for him the way they hold for the rest of us. They started. They did not all arrive. Some days he knew he was on death row. Some days he did not. He did not know what October 7 meant. I asked him if he liked art. He said no, then doubled back to the books with the lines in them, the ones with Sonic and Mario. In those visits, I understood what I was for. My work was to walk through the dark with him. He did not know what kind of walk it was. I went where he went. I did not argue with the corner. The record can tell you what he did. It cannot tell you what his voice did when he was joking. It cannot tell you how it changed when he was tired. It cannot tell you the two kinds of silence he had, one for thinking, one for a sentence he could not find. It cannot tell you what he saw in the corner. Those were the things I was learning when Texas set the date.

Jamaal Howard had a pure heart. I write that beneath the name of Vickie Swartout, whom he killed, whose family has waited twenty-six years. The state had forms for his mind. It measured until it had enough numbers to kill him. Nobody measured his heart. I sat across from it through glass. The day before he died, I watched it break a honey bun with its own hands. I watched it lift a bottle of Powerade to the heavens and drink. Jesus said the pure in heart will see God. There is no doubt in my mind that Jamaal has seen God. God did not wait for his mind to come back. God got behind the glass. The rest of this book is what we did to him while God was in the room.

The Rev. Dr. Jeff Hood
October 12, 2026

Medicated Enough to Be Murdered: The Case against the Execution of Jamaal Howard

September 1, 2026

In a few hours, I will sit across from Jamaal Howard on Texas' Death Row. Five weeks from now, the State intends to kill him. If that happens, I will be present in the chamber with him.

Texas wants to execute a man who did not understand what the death penalty meant when he was sentenced.

That is not rhetoric. It is the sworn testimony of Dr. Fred Fason, the psychiatrist who examined Jamaal Howard and concluded that he lacked a rational understanding of the charges against him and the consequences if convicted. When Fason tried to explain that Jamaal could die for what happened, Jamaal laughed. Not out of cruelty. Not out of defiance. He laughed the way people in the grip of schizophrenia laugh…at inappropriate moments, at things no one else can see, at a world that no longer functions in any coherent order.

This case has been litigated as a story about lawyers and courts. It is not. It is a story about a mind…a mind that broke. Jamaal's mind was measured and found gravely impaired. Every doctor who ever examined him described Jamaal's mind the same way…broken. Everything else…the bumbling defense, the rubber-stamped findings, the all-white juries…matters only because it allowed Texas to condemn that mind without ever truly looking at it. Mental illness and intellectual disability are not arguments among many here…they are the whole case.

THE MIND THAT BROKE

In May of 2000, Jamaal Howard, a young Black man in Hardin County, Texas, killed Vickie Swartout in the course of a robbery. A life was taken, and nothing here asks anyone to forget it. But the death penalty demands a second question: what was the state of the man who did it? On that question the record speaks with one voice, and it has never stopped speaking.

The people who knew Jamaal longest saw it first. Sandra Johnson had known him all his life. Before the crime, she watched him become dirty, vacant, unable to recognize her on the street. In the courtroom, he did not recognize her either. Tyre Thomas, a jailer who had known him since childhood, described a changed man…talking to himself, swinging between moods, needing to be told to bathe and brush his teeth. He complied when told. He caused no trouble. He was just not fully there.

The doctors saw it next. Dr. Duncan, court-appointed, found Jamaal's cognitive functioning so inconsistent that he sometimes could not produce intelligible speech…mumbling in low tones, needing the same question repeated again and again. He smiled and chuckled at nothing, and Duncan was left wondering what Jamaal was responding to. Duncan concluded his mental state was actively declining and his ability to assist his own attorney was in serious doubt, with schizophrenia and other organic brain factors consistently at work.

Dr. Fason went further. Jamaal could not complete basic standard psychological tests because he did not understand words like "mechanics" or "appetite." His answers bore no relation to the questions asked. He laughed at the wrong moments…which Fason named as one of the cardinal signs of schizophrenia. Fason's diagnosis was exactly that: schizophrenia. And underneath it lay something the jury never heard…in 1997, at seventeen years old, Jamaal had been shot in the head. A traumatic brain injury, sitting in the medical records, three years before the crime. Notes from the day of his arrest pointed to active mental illness. The worst external event to happen to his brain was never presented.

Then the State's own prisons confirmed everything. Within months of his death sentence, Jamaal was transferred from death row to the prison system's psychiatric unit…withdrawn, mute, urinating on the walls, deteriorating. He was given Haldol, Cogentin and Zoloft. He improved, was discharged, and declined again. He mutilated himself. His Haldol was raised to the maximum dosage. Admission after admission, the diagnosis settled into permanence: chronic schizophrenia. An early jailhouse label of antisocial personality disorder faded and vanished. Every doctor who examined him thereafter…every single one…reached the same conclusion…chronic schizophrenia.

This is not a theory constructed for appeal. It is a quarter-century of unanimous medical judgment, much of it generated by the State of Texas itself. The man the State proposes to

strap to a gurney is a man whose sanity is held together, day by day, with the maximum allowable doses of antipsychotic medications. Texas has spent twenty-five years treating the very illness its courts declared he did not have.

THE MIND THAT WAS MEASURED

Schizophrenia is a component of who Jamaal Howard is. The other half is intellectual disability.

The US Constitution does not merely counsel mercy when it comes to intellectual disability. It commands it.

In Atkins v. Virginia, the Supreme Court held that the Eighth Amendment forbids executing people with intellectual disability, because their impairments diminish personal culpability and make the death penalty's purposes…retribution and deterrence…incoherent as applied to them. Jamaal's numbers place him inside that protection. Dr. Duncan administered the verbal portions of the Wechsler Adult Intelligence Scale and placed his intellectual functioning in the 65-to-70 range. He described Jamaal as operating at the level of an eleven- or twelve-year-old child.

When the prosecutor pointed out that Jamaal had once passed school achievement tests, Duncan's answer only deepened the tragedy: that would indicate deterioration. Fason found that Jamaal's intellectual functioning collapsed after second grade…a drop of more than sixty percentile points in math across seven years. A child's mind that once worked, coming

apart through his entire childhood, then struck by a bullet at seventeen, then swallowed by psychosis at twenty. Intellectual disability and mental illness are usually argued as separate claims. In Jamaal, they are one continuous catastrophe.

Now the procedural scandal. Jamaal was tried before Atkins was decided. When his lawyers raised intellectual disability afterward, the Texas Court of Criminal Appeals rejected the claim under *Ex parte Briseño*...the notorious Texas standard that measured disability against lay stereotypes rather than clinical science. In 2017, in *Moore v. Texas*, the Supreme Court specifically repudiated Briseño. The framework used to deny Jamaal's claim no longer exists because the nation's highest court found it constitutionally intolerable.

Sit with that. A man with test scores in the protected range and documented cognitive collapse had his claim denied under a standard the Supreme Court has since struck down...and no court has ever revisited the question under valid law. He unquestionably is...at this very moment...a man the Constitution categorically forbids Texas to kill. Texas intends to kill him anyway.

THE MIND NO ONE DEFENDED

Jamaal's trial matters because of what it did to the evidence of his condition: it buried it.

His attorney, Tyrone Moncriffe, was paid $35,000 to defend a capital case against a client who could not reliably

communicate. He never filed a single pleading raising competency, intellectual disability or insanity…the three issues that were the case. He announced an insanity plea orally, halfway through jury selection, and then never had Jamaal examined for insanity by anyone. He requested a competency evaluation orally, the day before jury selection began…and only because Dr. Fason told him he had to. When Duncan returned a report questioning competence, Moncriffe did not speak with him until the day Duncan took the stand, a fact confirmed in open court. It was the prosecutor…the man seeking Jamaal's death…who finally had to move for a competency trial, because Jamaal's own lawyer would not.

And when the illness did reach a jury, it nearly saved him. The first competency jury heard Dr. Fason and hung. They could not agree that this man was competent to be tried. Days later, at the second competency trial, Moncriffe did not call Fason at all. No explanation has ever been offered. Stripped of the expert whose testimony had deadlocked the first jury, the second jury…all white…found Jamaal competent in forty-seven minutes.

At punishment, Fason told Moncriffe to hire a mitigation expert to develop Jamaal's life history. He never did. His entire mitigation strategy was to ask witnesses whether both families were hurting. The gunshot wound went unmentioned. The arrest-day evidence of psychosis went unmentioned. The confession of a man who could not define "appetite" went unchallenged…and the prosecution wielded it, again and again,

as proof that Jamaal was calculating and remorseless. Calculating. A man functioning at the level of a twelve-year-old, sliding into schizophrenia, portrayed to a death-qualified jury as a cold strategist…because his lawyer never gave them the truth. Under findings of Strickland and Wiggins, that is deficient performance. Under the Fifth Circuit's own precedents, failing to investigate a client's mental health history after clear notice of it is very nearly indefensible. And the prejudice is obvious: a single juror who saw the whole picture could have chosen life. One jury, shown part of the picture, already refused to agree he was even competent.

THE MIND NO COURT WOULD SEE

Defenders of this execution will say the courts have reviewed the case. They have processed it. Jamaal's state habeas application sat for nine years. The judge who tried the case was replaced by a judge who never saw a witness. In 2012, eleven years after trial, that new judge signed the State's proposed findings word for word, without a single evidentiary hearing…findings declaring that Jamaal was not mentally ill, at the very moment the record contained years of the prison system's own psychiatric admissions and a consistent diagnosis of chronic schizophrenia. The federal courts then deferred to that fiction, and the Fifth Circuit refused even a certificate of appealability. At no point has any judge, state or federal, held a hearing on the central reality of this case: the condition of Jamaal Howard's mind.

What Execution Would Mean

Strip away the citations and this is what remains. A boy whose mind began failing after second grade. A teenager shot in the head at seventeen. A twenty-year-old, descending into psychosis, who committed a terrible crime. A defendant who laughed because he could not comprehend his own death sentence. A prisoner whose illness the State has diagnosed, documented and maximally medicated for a quarter of a century.

The death penalty, its defenders insist, is reserved for the worst of the worst…those who choose evil with a clear mind. Jamaal Howard has never had a clear mind. Retribution against a man who cannot rationally understand his punishment is not justice. Deterrence aimed at a mind that cannot reason is a fiction. What remains is only killing…the blind infliction of death on a man the Constitution protects twice over, once for his disability and once for his disease.

Vickie Swartout deserves to be honored with truth. The truth is that executing Jamaal Howard will not restore her and will not express society's considered moral judgment, because that judgment was never rendered. It was defaulted by a lawyer, rubber-stamped by a judge and averted by every court since. Jamaal Howard should not be executed. He should receive what his broken and diminished mind has never once been given in twenty-six years: a fair hearing, before people willing to look at the whole of him. Anything less is not law. It is

momentum. And surely, momentum is not a reason to kill a child...or a man that functions like one.

The Coloring Book Campaign: Demand a Competency Hearing for Jamaal Howard

September 3, 2026

We need your help!

THE ONES WITH THE LINES IN THEM

Yesterday, I sat across from Jamaal Howard on death row in Texas. The State intends to execute him on October 7. If he is executed, I will be by his side. He and I have known each other for a while now, and one thing is always abundantly clear...he is a beautiful person. For two hours, we talked through the glass about all sorts of ins and outs of life, loss and other things. But throughout our visit, he kept pointing at things that were not there. Gesturing toward corners of the room. Interacting with a world that only he could see. This is not unusual in my interactions with Jamaal.

Somewhere in the middle of our visit, I asked him about his interests. Did he like art? He said no. Then he stopped. He doubled back. "Actually...there is one type of art that I really like. You know...the books. The ones with the lines in them." I had no idea what he was talking about. "You know," he said, "The ones with Sonic and Mario in them. The therapist gave them to me." Then, it hit me. He was talking about coloring books.

Jamaal Howard is forty-six years old, and spends much of his days coloring in books designed for children. I will not tell you what that means. I shouldn't have to. Countless doctors already have.

THE DOCTORS

Before his trial in 2001, Dr. Fred Fason examined Jamaal and diagnosed him with schizophrenia, concluding he lacked a rational understanding of the charges against him. Dr. Duncan, a court-appointed doctor, placed his intellectual functioning in the 65-to-70 range. Buried in the records sat a wound the jury never heard about. At seventeen, Jamaal was shot in the head. Within months of his death sentence, Texas transferred him to the Jester IV psychiatric unit, where the diagnosis settled into permanence. Chronic schizophrenia. Maximum doses of the strongest psychotropic drugs. For twenty-five years, the State has diagnosed, documented and medicated the very illnesses and disabilities the courts have repeatedly declared Jamaal did not have.

The Constitution draws two separate lines around this case. *Atkins v. Virginia* forbids executing people with intellectual disability, and Jamaal's test scores sit inside that protection...yet his claim was denied under *Ex parte Briseño*, the notorious Texas standard the Supreme Court struck down in 2017 as constitutionally intolerable. No court has fully and exhaustively revisited Jamaal's case for intellectual disability under currently valid law. The second line forbids executing a man who cannot rationally understand why he is being killed...and Jamaal recently told a pen pal he is scheduled to die because Vickie Swartout reached out and accidentally caught one of his bullets out of the air. In his mind, there was no murder. She just accidentally grabbed something out of the air

that she shouldn't have. I am not asking anyone to decide either legal question from an essay. I am asking for something much simpler.

THE ASK

Judge Steven Thomas of the 356th District Court in Kountze, Texas is the primary judge before whom Jamaal's competency can be raised before his scheduled execution on October 7. We are asking him for one thing. Not a ruling. Not an outcome. A hearing. And the clock is merciless. Under Article 46.05 of the Texas Code of Criminal Procedure, the trial court keeps jurisdiction over Jamaal's competency...but the statute cuts off appellate review of any competency motion filed on or after the twentieth day before an execution. Jamaal is set to die on October 7. That makes September 17 the deadline that matters.

THE COLORING BOOK CAMPAIGN

a nationwide campaign to send unmarked coloring books to the judge primarily responsible for questions of Jamaal Howard's competency to remind him of the limited nature of Jamaal's intellectual ability.

We are asking people to send coloring books to Judge Thomas. Blank ones. No messages inside. No legal arguments. No notes. The books themselves are the message. *Do not worry. We are going to make our message very clear in the local media. We simply need you to send unmarked coloring books. One coloring*

book arriving at a Texas courthouse is only slightly out of the ordinary. Hundreds arriving from every corner of the United States become a visible measure of injustice that will be hard to ignore.

Send the coloring books here...

Judge Steven Thomas
356th District Court
Hardin County Courthouse
300 West Monroe Street
Kountze, TX 77625

Our first one hundred books are already in the mail. We need you to send the next hundred. Send one. Send ten. Ask your church to send a box. Ask your children to pick one out...and tell them why. Understand what you are holding when you drop that envelope in the mail. The books are the protest. No march. No permit. No bullhorn. Just coloring books converging on one courthouse from every direction...a demonstration that arrives by post, one that no one can disperse and no one can ignore. *Again...do not worry...we will carry Jamaal's story to the media so everyone knows exactly who is sending the coloring books and who Texas is preparing to kill. Our demand will remain the same: Hold a hearing for Jamaal Howard.*

TRUTH

Vickie Swartout lost her life in 2000, and nothing in this campaign asks anyone to forget her. She deserves to be honored with truth. The truth is that executing a man who functions like a child will not restore her and will not express society's considered moral judgment...because that judgment has never been rendered.

Somewhere on death row tonight, Jamaal Howard is sitting in the floor coloring. Careful...always careful...to stay inside the lines.

Now is the time for us to stand with Jamaal. Send the books...the ones with the lines in them.

The Crayons We Hold in Common: Mental Health, Jamaal Howard and the Struggle to Survive

September 4, 2026

"The State of Texas is preparing to execute a man who spends his days clinging to crayons. The question is whether anyone has adequately examined what that tells us about his present competence to die."

I carried crayons everywhere.

On July 7, 2016, I stood at the front of a march I'd organized through downtown Dallas, Texas. We had gathered to grieve Alton Sterling and Philando Castile, two Black men who had been killed by police brutality in the span of only a few days. Thousands of people came out that night. I had raised my voice and passionately demanded that they show up in those streets. The night was peaceful. Officers repeatedly offered marchers assurances about their commitment to stop police brutality. Some officers even stopped to pose for pictures with protesters. Children rode on their parents' shoulders. Drums and chants filled the air. For a few blocks, it felt like the entire city was praying with one voice for a lasting victory for love and justice.

Then, shots rang out.

The sound bounced off the buildings so hard nobody knew where death was coming from. People screamed. People ran. People fell to the pavement and covered their children with their bodies. I grabbed my stomach, thinking that I had been shot. I watched a war zone explode right before my eyes. Before morning, five police officers were dead, and dozens of people

were in hospitals recovering from injuries. And I am the one who called all of those people into the streets.

In the weeks to come, my mind broke. I don't say that lightly. I say it because it's the truest way I know how to describe it. Something in me shattered that night. I spent the months that followed trying to put all of the pieces back together with wax and paper.

I remember the waiting room at the psychiatrist's office. I couldn't read the magazines. I couldn't follow the television bolted to the wall. I couldn't hold a thought long enough to finish it. The shots just kept coming back over and over. The screams bounced around my skull. My mind was trapped in a city on fire. There was nothing to hold on to.

Except crayons and paper.

I could concentrate on the colors. Nothing else. A grown man, a father, a husband, a priest, a theologian...hunched over a coloring book in a psychiatric waiting room...pressing a crayon into the page like it was the last solid thing on earth that I could grab. Because it was. Blue stayed blue. Green stayed green. The lines held. When nothing in my head would hold together, the lines held.

So I colored furiously. In the waiting room. In church pews. In my car. At my own kitchen table while my children ate breakfast. People stared. I didn't care. I was not coloring for fun. I was coloring to stay alive. Each page I finished was proof that I was alive. Every stroke was a heartbeat I could see.

Jamaal Howard colors too.

In a cell in Texas, Jamaal waits to be murdered with crayons in his hands. He colors the way I colored...furiously...desperately...trying to stay inside himself while the world outside promises to kill him on October 7.

But nobody is giving Jamaal grace. Nobody is giving him time. The State of Texas looks at a man clinging to crayons and calls him competent enough to execute. Nobody seems willing to take a second to stop and see what is going on in his brain.

I know what those crayons are. They are not a hobby. They are not a distraction. They are a drowning man's grip on something solid. I held that same grip. In that waiting room...I was Jamaal. The only difference between us is that when I broke...my world let me color my way back in. When Jamaal broke...the world silenced him and scheduled his death.

Under Texas law, a competency hearing must be held more than 20 days before an execution. That makes September 17 the deadline. Judge Steven Thomas can order that hearing. He just has to be moved to do it. So we are sending him coloring books.

We are asking people to help Judge Thomas understand the level of horror it would be to execute someone who is clinging to crayons to survive already. We are not telling him what to do. We are sending him blank coloring books to encourage him to hold a hearing. In the coming weeks, we will be utilizing

the media and other forms of communication to make sure that the meaning of these coloring books is clear.

After my mind broke, I survived because someone let me hold a crayon instead of a casket.

Jamaal deserves the same.

God Loves Jamaal Howard...More than Us

September 13, 2026

God loves Jamaal Howard…more than us.

Such a statement is not a metaphor. It is not a provocation dressed up as theology. It is the claim itself.

Jamaal Howard lives in a cell in Texas. The state has written down the day it intends to kill him: October 7. Judge Steven Thomas in Hardin County can order a hearing on whether Jamaal understands what is coming. Under Texas law, it must occur more than twenty days before an execution. For Jamaal, that deadline is September 17. The state has looked at him and decided he is well enough to die…though not well enough for much else.

I sat with him a few weeks ago. I have sat in rooms like that one for years. So when I tell you where God is, I am not guessing.

I have seen God in such places.

Such places are where God is.

Indeed, God is the God that dwells in those we put out and condemn. God is…A God who chose slaves over Pharaoh. A God who ate with tax collectors while the righteous stood outside the door. A God who was strapped to wood by the state, who died between two condemned men, who promised paradise to one of them without asking what he had done.

We say we believe that. Then, we build a chamber and call God neutral about who goes in it.

God is not neutral. Love is not neutral. Love goes where the horror is. Jamaal is in the horror.

So yes. More. Not equal. Not the same. More. If that offends, the offense is the point.

This is why Jamaal Howard is the test of whether we believe in God's love...not just believing that he is an object of God's love.

Not God's love as an idea. Not the creed we can recite. Not the pew we sit in on Sunday. Whether belief in God's love survives contact with a condemned man.

Everything we say about God in the abstract turns concrete at Jamaal's cell door. God is love. What does that mean when the state has picked the day to kill a man? Every human being bears the image of God. What happens when we shrug when others try to destroy that image with a needle? Christ is met in the prisoner. Then, Jamaal is not a question at the edge of the faith. He is the epicenter of our faith.

Matthew 25 makes it almost unbearable. Christ does not say we will be judged by what we believed about the prisoner. Christ says he is the prisoner. I was in prison, and you came to me. Not you thought about me. Not you prayed for me. You came. Christ is in the terrorized. Christ is the condemned.

That moves the burden. Jamaal is not the test of whether God will save him. God is already in the cell. God is already there.

Jamaal is the test of whether we will encounter the love of God at all…the test of whether the love of God will save us.

God is not in Jamaal because he is worthy. God is there because Jamaal is condemned. The condemned is always the destination of a God of love. Our sentence has determined God's destination.

This is why executions are heresy. I do not use the word loosely. Heresy is the denial of who God is. When Texas straps Jamaal to the gurney, it will be preaching that God's love can be overruled by a jury, a judge, a governor. That the state has the authority to contradict God's love. That somehow the very place where God is can be destroyed. That God is not the one lying on the gurney. Every execution preaches that heretical sermon of hate. Every one of those sermons is a lie.

Here is the part nobody expects. If God loves Jamaal Howard…the murderer that society is determined to kill…more than God loves us, then there is no place we can fall that God has not already gone.

The murderer is not the exception to God's love. He is the proof of it.

The Mind of Jamaal Howard: An Exhaustive Account

September 14, 2026

A note before you begin. The length is deliberate. Texas intends to execute Jamaal Howard on October 7. The one hearing that could stop it must be held before September 17. If nobody acts by then, what follows is the record of what the State knew about his mind and chose not to examine. I wanted that record in one place, quoted from the court filings themselves, so that no one can say afterward that the facts were unavailable. Read it now, while it can still be an argument. After September 17, it becomes a historical document.

Texas has set October 7, 2026 as the date it will kill Jamaal Howard.[1] He was twenty years old on the morning of May 12, 2000, when he walked into a Chevron station in Silsbee, a small town in Hardin County, and shot Vickie Swartout, the clerk, in the chest. The Court of Criminal Appeals told the story in a paragraph on direct appeal: he "stole a gun from his grandfather the night before the murder and hid it," refused his family's pleas to give it up, "walked several blocks from his house to the Chevron store," peered in the windows, entered the office where she sat, "cocked the gun, and shot the victim in the chest." He "stole $114.00 from the cash register and reached over the dying victim to steal a carton of cigarettes before leaving. The offense was recorded on videotape."[2] The

[1] Texas Department of Criminal Justice, Scheduled Executions (listing Jamaal Howard, Oct. 7, 2026); Texas Coalition to Abolish the Death Penalty, Stop Executions (same); 12NewsNow, "Silsbee man convicted of 2000 murder set for execution" (Apr. 2, 2026) (reporting that the order setting the date was filed March 26, 2026).

[2] *Howard v. State*, 153 S.W.3d 382, 383–84 (Tex. Crim. App. 2004) (per curiam); quoted in *Howard v. Davis*, No. 19-70018, slip op. at 2 n.1 (5th Cir. May 11, 2020),

court added two more sentences: "The appellant denied committing the offense until he was told it was videotaped. He told the officer who took his statement that he was not sorry for committing the offense."[3]

Nothing that follows disputes a word of that. A woman died. He killed her. Her family has carried her absence for twenty-six years, and they are owed the truth about the man who took her from them. The truth is what this essay is after.

Here is the question the truth turns on. What was the condition of the mind that did this? And has any court, in a quarter century, ever looked? The record answers the first question with a consistency that is almost eerie: every doctor who has examined Jamaal Howard, before trial and after, with one exception the State paid for, has found the same broken thing. The record answers the second question with a silence that runs through every courthouse that touched him.

THE CHILD

The story begins in the elementary schools of Silsbee, in records that nobody had a reason to falsify.

Dr. Fred Fason, the psychiatrist the defense retained before trial, found those records because the defense lawyer had not

published at 959 F.3d 168. The convicting court was the 356th District Court of Hardin County, Cause No. 15114-A. *Ex parte Howard*, No. WR-77,906-01, slip op. at 1 (Tex. Crim. App. Dec. 12, 2012) (per curiam) (not designated for publication).

[3] *Howard v. State*, 153 S.W.3d at 384 (point of error six).

gone looking for them. Fason's first encounter with his patient set him searching. As the Court of Criminal Appeals later recounted, "when he first met with the appellant and began to administer one of the psychological tests, the appellant did not know some of the words in the first few questions." That was enough to make Fason "conclude that the appellant could not read at the sixth grade level and to question whether the appellant was mentally retarded."[4] The words Jamaal did not know, according to the habeas record, were "mechanics" and "appetite."[5] The test Fason could not finish was the MMPI-2, the most ordinary instrument in the psychiatric toolkit.[6]

So Fason went to the schools. What he found, in the court's words, was that Jamaal "had started out in school as a very bright student; the appellant was in the ninetieth percentile in math in the second grade, but had dropped to about the thirtieth percentile in the fifth grade. Fason theorized that the appellant's declining performance in school was due to the onset of schizophrenia."[7]

Sixty percentile points in three years. That is not what laziness looks like. It is what a mind coming apart looks like, measured by public school teachers years before anyone had a case to make. When the prosecutor later tried to use Jamaal's early achievement scores against him, the court-appointed

[4] *Id.* (point of error two).

[5] Petition for Writ of Certiorari, *Howard v. Lumpkin* (U.S. filed 2020), cert. denied, 141 S. Ct. 1085 (2021) (hereinafter "Cert. Pet.") (Fason's testimony).

[6] Cert. Pet. (MMPI-2).

[7] *Howard v. State*, 153 S.W.3d 382 (point of error two).

psychologist, Dr. James Duncan, gave the only honest answer available: that would indicate deterioration.[8] The bright second-grader is not the State's evidence. He is the measure of what was lost. The court noted that Duncan, an independent expert appointed by the judge rather than the defense, "reached a similar conclusion" to Fason's.[9]

The State told a different story about those same years, and fairness requires hearing it in full. At punishment, the prosecution offered evidence that Jamaal "demonstrated a disregard for authority and school rules despite the continued efforts of his mother and educators," that he "punched a pregnant teacher in the chest with his fist when she asked him to return to his seat," and that in the alternative school "he refused to comply with its rules and standards, and he was defiant and disruptive."[10] The State went on to present "evidence of the appellant's possession of controlled substances, his fighting with police officers and resisting arrest, his committing of several burglaries as a juvenile, and his fighting with other inmates."[11] Jamaal's own appellate lawyer answered that "there was no evidence of premeditation to commit the instant murder and that he has no history of prior criminal violence."[12] The court was unmoved: "The appellant's actions in committing the crime were senseless and deliberate;

[8] Cert. Pet. (Duncan's cross-examination at the competency hearing).

[9] *Howard v. State*, 153 S.W.3d 382 (point of error two).

[10] *Id.* (point of error six).

[11] *Id.*

[12] *Id.*

his actions immediately following its commission were equally so."[13]

Senseless and deliberate. The two words sit side by side in the court's opinion without anyone pausing to ask whether a senseless act can also be a deliberate one, or what kind of mind produces both at once. The court itself saw the problem with the school-discipline evidence. It "was presented as bearing on the issue of whether the appellant was suffering from a mental illness, or whether his actions were, as the State contended, volitional."[14] A boy who hits his teacher may be a bad boy. He may also be a sick one. Nobody qualified to tell the difference was ever asked to.

Then, at seventeen, Jamaal Howard was shot in the head.[15] The medical records of that injury sat in the file through the whole of his capital trial. The Fifth Circuit would later acknowledge the "records suggesting that Howard injured his head in 1997."[16] The jury never heard of them. Three years after the bullet, in the fog of what every later physician would call schizophrenia, he walked into the Chevron.

THE WITNESSES

The people who had known Jamaal longest saw the change before any doctor did, and their testimony is in the trial record.

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[13] *Id.*

[14] *Id.* (point of error two).

[15] Cert. Pet. (1997 medical records).

[16] *Howard v. Davis*, slip op. at 4.

Sandra Johnson had known him his whole life. In the months before the crime, she watched him turn into someone else: unwashed, vacant, unable to recognize her when they passed on the street. When she came to the courthouse, he did not recognize her there either.[17]

Tyre Thomas worked as a jailer, and he too had known Jamaal since childhood. The man he saw in custody was not the boy he remembered. Jamaal talked to himself. His moods swung without warning. He had to be told to bathe, told to brush his teeth, and when told, he complied. He gave the jailers no trouble. He was simply, in Thomas's account, not fully present.[18]

Those two accounts are the baseline. Whatever the experts disagreed about, the people who knew him agreed that the Jamaal Howard sitting at the defense table was not the person they had watched grow up.

THE EXAMINATIONS

Two doctors examined Jamaal before trial. They arrived at the same place by different roads.

Duncan was the court's man, appointed to assess whether Jamaal was competent to stand trial. He gave Jamaal the verbal subtests of the Wechsler Adult Intelligence Scale, and his testimony at the competency hearing survives in the appellate

[17] Cert. Pet. (testimony of Sandra Johnson).

[18] Cert. Pet. (testimony of Tyre Thomas).

record: "I gave [the appellant] some portions of an I.Q. test to arrive at that estimate, some of the verbal subtests of the Weschler [A]dult [I]ntelligence [S]cale." Asked whether he could put a number on it, he answered: "I would say in the range of 70; but because I didn't give the full test, that number would be-there would a range there. I would say that based on the-scoring the subtest that I gave and figuring out that number, would be a 65 to 70 kind of I.Q. range."[19] He put it another way for the jury: Jamaal "tested in the borderline to mildly impaired range which Duncan said was the level of an eleven or twelve year-old."[20]

Sit with those two phrases. An IQ of 65 to 70. The mind of a child of eleven or twelve. By the definition the Court of Criminal Appeals itself would later apply to Jamaal's case, "'Significantly subaverage general intellectual functioning' is defined as an IQ of 70 or below."[21] Every number in Duncan's range fell inside that line.

The State's answer to the number was to attack its provenance. As the court noted, "[o]n cross-examination, however, it was emphasized that Duncan had given the appellant only portions of an I.Q. test on which he had based an estimate of the appellant's I.Q."[22] That is a fair point as far as it goes. It also raises the obvious reply: if the estimate was incomplete,

[19] *Howard v. State*, 153 S.W.3d 382 (points of error four and five, quoting the competency-hearing record).

[20] *Id.* (point of error two).

[21] *Id.* (citing *Ex parte Briseno*, 135 S.W.3d 1, 7 n.24 (Tex. Crim. App. 2004)).

[22] *Id.* (point of error two).

someone should have completed it. The State did not. The defense did not. No court ever ordered it. Twenty-five years later, the only IQ measurement in Jamaal Howard's file is still Duncan's partial one, and it still says 65 to 70.

The number was only part of what Duncan saw. His report, as the habeas record describes it, is a portrait of a man who was barely reachable. Speech came out low and indistinct, when it came at all. Questions had to be repeated before any answer arrived, and the answers often failed to cohere. In the middle of the interview Jamaal would break into a smile or a soft laugh at something Duncan could not identify, and Duncan found himself wondering what, in that room, his patient was reacting to. His conclusion was that the deterioration was ongoing, that organic brain factors and schizophrenia were both at work, and that Jamaal's capacity to help his own attorney was in serious doubt.[23]

Fason saw the same thing from a psychiatrist's chair. The laughter that erupted at the wrong moments he recognized as a classic marker of schizophrenia. He tried to explain to Jamaal that the State could put him to death for what he had done, and Jamaal laughed at that as well. Nothing Fason asked produced an answer that connected to the question. His diagnosis was schizophrenia, and his conclusion was that Jamaal had no rational grasp of the charges or of what a conviction would bring.[24]

[23] Cert. Pet. (Duncan's report and testimony).

[24] Cert. Pet. (Fason's evaluation and testimony).

None of this is contested. Twenty years later, the Fifth Circuit summarized the trial record in its own words: "One of the evaluating psychologists—Dr. James Duncan—testified at the guilt phase that Howard was impaired and possibly schizophrenic. And Dr. Fason testified at punishment about Howard's mental shortcomings, including that he may have been schizophrenic."[25] The court called it "the bountiful testimony concerning Howard's mental health."[26] It described the parade of lay witnesses, "close family members, extended family, educators, coaches, neighbors, and friends," who took the stand "regarding his mental decline and odd behavior throughout the years."[27] It noted that the jury heard "lots of evidence during the guilt phase about Howard's mental health and odd behaviors."[28] It even observed, in a footnote, that although "Duncan was appointed to evaluate Howard's competency for trial and not (specifically) to gather mitigation evidence," nonetheless "much of what his evaluation revealed also counted as mitigation evidence of Howard's mental issues."[29]

And then there was Dr. Edward Gripon, who testified for the State "that the appellant was not suffering from schizophrenia, but rather was suffering from antisocial personality disorder."[30]

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[25] *Howard v. Davis*, slip op. at 6.

[26] *Id.*

[27] *Id.* at 5 (quoting the district court).

[28] *Id.* at 6 n.11.

[29] *Id.* at 5 n.10 (citing *Bell v. Cone*, 535 U.S. 685, 699–700 (2002)).

[30] *Howard v. State*, 153 S.W.3d 382 (point of error six).

Gripon had an explanation for the school records too. Jamaal's decline, he said, "stemmed solely from his attention-deficit disorder which was addressed when he took his medication; when the appellant refused to take his medication, his grades declined and his behavior deteriorated." The court summed up Gripon's view in one sentence: he "did not see any evidence that the appellant suffered from schizophrenia."[31]

Hold that sentence. The next twenty-five years would answer it.

TWO JURIES

In Texas, competency to stand trial is a jury question. In Jamaal's case it was put to a jury twice.

The first panel heard Fason testify. Twelve people listened to a psychiatrist describe a defendant who laughed at the prospect of his own execution, and they could not reach a verdict. The proceeding ended in a mistrial.[32]

A second panel was seated within days. Fason was not on the witness list. Nothing in the record explains why the one expert who had produced a deadlock was left at home. The new jury, entirely white, took forty-seven minutes to find Jamaal Howard competent.[33]

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[31] *Id.* (point of error two).

[32] Cert. Pet. (first competency trial).

[33] Cert. Pet. (second competency trial).

The Fifth Circuit would later compress all of this into a single clause: "After two trials on the matter, a jury found Howard competent."[34] The clause is true. It is also a way of not saying that the first jury, the one that heard the whole expert picture, refused. A capital trial went forward against a man whose fitness to be tried had deadlocked twelve of his neighbors, and whose second jury never heard the one witness who had deadlocked the first.

THE LAWYER

The State of Texas paid Tyrone Moncriffe $35,000 to stand between Jamaal Howard and the death chamber.[35] His client could not hold a conversation. What he did with that fact is written into the habeas filings, and some of it made its way into the Fifth Circuit's own summary of the claims Jamaal later raised.

The Fifth Circuit listed the failures in one sentence. Moncriffe "'did not even consider competence until Dr. Fason urged him'"; he "failed to request an expert's review of competency until Fason suggested"; he "'did not discuss' Duncan's report with Duncan 'until the day [the lawyer] began opening his case on guilt'"; and he "failed to request a trial on competency but, instead, waited for the state to do so."[36]

[34] *Howard v. Davis*, slip op. at 7.

[35] Cert. Pet. (counsel's fee).

[36] *Howard v. Davis*, slip op. at 8 (quoting Howard's COA briefing).

Each of those deserves a moment. The request for a competency evaluation came in spoken form, on the eve of jury selection, after Fason insisted on it.[37] Duncan's report came back doubting that Jamaal could be tried at all; Moncriffe's first conversation with Duncan about it took place on the morning Duncan testified, and Moncriffe admitted as much in front of the jury.[38] No written motion on competency, intellectual disability or insanity was ever filed, though those three questions were the entire defense.[39] Moncriffe declared an insanity defense from counsel table in the middle of voir dire, and no expert was ever asked to evaluate insanity.[40] Even the competency trial, the one proceeding that came close to sparing Jamaal, was not Moncriffe's doing. The district attorney filed the motion. The office trying to kill Jamaal Howard was the office that asked whether he could follow his own trial.[41]

The federal courts would later give Moncriffe credit for the shape of his defense, and the credit is worth quoting because of what it leaves out. "In his first remarks during guilt-phase opening arguments, the lawyer emphasized Howard's impairments," the Fifth Circuit wrote. "And in closing arguments at the punishment phase, the lawyer stressed that the jury should consider Howard's mental illness and give him

[37] Cert. Pet.; see *Howard v. Davis*, slip op. at 8.

[38] Cert. Pet.; see *Howard v. Davis*, slip op. at 8.

[39] Cert. Pet.

[40] Cert. Pet.

[41] Cert. Pet.; *Howard v. Davis*, slip op. at 8 ("waited for the state to do so").

life."[42] The court noted that "Howard's lawyer looped experts in, too," that "counsel hired a psychiatrist—Dr. Fred Fason—to conduct an examination," and that "twice counsel successfully moved the trial judge to appoint doctors to evaluate Howard's competency to stand trial."[43] All true. Moncriffe talked about mental illness. What he did not do was prove it.

Then came the guilt phase, and a moment the Court of Criminal Appeals recorded with some care. Duncan was on the stand. He had a number. Moncriffe never asked for it. In the court's words, "although Duncan testified about the appellant's 'borderline to mildly impaired functioning,' he neither testified specifically to his determination of the appellant's I.Q., nor was he questioned by the appellant's counsel about the I.Q. test he had administered."[44] The jury that convicted Jamaal Howard never heard the words "65 to 70."

The court excused this. Because Duncan had given only "portions" of the test to reach an "estimate," the court wrote, "we presume that the appellant's defense counsel was exercising reasonable trial strategy by not eliciting such testimony from Duncan before the jury, in light of the speculative weight of the testimony and its susceptibility to

[42] *Howard v. Davis*, slip op. at 5.

[43] *Id.*

[44] *Howard v. State*, 153 S.W.3d 382 (points of error four and five).

cross-examination."[45] A presumption is not a finding. Nobody ever asked Moncriffe why. The court recited the rule that "[a]llegations of ineffectiveness must be firmly founded in the record as counsel is presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment,"[46] which is a way of saying that the less a lawyer explains, the safer he is. The court added that Jamaal "has not shown that the outcome of the trial would have been different had the testimony been elicited,"[47] which raises a question the court did not answer: how does a man prove what a jury would have done with a number it never heard?

The punishment phase is where a capital lawyer earns his fee, and it is where Moncriffe did the least. Fason advised him, in so many words, to retain a mitigation specialist who could assemble Jamaal's life history. No specialist was retained.[48] The hospital records from the 1997 shooting stayed in the file.[49] So did the notes written on the day of his arrest that pointed to active psychosis.[50] What the jury got instead, according to the habeas record, was a series of relatives and friends asked whether both families were in pain.[51] The record does

[45] *Id.*

[46] *Id.* (citing *Ex parte Varelas*, 45 S.W.3d 627, 629 (Tex. Crim. App. 2001)).

[47] *Id.*

[48] Cert. Pet. (Fason's recommendation of a mitigation specialist).

[49] Cert. Pet.; see *Howard v. Davis*, slip op. at 4, 7.

[50] Cert. Pet. (arrest-day notes).

[51] Cert. Pet. (punishment-phase lay witnesses).

document one subject Moncriffe pursued with energy: his own compensation, in a string of motions asking the court for more money.[52]

He never challenged the confession either, and the confession became the prosecution's favorite weapon. Texas Ranger L.C. Wilson took Jamaal's written statement, and his account of how it ended is preserved verbatim: "I asked him, you know, 'Do you have any remorse for this?' He said, 'No.' And I said, 'You're willing to sign that statement? You have no remorse?' And he did."[53] Wilson had prefaced the question, by his own account, with a speech no eleven-year-old could parse: "Jamaal, you know, in a year or so from now a jury is going to hear this and they are going to want to know why you did it. You know, now is your chance, you know. I'm asking you to explain to anybody."[54] On cross-examination, Wilson "did not specifically remember asking the appellant if he understood the meaning of the word remorse, but he remembered asking him, 'Do you feel sorry about what you did?'"[55] This from a man who did not know the word "appetite."

The prosecutor took that exchange to the jury at punishment: "And since that time not one feeling of remorse, not one word of sorry. In fact, he told Ranger Wilson, 'I'm not sorry.' That's the type of person you are dealing with in Jamaal Howard."[56]

[52] Cert. Pet. (fee requests).

[53] *Howard v. State*, 153 S.W.3d 382 (point of error three, quoting Ranger Wilson).

[54] *Id.*

[55] *Id.*

[56] *Id.* (quoting the prosecutor's punishment argument).

The court acknowledged that "a prosecutor's comment on a defendant's failure to show remorse is tantamount to a comment on his failure to testify," then found no error because "Wilson testified that the appellant told him he had no remorse."[57] In a footnote it observed that "[t]he appellant did not complain at trial, nor does he complain in this appeal, about the admission of Wilson's testimony."[58] Moncriffe had not objected.

Years later, in federal court, Jamaal argued the obvious: that "if his lawyer had adequately explored his mental health, then the lawyer would have successfully contended that Howard lacked the capacity to waive his Miranda rights and confess."[59] The harm was that the prosecutors used the statement "to demonstrate that Mr. Howard was calculating and had no remorse, something that was highlighted time and again . . . in seeking a death penalty."[60] The Fifth Circuit brushed it aside. "Howard does not suggest that he would have been acquitted were the confession excluded," it wrote, and he "does not explain how a better investigation of his mental health could somehow have led to a successful challenge to his confession." He "fails to engage with the district court's reasoning that the evidence showed that Howard understood his rights and was not coerced into waiving them and confessing."[61] The evidence

[57] *Id.* (citing *Davis v. State*, 782 S.W.2d 211, 222 (Tex. Crim. App. 1989)).

[58] *Id.* at n.4.

[59] *Howard v. Davis*, slip op. at 8.

[60] *Id.* at 8–9 (quoting Howard's briefing).

[61] *Id.* at 8–9.

showed. Which evidence, the court did not say. The only evidence of Jamaal's understanding of anything was the testimony of two doctors that he understood very little.

Even Fason's own testimony was turned into a weapon. On cross, the prosecutor walked him through Jamaal's juvenile history, asked whether "having charges related to delivery of cocaine, possession of cocaine, would that be important in making that diagnosis," and got a careful clinical answer: "Well, it's something you take into consideration; but it wouldn't be-it's not pathognomonic of-of any social personality disorder."[62] The prosecutor pressed on: "And even the history that his mother gave you that he was stalking some young lady- ... would that be important in diagnosing antisocial personality?" Fason answered, "Not in the way it was presented, no. I mean it's significant."[63] Then the question the whole exchange was built to reach: whether "a history from the age of 13, from theft, to 15, 16, dealing drugs, to stalking, to capital murder, all that taken together doesn't that kind of suggest that there may be an antisocial personality here?"[64] Fason answered like the clinician he was: "arriving at a diagnosis, in a way, is kind of like working a jigsaw puzzle. You take a whole bunch of different pieces and you see how they fit

[62] *Howard v. State*, 153 S.W.3d 382 (points of error eight and nine, quoting the State's cross-examination of Fason).

[63] *Id.*

[64] *Id.*

together to come out with a picture; and that would be a piece of the puzzle."[65]

The court held that "Fason's affirmative response to the prosecutor's question made the suggestion become evidence, albeit slight,"[66] which licensed the prosecutor to tell the jury, "Then we find out that he was stalking a young lady. That's a threat of violence."[67] The prosecutor had more. "When he is not waiting for capital murder trial and not going to have to be on his best behavior, then what is he going to act like?" he asked the jurors. "Gang activity, 5-9 Hoover Crypts [sic], and Crypts [sic] are in prison, too. He will fall right in with his old buds; extortion, rape, drug trafficking-"[68] The defense objected that this was outside the record. The objection was overruled, and the court on appeal found "any error is harmless" because the prosecutor had already said similar things without objection.[69] Among them: that "drugs are a big factor with prison gangs," that Jamaal "would have the opportunity, if he wants to, if he hadn't learned his lesson," and that he had "been stalking a girl," which the prosecutor said he learned only when "Dr. Laine's medical record came in through Dr. Fason."[70] The defense's psychiatric evidence became the State's case for future dangerousness, and the court upheld that

[65] *Id.*

[66] *Id.*

[67] *Id.* (quoting the prosecutor's punishment argument).

[68] *Id.* (point of error one, quoting the prosecutor's punishment argument).

[69] *Id.* (citing *Massey v. State*, 933 S.W.2d 141, 149 (Tex. Crim. App. 1996)).

[70] *Id.* (point of error one, quoting the prosecutor's opening punishment argument).

verdict in part on "the expert testimony that the appellant displayed an antisocial personality disorder."[71]

Jamaal's appellate lawyer also asked the court to review whether the mitigating evidence was sufficient to spare his life. The court's answer was that it does not do that: "This Court has repeatedly declined to review the sufficiency of the mitigating evidence and has rejected the claim that it deprives a defendant of a meaningful appellate review."[72] The one question that mattered most, whether the evidence of Jamaal's mind should have saved him, is the one question the court has a standing policy of refusing to ask.

Jamaal's federal lawyers described all of this in a sentence the Fifth Circuit quoted without disagreeing: "the record is replete with a picture of a bumbling attorney who was doing the bare minimum to get through a trial that could not end soon enough."[73] They added what should have been obvious: "Had counsel's performance not been deficient, there is a reasonable probability that Mr. Howard would have been sentenced to life instead of death."[74]

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[71] *Id.* (point of error six).

[72] *Id.* (point of error seven) (citing *Salazar v. State*, 38 S.W.3d 141, 146 (Tex. Crim. App. 2001); *McGinn v. State*, 961 S.W.2d 161, 166 (Tex. Crim. App. 1998)).

[73] *Howard v. Davis*, slip op. at 4 (quoting Howard's briefing).

[74] *Id.*

The Prison

What the courts would not find, the prison could not avoid finding.

Jamaal had been on death row only a few months when the Texas Department of Criminal Justice moved him to Jester IV, its psychiatric hospital.[75] The intake notes describe a man who had stopped speaking, who had withdrawn from everyone around him, who was relieving himself on the walls of his cell.[76] The doctors there started him on Haldol, an antipsychotic, along with Cogentin to manage its side effects and Zoloft for depression.[77] The pattern that followed is familiar to anyone who has watched schizophrenia up close: stabilization, release back to the row, collapse, readmission. At one point he cut himself.[78] The Haldol was pushed to the ceiling of what the prescribing guidelines allow.[79] Each new admission repeated the diagnosis of the last one until the file carried a single unbroken verdict: chronic schizophrenia.[80]

The antisocial personality disorder that Gripon had described for the jury turns up once in the early prison paperwork and then disappears from it for good.[81] From that point forward,

[75] Cert. Pet. (TDCJ records of transfer to Jester IV).

[76] Cert. Pet. (Jester IV admission records).

[77] Cert. Pet. (medication records).

[78] Cert. Pet. (self-mutilation).

[79] Cert. Pet. (Haldol dosage).

[80] Cert. Pet. (diagnosis across successive admissions).

[81] Cert. Pet.; compare *Howard v. State*, 153 S.W.3d 382 (point of error six) (Gripon's diagnosis).

no clinician who laid hands on Jamaal Howard came away with anything but the diagnosis Gripon had testified was unsupported. For a quarter century, Texas has been medicating the disease its own expert told a Hardin County jury did not exist. The person it means to execute on October 7 is a person whose hold on reality depends on a daily maximum dose of antipsychotic medication.

THE COURTS

This is where the story turns from tragedy to indictment. Follow the chain link by link.

On direct appeal in 2004, Jamaal's lawyer put the constitutional claim plainly: "[a] procedure that permits the death penalty to be inflicted on defendants with mental retardation despite their diminished personal culpability violates the Eighth Amendment to the United States Constitution."[82] He argued, in the court's paraphrase, "that an individual put to death must be able to rationally appreciate and evaluate the consequences of his actions," and he pointed to Duncan's testimony of "borderline to mildly impaired intellectual functioning."[83] The Court of Criminal Appeals conceded the core fact and denied relief in the same breath. "Although experts for both the State and the defense testified that the appellant's intellectual functioning and adaptive behavior were impaired to some degree," it wrote, "the

[82] *Howard v. State*, 153 S.W.3d 382 (point of error two, quoting appellant's brief).
[83] *Id.*

testimony was not sufficiently developed to establish that appellant was 'mentally retarded' under the guidelines we set in Briseno. Because the evidence does not support the appellant's claim that he is mentally retarded, we reject his Eighth Amendment claim."[84]

Read that again. Both sides' experts agreed his functioning was impaired. The claim failed because the testimony "was not sufficiently developed." Developed by whom? By the lawyer who had Duncan on the stand and never asked for the number. The court noticed the thinness of the record on adaptive behavior, "other than the testimony about his lack of personal hygiene which was presented by the defense as indicative of the appellant's alleged schizophrenia."[85] The gap was the lawyer's gap. The court closed the door on the man.

There is a further problem with that ruling. The court described the Briseño test it applied as "a stop-gap measure for cases that we must decide in the absence of legislation," a set of "temporary guidelines for determining mental retardation in the death penalty context."[86] It acknowledged that Atkins had "left to the States 'the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences,'"[87] and it recited a definition it said was "essentially the same as the one utilized by the American Association of

[84] *Id.* (citing *Stevenson v. State*, 73 S.W.3d 914, 917 (Tex. Crim. App. 2002)).
[85] *Id.*
[86] *Id.* (citing *Ex parte Briseno*, 135 S.W.3d 1, 5 (Tex. Crim. App. 2004)).
[87] *Id.* (quoting *Atkins v. Virginia*, 536 U.S. 304, 317 (2002)).

Mental Retardation," under which "'[a]daptive behavior' means the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group."[88] In 2017, in *Moore v. Texas*, the United States Supreme Court struck the Briseño guidelines down as an unconstitutional departure from clinical standards, and in 2019 it reversed Texas again for continuing to apply them in substance.[89] Jamaal Howard's intellectual disability claim was rejected under a test the Supreme Court has since declared illegitimate, on a record his own lawyer never built. The court's own footnote supplies a final irony: "*Atkins v. Virginia*... was decided on June 20, 2002. Appellant was tried and convicted in April 2001."[90] He was tried fourteen months before the Constitution caught up to him. Two judges, Meyers and Holcomb, dissented without writing a word.[91]

His state habeas application then sat for nine years.[92] The judge who had tried the case was replaced by one who had never seen a witness.[93] In December 2012, the Court of Criminal Appeals disposed of the whole thing in a page. "This is an application

[88] *Id.* (quoting Tex. Health & Safety Code § 591.003(1) and citing Briseno, 135 S.W.3d at 7).

[89] *Moore v. Texas*, 581 U.S. 1 (2017); *Moore v. Texas*, 139 S. Ct. 666 (2019) (per curiam).

[90] *Howard v. State*, 153 S.W.3d 382, at n.10.

[91] *Id.* ("MEYERS and HOLCOMB, JJ., dissent.").

[92] Cert. Pet.; compare *Howard v. State* (Oct. 13, 2004) with *Ex parte Howard* (Dec. 12, 2012).

[93] Cert. Pet.; see *Howard v. Davis*, slip op. at 5 n.9.

for writ of habeas corpus filed pursuant to the provisions of Article 11.071," the order begins. "Applicant presents twenty-one allegations in his application in which he challenges the validity of his conviction and resulting sentence. The trial court did not hold an evidentiary hearing. The trial court adopted the State's proposed findings of fact and conclusions of law recommending that the relief sought be denied. This Court has reviewed the record with respect to the allegations made by applicant. We adopt the trial judge's findings and conclusions."[94] Nine of the claims, the court added, were "also procedurally barred because they could have been raised on direct appeal."[95] The order closes with two words: "Do Not Publish."[96]

Twenty-one claims. No hearing. Findings drafted by the district attorney's office, signed by a judge who had never been in the same room as the defendant, adopted wholesale by the highest criminal court in Texas, and marked so that no one would ever cite them. Among the findings so adopted was the conclusion that Jamaal Howard was not mentally ill. By the time that finding was signed, the record in front of the court already held years of Jester IV admissions and a chronic schizophrenia diagnosis from every physician who had treated him.[97]

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[94] *Ex parte Howard*, No. WR-77,906-01, slip op. at 1–2.

[95] *Id.* at 2 (citing *Ex parte Banks*, 769 S.W.2d 539, 540 (Tex. Crim. App. 1989)).

[96] *Id.* at 2.

[97] Cert. Pet. (State's proposed findings; TDCJ psychiatric records in the habeas record).

Then came federal court, and here a word about the rules is needed, because the rules are the story. A state prisoner who has lost in state court may ask a federal judge for a writ of habeas corpus, but under the Antiterrorism and Effective Death Penalty Act the federal judge may not simply decide whether the state court was wrong. The Fifth Circuit described the task: "to determine whether the state adjudications were contrary to, or unreasonably applied, clearly established federal law as determined by the Supreme Court, or unreasonably determined the facts."[98] If the prisoner loses there too, he may appeal only with a certificate of appealability, which requires "a substantial showing of the denial of a constitutional right," meaning "issues that are debatable among jurists of reason, that another court could resolve the issues differently, or that the issues are suitable enough to deserve encouragement to proceed further."[99] And because the claim is ineffective assistance, a third layer of deference applies: "Courts strongly presume that the performance was good enough."[100] The Fifth Circuit stacked all three and stated the resulting question: "in this posture, we ask whether it's debatable that 'there is any reasonable argument that counsel satisfied [Washington's] deferential standard.'"[101]

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[98] *Howard v. Davis*, slip op. at 4 (citing 28 U.S.C. § 2254(d)(1)–(2)).

[99] *Id.* at 3 (quoting 28 U.S.C. § 2253(c)(2) and *Raby v. Davis*, 907 F.3d 880, 883 (5th Cir. 2018)).

[100] *Id.* at 3 (citing *Rockwell v. Davis*, 853 F.3d 758, 761 (5th Cir. 2017)).

[101] *Id.* at 4 (quoting *Harrington v. Richter*, 562 U.S. 86, 105 (2011)).

Read that slowly. Not whether Moncriffe was ineffective. Not whether the state court was wrong to say he was not. Whether it is debatable that there is any reasonable argument that the state court was not unreasonable in saying he was not. That is the question the Fifth Circuit asked about Jamaal Howard's life. It is a question designed to be answered no.

Jamaal's federal petition raised three claims about his lawyer, which the Fifth Circuit summarized: "Howard complained that his lawyer had failed to investigate and proffer evidence of his mental illness that would have (1) resulted in a life instead of death sentence; (2) persuaded the jury that he was incompetent to stand trial; and (3) shown that his Miranda waiver was neither knowing nor intelligent."[102] The district court "declined to issue the writ, holding that, though Howard had exhausted the claims, he had failed to show that the state courts unreasonably applied federal law."[103] It also refused him an evidentiary hearing.[104] The Fifth Circuit's opinion, written by Judge Jerry E. Smith for a panel that included Judges Costa and Ho, opens by announcing the result: "Because reasonable jurists would not dispute the issues, we deny the motion."[105]

Jamaal said in federal court exactly what this essay has said. The Fifth Circuit recorded his argument that the state findings "were prepared by the State for a different Judge eleven years

[102] *Id.* at 2.

[103] *Id.* (citing 28 U.S.C. § 2254(d)).

[104] *Id.* at 2 n.2.

[105] *Id.* at 1.

after the trial and were signed off by the new Judge without a hearing."[106] The court did not say he was wrong. It said the argument was "forfeited" because "Howard never told the district court that he had a problem with the state courts' method of factfinding."[107] The specific failures of counsel on competency met the same end: Jamaal "did not, however, press those omissions in his federal petition,"[108] and the petition was "silent regarding how the state habeas court [wa]s unreasonable."[109] "We cannot grant a COA," the court concluded, "on an argument the district court had no chance to address."[110] Other evidence Jamaal pointed to was waived for a different reason: he had referred the court to his district-court briefing, and "a COA applicant waives claims by directing the appellate court to briefing before the district court to support his request for a COA."[111]

On the merits, the court dwelt on what Moncriffe had done rather than what he had not. It recited what Jamaal said a competent lawyer would have done: "(1) hired an expert to examine Howard and gather a life history 'for mitigation purposes'; (2) discovered records suggesting that Howard injured his head in 1997; and (3) presented more witnesses and

[106] *Id.* at 5 n.9.

[107] *Id.* (citing *Thompson v. Davis*, 916 F.3d 444, 460 (5th Cir. 2019); *Garcia v. Davis*, 704 F. App'x 316, 321 n.2 (5th Cir. 2017); *Carty v. Thaler*, 583 F.3d 244, 266 (5th Cir. 2009)).

[108] *Id.* at 8.

[109] *Id.* (quoting the district court).

[110] *Id.* (citing Thompson, 916 F.3d at 460).

[111] *Id.* at 4 n.8 (quoting *McGowen v. Thaler*, 675 F.3d 482, 497 (5th Cir. 2012)).

questioned them better."[112] Against that, it quoted the district court's finding that "Howard's trial counsel did investigate and provide witnesses and records as to Howard's childhood background, educational struggles, depression, and mental health issues."[113] It noted that "counsel started and finished the proceedings by highlighting Howard's mental issues."[114] It agreed with the district court that "Howard's case is plainly distinguishable … from those in which a lawyer totally fails to examine mental health and life history," and that "there is undeniably a reasonable argument that the lawyer satisfied Washington's deferential standard. To say otherwise only second-guesses the lawyer's performance as a matter of degree."[115]

A matter of degree. The court found that Jamaal's "protests of inadequate research fail to show a debatable issue when they are stacked against the lawyer's investigative efforts and the bountiful testimony concerning Howard's mental health."[116] It invoked the rule that "[c]umulative testimony generally cannot be the basis of an [IAC] claim," and held that "[t]he suggestion that counsel should have gone even further—say, by finding evidence of a head injury or by hiring yet another expert—does not show that the district court's conclusion was debatable."[117] In a footnote it reached back for older language: "Did counsel

[112] *Id.* at 4.

[113] *Id.* at 5 (quoting the district court).

[114] *Id.*

[115] *Id.* at 6.

[116] *Id.*

investigate enough? Did counsel present enough mitigating evidence? Those questions are even less susceptible to judicial second-guessing."[118] Jamaal, it said, "only speculates that counsel would've obtained other evidence of mental illness, and jurists would not debate that that's not enough."[119]

Speculates. The gunshot records existed. The arrest-day notes existed. The Jester IV file existed. None of it was speculation. All of it was in the record the court was reading.

On the gunshot wound itself, the court reached for a doctrine that should trouble anyone who reads it. Evidence of brain injury, it observed, "is all 'double edged,'" because "even if his recent claims about this evidence is true, it could all be read by the jury to support, rather than detract, from his future dangerousness."[120] In plain language: a bullet through a teenager's skull might have made the jury more eager to kill him, so his lawyer's failure to mention it cannot be called prejudice.

The court even turned Jamaal's own words against him. His "own state application," it noted, "admitted that his 'trial lawyer did a fairly good job of presenting some type of mental deficiency.'"[121] Some type. The phrase is its own indictment.

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[117] *Id.* at 6–7 (quoting *Richards v. Quarterman*, 566 F.3d 553, 568 (5th Cir. 2009)).

[118] *Id.* at 7 n.15 (quoting *Kitchens v. Johnson*, 190 F.3d 698, 703 (5th Cir. 1999)).

[119] *Id.* (citing *Whitaker v. Quarterman*, 200 F. App'x 351, 355 (5th Cir. 2006)).

[120] *Id.* at 7 n.14 (quoting *Johnson v. Cockrell*, 306 F.3d 249, 253 (5th Cir. 2002)).

[121] *Id.* at 7.

The jury knew something was wrong with Jamaal Howard. It never learned what.

The remaining arguments fell like dominoes. Jamaal's observation that the Eighth Amendment guarantees a capital defendant the right to present mitigation drew this reply: "that jurisprudence establishes the state's obligation to permit Howard to submit such evidence—not his attorney's obligation to present it."[122] The ABA guidelines for capital defense: "waived for inadequate briefing."[123] The evolution of Sixth Amendment law since 2001: "under professional standards from any era, reasonable jurists would not debate that the state courts reasonably applied federal law."[124] The denial of an evidentiary hearing: "Because [Howard's] constitutional claims fail, we need not address the merits of his evidentiary hearing claim."[125]

The court had opened its analysis by reciting the rule for capital cases: "Because Howard sits on death row, we resolve doubts in favor of issuing a COA."[126] It found no doubts to resolve. "The motion for a COA is DENIED. The order denying an evidentiary hearing is AFFIRMED."[127] On January 11, 2021, the Supreme Court declined to hear the case.[128]

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[122] *Id.* at 4 n.7 (citing *Buchanan v. Angelone*, 522 U.S. 269, 276 (1998)).

[123] *Id.* at 6 n.13 (citing *Woods v. Cockrell*, 307 F.3d 353, 357 (5th Cir. 2002)).

[124] *Id.* at 7 n.13.

[125] *Id.* at 9 (quoting *Jackson v. Davis*, 795 F. App'x 939, 940 (5th Cir. 2020)).

[126] *Id.* at 3 (citing *Hernandez v. Johnson*, 213 F.3d 243, 248 (5th Cir. 2000)).

[127] *Id.* at 9.

Now look at the whole chain. A trial court adopted the State's findings without a hearing. The Court of Criminal Appeals adopted the trial court's. The district court deferred to both and refused a hearing of its own. The Fifth Circuit deferred to the district court and affirmed the refusal. Every court in the sequence relied on the one before it, and the one at the bottom relied on the prosecutor. Not one of them took testimony. Not one of them heard from a doctor. Twenty-five years of litigation have produced a stack of orders and not a single hour of evidence on the only question that ever mattered, which is what is wrong with Jamaal Howard's mind.

WHY THIS FORBIDS EXECUTION

Two independent constitutional principles apply here, and either one is enough.

The first is intellectual disability. *Atkins v. Virginia* holds that the Eighth Amendment forbids executing people with intellectual disability, because diminished capacity undercuts both of the purposes the death penalty claims to serve, retribution and deterrence.[129] The Court of Criminal Appeals itself laid out the test in Jamaal's case: "significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period," where "significantly subaverage" means "an IQ of 70

[128] *Howard v. Lumpkin*, 141 S. Ct. 1085 (2021) (mem.); Order List, 592 U.S. (Jan. 11, 2021).

[129] *Atkins v. Virginia*, 536 U.S. 304, 318–21 (2002).

or below" and the developmental period is "the period before age 18."[130]

Now lay the record beside the test. Verbal scores of 65 to 70, in the words of the court's own examiner.[131] Functioning at "the level of an eleven or twelve year-old."[132] A documented collapse from the ninetieth percentile to the thirtieth between second and fifth grade, squarely inside the developmental window.[133] Adaptive deficits so severe that a psychiatrist could not get through a standard test.[134] The only adjudication of that claim used a standard the Supreme Court has since condemned, and it failed for want of development by a lawyer who never asked the one question that would have developed it.

Strickland v. Washington and *Wiggins v. Smith* require counsel to conduct a reasonable investigation into mitigation. The Fifth Circuit acknowledged in this very case that "'[c]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary,'" and that "[a] lawyer's work can be deficient where he fails, at the punishment phase, to look into and present mitigating evidence of the defendant's life history or

[130] *Howard v. State*, 153 S.W.3d 382 (point of error two) (quoting Tex. Health & Safety Code § 591.003(13) and citing Briseno, 135 S.W.3d at 7 & nn.24–25).

[131] *Id.* (points of error four and five).

[132] *Id.* (point of error two).

[133] *Id.*

[134] *Id.*; Cert. Pet.

mental illness."[135] Moncriffe was on notice three times over: Fason told him, the family told him, and his client told him every time he opened his mouth at counsel table. Texas requires a unanimous jury to impose death. It would have taken one juror, shown the bullet wound, the schizophrenia, the IQ estimate and the second-grader who stopped being able to learn, to say no.

The second principle is present incompetency. *Ford v. Wainwright* and *Panetti v. Quarterman* forbid executing a person who lacks a rational understanding of why he is being put to death.[136] Consider who Jamaal Howard is today: a man who, at twenty, laughed when a psychiatrist told him he could be executed; who has since carried a chronic schizophrenia diagnosis through twenty-five years of state custody; whose functioning on any given morning depends on the largest dose of Haldol his doctors are permitted to give him. If Panetti protects anyone, it protects him.

Texas law provides the mechanism. Article 46.05 of the Code of Criminal Procedure allows a person facing execution to raise incompetency before the trial court, which must hold its hearing more than twenty days before the execution date.[137] With an execution set for October 7, the deadline falls on

[135] *Howard v. Davis*, slip op. at 3–4 (quoting *Strickland v. Washington*, 466 U.S. 668, 691 (1984), and citing *Williams v. Taylor*, 529 U.S. 362, 395–96, 398 (2000); *Lockett v. Anderson*, 230 F.3d 695, 711 (5th Cir. 2000)); *Wiggins v. Smith*, 539 U.S. 510 (2003).

[136] *Ford v. Wainwright*, 477 U.S. 399 (1986); *Panetti v. Quarterman*, 551 U.S. 930 (2007).

[137] Tex. Code Crim. Proc. art. 46.05.

September 17, 2026, before Judge Steven Thomas of the 356th District Court in Kountze.[138] It would be the first hearing on Jamaal Howard's mind that any court has ever held.

The State's answer to all of this is procedure. The claims were forfeited, unexhausted, "not sufficiently developed," raised too late by a lawyer who raised nothing on time. That answer proves the point rather than refuting it. Every default in this case traces back to the same source: a defendant who could not communicate, represented by counsel who did not try. The findings were written by the prosecution. The hearing was never held. At every level, courts that announced they would resolve doubts in his favor resolved them against him. The Constitution does not permit a state to manufacture procedural bars out of a man's disability and then execute him for failing to clear them.

The Weight

Set the case law aside for a moment and read the record as a life.

A second-grader in Silsbee scored in the top tenth of his class in math. Three years later he was near the bottom, and the teachers who watched the slide filed the numbers away. At seventeen a bullet entered his skull, and a hospital filed that away too. At twenty, with his mind giving way, he shot Vickie Swartout for the contents of a cash drawer, and a store camera recorded it. Two doctors sat with him afterward and reported

[138] *Id.*; *Ex parte Howard*, No. WR-77,906-01, slip op. at 1.

that he could not understand what was being done to him. The first jury asked to decide whether he could be tried could not agree. The second, which never heard from the psychiatrist, needed less than an hour. His lawyer stood beside the court's own expert and never asked him to tell the jury the number. Then Texas took him into its prisons, diagnosed him, hospitalized him, and medicated him to the limit for the illness its own witness had denied, while its courts signed the prosecutor's paperwork saying the illness was not there.

The usual defense of capital punishment is that it is reserved for people who choose evil with open eyes. That description has never fit Jamaal Howard. The two justifications the Supreme Court permits for an execution, retribution and deterrence, both assume a mind capable of weighing what it does. Take that assumption away and what is left is not punishment. It is the State killing a sick man because the paperwork allows it.

Vickie Swartout's memory is not served by a lie about who killed her. The record says who killed her: a man whose mind was already failing, who could not read the questions on a psychological test, who laughed when told he might die, and who has been a psychiatric patient of the State of Texas for a quarter century. No court has been willing to say that aloud. Before October 7, one should. Texas should not execute Jamaal Howard. It should hold the hearing it has owed him since 2001.

The Stop-Gap: Penry, Atkins, Briseño and the Mind of Jamaal Howard

September 25, 2026

A note before the essay. I most often write about God, existential thoughts about the men I sit with, experiential thoughts about what an execution chamber smells like. I do not write about case law. This piece is case law, start to finish. I wrote it because people keep asking me what the courts did to Jamaal Howard, and every answer I gave was too long or too short. So here is the whole thing, laid out in order, for anyone who wants to understand how a man with the mind of a child ended up 12 days away from a gurney.

In 2004, the Texas Court of Criminal Appeals told Jamaal Howard that the test it was using to decide whether he could be executed was a stop-gap. Its word. Thirteen years later, the Supreme Court held that the Constitution forbade using that stop-gap to decide who was intellectually disabled. The rulings the stop-gap produced are the ones Texas intends to carry into the death chamber on October 7.

He was sentenced to death in Hardin County in 2001. Since then, the Supreme Court has changed the constitutional rule on intellectual disability, Texas has written a rule of its own, and the Supreme Court has thrown that one out. He was sentenced under the old rule. His claim was denied under the Texas one.

PENRY

In 1979, Johnny Paul Penry raped and killed Pamela Carpenter in Livingston, one county over from where Jamaal Howard

would later stand trial. Penry's IQ tested between 50 and 63. He reasoned like a child of six. A Polk County jury sentenced him to death.

In 1989, the Supreme Court considered whether the Eighth Amendment forbade it. Justice O'Connor, writing for the majority, counted the states that barred the execution of people with what the law then called mental retardation. She found two. Two states did not make a national consensus. The Constitution, the Court held, did not yet categorically prohibit it.

Penry won a narrower point. The questions Texas juries answer to decide between life and death, the special issues, had given his jury no vehicle to give effect to his disability as a reason for mercy. His sentence was vacated. Texas retried him, sentenced him to death again, then lost again in 2001 over a patch instruction that told jurors to answer a factual question falsely if they wanted to spare him. Through all of it, the substance held. Intellectual disability was mitigation. The jury had to be able to weigh it.

That was the law in the Hardin County courtroom in 2001. Before trial, at a competency hearing, Dr. James Duncan estimated Jamaal's IQ in the 65-to-70 range from portions of a test, describing his functioning as that of a child of eleven or twelve. The jury never heard the number. What it heard was Duncan describing borderline to mildly impaired functioning, then Dr. Fred Fason attributing Jamaal's declining school

performance to the onset of schizophrenia. The State's expert, Dr. Gripon, offered ADHD as another explanation. Under Penry, none of that was a bar. Jurors could weigh it. Nothing in the Constitution yet required them to spare him for it. Their answers meant death.

ATKINS

In June 2002, the Court counted again. In *Atkins v. Virginia*, eighteen death penalty states plus the federal government now barred the practice, with the change running in one direction only. Justice Stevens, for six justices, found a national consensus, then gave the Court's own reasons.

People with intellectual disability are less able to reason, to control their impulses and to learn from mistakes. Retribution assumes a culpability they do not have. Deterrence assumes a calculation they cannot make. They give false confessions. They make poor witnesses for themselves. Their affect can read to a jury as absence of remorse. They face, the Court said, a special risk of wrongful execution.

Atkins drew the line. It did not say where the line fell. Quoting an earlier case, the Court left to the states the task of developing appropriate ways to enforce the restriction. That sentence handed Texas a pen.

Texas had already shown what it would write. In 2001, the Legislature passed a bill to bar the execution of people with mental retardation. Governor Rick Perry vetoed it. After

Atkins, Texas still had no statute for deciding who qualified. The gap stayed open for two years. The Court of Criminal Appeals filled it.

BRISEÑO

José Briseño killed Dimmit County Sheriff Ben Murray in 1991. His Atkins claim reached the Court of Criminal Appeals in 2004 with no statute to apply. Judge Cathy Cochran, writing for the court, adopted the definition in the 1992 manual of the American Association on Mental Retardation: significantly subaverage intellectual functioning, related limitations in adaptive skills and onset before age eighteen. To that point, the court was tracking the medicine. Then it stepped away.

The court called the adaptive-deficit criteria exceedingly subjective. It asked whether Texans would agree that every person who qualified for state services under that definition should also be spared execution. It reached for a novel to answer. Most Texans, the court wrote, would agree that Steinbeck's Lennie should be exempt. Whether everyone a clinician would diagnose deserved the same protection, the court left open. A character in Of Mice and Men had become the reference point for who Texas could kill.

To sort the living against Lennie, the court listed seven questions of its own making, calling them temporary guidelines. Did the people who knew the defendant as a child think he was disabled, then act on it? Did he form plans and

carry them out, or act on impulse? Did he lead, or was he led? Were his responses to the world rational, whether or not socially acceptable? Did he answer questions on point, or wander? Could he lie effectively, or hide facts in his own interest? Setting aside its brutality, did the crime require forethought, planning and complex execution of purpose?

None of those questions came from a clinician. Each one rewards a stereotype. A man with intellectual disability who has learned to lie, who once followed someone else's plan or who answered a detective in order could be ruled outside the diagnosis by the same court that had just recited it. Briseño added more. A deficit with another possible cause, a personality disorder, say, or a head injury, could be set aside as unrelated. Strengths were weighed against weaknesses. Conduct in prison counted. A man could meet every clinical criterion, then be found fit to die because he had adapted to a cell.

That is the ruler Texas laid against Jamaal Howard.

His direct appeal reached the Court of Criminal Appeals in 2004, the year of Briseño. The court applied the new framework to his claim, calling it a stop-gap measure, then found the evidence insufficient. The record before it held Duncan's estimate along with Fason's testimony, Gripon's answer to it and school records showing a child who fell apart after second grade.

Briseño gave the court a framework in which a rival explanation for an impairment could be turned against the claim of intellectual disability. In Jamaal's record, schizophrenia and ADHD became the rival explanations for his deterioration rather than evidence of a mind under siege from every side. Under Briseño, the bullet he took to the head at seventeen could serve the same purpose.

In 2012, his post-conviction appeal in state court raised intellectual disability again, as its first ground. The trial court held no evidentiary hearing. It adopted the State's proposed findings and conclusions. The Court of Criminal Appeals adopted them in turn. Twice denied. Neither time with an evidentiary hearing on the claim.

Moore

Bobby James Moore killed a Houston grocery clerk in 1980. Decades later, a state habeas court applied current clinical standards, took evidence and found him intellectually disabled. The Court of Criminal Appeals reversed under Briseño. In 2017, the Supreme Court reversed the Court of Criminal Appeals.

Justice Ginsburg, writing for five justices, took the Texas framework apart piece by piece. The 1992 manual was superseded. An IQ score carries a standard error the court had ignored, a point the Supreme Court had settled three years earlier. Adaptive strengths do not cancel adaptive deficits. A

prison record is not the measure. Deficits do not stop counting because trauma or mental illness helped cause them.

As for the seven factors, the Court called them an invention of the Texas court, untied to any acknowledged source and built on lay stereotypes, creating an unacceptable risk that people with intellectual disability would be executed. Texas, the Court noted, did not use those factors to decide who received disability services. It used them only when a life was at stake.

Texas did not yield. On remand, the Court of Criminal Appeals found Moore not disabled a second time. In 2019, the Supreme Court found the same errors at work under new names, then reversed again. On the record before it, the Court held, Bobby Moore had shown he was intellectually disabled. He was resentenced to life, then paroled in 2020.

JAMAAL

Atkins overruled Penry on the categorical question, then reached back. That is why his claim was heard at all in 2004. It was heard under Briseño. Moore struck the ruler. It did not go looking for the men already measured with it.

So the denials stand. Unless a court agrees to look again, they are the last word before October 7. That is not fantasy. The Court of Criminal Appeals has stopped executions before to reexamine Briseño-era denials under Moore. The tool exists.

Twenty-five years ago, a psychologist estimated that Jamaal Howard functioned like a child of eleven. The jury that

sentenced him never heard the number. Three years later, the state's highest criminal court tested him against a stop-gap of its own making and found him wanting. Eight years after that, a trial court denied him again without hearing a witness, signing findings the State had drafted.

The Supreme Court has since said the Constitution forbids using that stop-gap to decide who can be executed. Both rules he was judged under are gone. No court has held a post-Moore evidentiary hearing on his intellectual disability. Jamaal Howard waits on the Polunsky Unit in Livingston…the town where Johnny Paul Penry's story began…coloring inside the lines of a children's book on the largest dose of Haldol the state allows.

Jamaal Howard Has a New Website. Texas Would Rather You Not Look.

October 1, 2026

Six days until the execution. One day until the Board stops listening.

The Texas Board of Pardons and Paroles has to hear from you by tomorrow, Friday, October 2. After that, the window closes. Whatever they have in front of them Friday is what they'll vote on. If your name isn't in that pile, it doesn't exist.

So do this before you read anything else.
Email bpp_clemency@tdcj.texas.gov. Put Jamaal Howard, TDCJ #999383, DOB 02/08/1980 at the top. Ask the Board to recommend mercy. Tell them Jamaal lives with severe intellectual disabilities and serious mental illness. Keep it short. They aren't reading for style. Then come back.

In May 2000, Jamaal Howard was twenty years old. He robbed a woman named Vickie Swartout in Silsbee, Texas, and he killed her. Her family has carried that for twenty-six years. Nothing on this website asks them to carry less. I don't write about Jamaal to make what he did smaller. I write about him because of what the record says about the man who did it.

Here is what the record says.

A boy who did well in school. A boy people liked. Then, somewhere in his teens, the lights went down. By twenty he'd stopped answering questions with more than a word. He talked to the air instead. Family said he would sit for hours looking at nothing. He wouldn't wash. He wore the same clothes day after day, hanging off him, the waistband bunched

in his fist to keep them up in the heat. That is the man who walked into Vickie Swartout's life.

The court knew. Before trial, the judge's own psychologist tested him and came back with an IQ somewhere between 65 and 70. He said he had doubts Jamaal could follow his own trial. The state didn't fight him on it. So a jury was picked for one job: decide if this man was competent. They couldn't decide. A second doctor came in. His own report says Jamaal couldn't tell him what a judge was for. Or a district attorney. Or a jury. Couldn't tell him what Texas does to people convicted of capital murder. The doctor called him competent anyway. Twelve white people were seated. They sent Jamaal to die.

After that, the state moved him repeatedly. Death row. Psychiatric hospital. Death row. They wrote schizophrenia on his chart. They gave him as much Haldol as a body can take. Nobody argued about his mind then. They medicated it. Now, they want to kill him.

Some days Jamaal doesn't know he is on death row. I've sat with him. He doesn't know what October 7 means. The state knows exactly what it means and is going ahead anyway.

Yesterday, we put up jamaalhoward.org.

A website is a strange thing to build for a man who will never see it. I should say why we bothered.

Executions need you to stay far away. That's the whole trick. The state says "murderer" and hopes the word does the looking for you. Nobody reads the opinions. Nobody reads the filings. Nobody reads what the doctors said about the inside of this man's head. Then one night in Huntsville a few guards do a job, and the rest of us find out from a headline, if we find out at all.

So we put the record where it can't be missed. The public court opinions are on the site. The filings are on the site. The essays I've been writing since summer are on the site...Medicalized Enough to Be Murdered, Out of His Mind, The Ones With the Lines in Them. Go read what the courts admitted about Jamaal's mind and then read what they decided to do anyway. You don't need me to interpret it.

In September, people from across the country mailed blank coloring books to Judge Steven Thomas in Kountze. They weren't demanding anything of him but a hearing, one more look at whether Jamaal understands what is about to happen to him. On September 28, Jamaal's lawyers went to the Court of Criminal Appeals with a new claim on his intellectual disability. They want the execution halted. They want the evidence looked at again in the court where it started. If that happens, the question could land back on Judge Thomas's desk. I pray he gets the chance to answer it.

Let me be plain about what a website does. Nothing. It stops no needle. What stops a needle is a Board that gets tired of

seeing the name Jamaal Howard and a governor who gets tired of hearing it. The site exists so that when you write, you aren't guessing. So reporters can quote the record instead of the prosecutor. So nobody in Austin gets to say later they didn't know.

After the Board, call Governor Abbott's office. 512-463-2000. Give your name. Tell them you're asking for his help stopping the execution of Jamaal Howard on October 7. The Governor can't act alone, but he appoints the Board. He can lean on them. Tell him a man of faith has the power to save a life here.

Then send jamaalhoward.org to somebody who wouldn't normally care.

I've been in thirteen executions. I know what the chamber does to a man who understands it. I don't know what it does to one who can't. I'd rather not learn with Jamaal.

The Halo You Gave Christa Pike Is Choking Jamaal Howard

October 4, 2026

I doubt Christa Pike has ever met Jamaal Howard or even heard his name. As I write, Christa is lying in a hospital bed in Tennessee, reliant on a machine to breathe for her. It seems there are real questions as to whether she will make it back from the horrors that she has faced. Surely, it is difficult to flush that much poison out of a body. Four days from now, Texas intends to strap Jamaal to a gurney and pump the same brand of poison that Tennessee did. I will be standing a few feet away.

When the needles came out of Christa's body Wednesday night, I felt what everyone with a conscience felt: relief. There was a life pulled back from the edge of death. Then again, I didn't know the horror that had fallen. The ringing bells, the marches, the signatures, all of it seemed to have done its work. Then, the evil that had transpired in the chamber began to seep out of the cinder block. Tennessee had failed miserably. There were no abolitionists who succeeded. You would have to be insane to accept credit for this nightmare.

Despite the media circus that followed Christa, the calendar still said Wednesday for Jamaal.

Jamaal was twenty when the door of the Chevron in Silsbee swung shut behind him that morning. Past the aisles, in the back office, Vickie Swartout was sitting at her desk. One shot to the chest killed her. She was forty-two. The drawer gave up $114, and a carton of cigarettes went out the door with him.

There is no doubt that the mind of Jamaal Howard works incorrectly. Severe intellectual disability. Serious mental illness. People have consistently declared it his entire life. I can say it too. I am his spiritual advisor. We talked on the phone just yesterday. He is unable to hold much in his head. Talking to him is sometimes like trying to fill up a bucket with holes in it. Sentences don't work for Jamaal like they do for everybody else. Over time, I have realized that my job is simply to journey through the dark with him. I don't even think he understands what kind of journey we are on.

Christa was eighteen when she killed Colleen Slemmer. The abuses that were inflicted on Christa before this point are immeasurable. Abused. Raped. Beaten. Tortured. Words couldn't possibly do justice to all that she went through. Since going to prison, there have been some signs of redemption. Women housed near her in prison said she mentored them and held them up. She was the only woman on the row and found reasons to live. It's all true. Indeed, it has all fit succinctly on a flyer.

Nobody in the movement figured out a good way to talk about the pentagram, the piece of skull, the woods, the shoestring strangulation in prison. None of that would have fit on the flyer.

Colleen was nineteen. Her mother, May Martinez, stood in the gallery Wednesday night with her daughter's photograph. For over thirty years, she had waited for this moment. Instead of

the apology she had longed for, Christa was described as talking and laughing. When the moment came for a final statement, there were no words for Ms. Martinez.

Not one word to the mother of the girl she killed. Whatever remorse Christa carries is folded into the petition for some sort of intervention on the governor's desk. Thirty years of filings, countless interventions from all over the world, a gallery full of people, and the woman on the gurney had nothing for the one person who yearned to hear it the most.

It seems that so many have told Christa's story without ever stepping into the woods where Colleen died. I guess flyers can't contain such nuance.

Jamaal has no flyer. There is no childhood anyone wrote up. There is no letter he can write to make you cry. He killed Vickie Swartout, whose family has waited twenty-six years, and I will not make her a footnote so he can become a symbol of a false spirituality of misplaced do-goodism. He did it. He should not be killed for it. Simplicity is always the enemy of these moments of moral profundity. For now, Jamaal remains a man from Silsbee, Texas, with a dead clerk on his record and no crowd at his back.

The reservoir of compassion has been poured out.

It was wrong to even attempt to kill Christa Pike. But I can't help but suspect that Christa was someone people fought for, because she was someone that they could imagine saving. I wish that the words on the lips of activists were logical. Perhaps

that is too ambitious. But it does seem that if someone who was brutalized as a child can be forgiven for bashing in the head of Colleen Slemmer, then a man who can barely tell you where he is at could solicit just a bit of the same moral generosity. I can't help but wonder if an intellectually disabled Black man matters less to people than a white woman. I don't know. But I do know that Jamaal matters deeply to me.

It seems as if the attempted canonization of Christa Pike is furthering her dehumanization by making her into something she never was and distracting from the nation's next execution.

His name is Jamaal Howard.

Fighting the Dawn: The Struggle for Jamaal Howard

October 5, 2026

I am in bed with my eyes open. I have been trying to sleep for hours. Every time I close my eyes, I become aware of the morning. The room is dark. My phone is face down. There is nothing but the anonymous sounds of a strange hotel. Nothing is happening, yet there is no rest tonight. Somewhere beyond this room, beyond this night, there is a date approaching. I know what happens when it arrives. That knowledge has made sleep feel less like rest than surrender. So I lie here fighting the dawn.

Of course, Jamaal Howard is scheduled to be executed this week. I keep reading that sentence as though changing the words might change what they mean. Scheduled. As though there is something ordinary about putting a human being's death on a calendar. This week. As though a week is enough time to comprehend what it means to know that someone you love may not be alive at the end of it. I have known the date was coming for a long time. Knowing is different now. The future has become the present. The present is moving faster than I prepared for.

What I cannot get past is how little the world seems to notice. Almost nobody is paying attention to Jamaal's case. The rest of the country is asleep. There are other stories, other emergencies, other names filling the news. I understand how the world works. I know that every day brings more suffering than any person can absorb. But lying awake at 1 a.m., knowing that Jamaal's life is approaching an ending while most people will sleep through the night without ever learning his

name, I cannot stop thinking about how easily a person can disappear.

I know what happened. I know there was a victim. I know there was terrible harm. I do not have to pretend otherwise to know Jamaal as a human being. That is what comes with loving someone on death row: the person becomes impossible to simplify. The case has a beginning and an ending. A human life does not.

The legal record can tell me what Jamaal did. It cannot tell me what he sounds like when he is joking. It cannot tell me how his voice changes when he is tired. It cannot tell me the difference between his silence when he is thinking and his silence when he cannot figure out how to say something. Those things are not in the court record. They are what make it impossible for me to think about his execution as an abstraction.

The night speeds into the dawn. I keep looking at the clock without meaning to. The hands seem to move faster because I am watching them. I know what is happening...another hour is disappearing, and I cannot do anything to stop it. There is no connection between the clock on my nightstand and the machinery waiting for Jamaal. Then again...my eyes cannot hold back the sun. My sleeplessness cannot change a court order.

Still, I cannot bring myself to close my eyes. If I sleep, the hours disappear without me. If the hours disappear, morning

comes. And if morning comes, I am one day closer to living in a world where Jamaal is no longer here.

I don't want to lose him. I don't want to change the tense when I talk about him. I don't want Jamaal to become was. I don't want his name to become something I have to explain by saying, "He was my friend."

I want to say, is. Tonight, he is.

So, I stay awake.

Not because I believe it will save him. I know better than that. I stay awake because someone should be paying attention. If almost nobody is watching this case, then I want at least one person to be awake while the hours disappear. If the world is going to sleep while Jamaal waits, then I want there to be the one pair of eyes that refuses to close.

It is a small, almost ridiculous form of resistance. I know that. But I am running out of options. The only thing left that belongs to me is whether I close my eyes.

The darkness outside the window is beginning to thin. It is not light yet. I can feel the night loosening. So, I keep my eyes open. I watch the clock. I do battle with the speeding hands of time before they kill my friend.

The Room Is Ours

October 6, 2026

I have sat with Jamaal for a long time. That is the sentence I gave the press. It is true, although it is thinner than it sounds. Sitting is the simplest thing a body can do. You lower yourself into a chair. You stay. Eventually the conversation ends. I am still sitting. Leaving would mean accepting the horror that is to come.

Tomorrow, I will be with Jamaal in the execution chamber. I will be separated from the machinery of his death by inches. Somewhere a clock will move toward six o'clock. A man will be alive when the hour begins. He will be dead when it is over.

People keep asking me what Jamaal deserves. Reporters ask. Pastors ask. People who have called the governor every morning for a month ask. I can tell them that Jamaal lives with severe intellectual disabilities. I can tell them that he lives with serious mental illness. The record says so. I have seen it in the long pauses between one thought and the next.

I have spent years inside that question. We establish that a person is sufficiently diminished, sufficiently sick, sufficiently human to qualify for an exception. We place the facts on a scale. The scale remains standing. Once we accept that a human being can be weighed against his crime and found unworthy of breath, we have accepted everything the death penalty needs. We are simply arguing about the measurement.

Texas has been weighing people for a very long time.

I distrust the word deserve. We deserve wages because we worked for them. Nobody earns a first breath. It arrives before

we have done anything at all. Jamaal did not earn his mind. I did not earn mine. The people he harmed did not earn theirs.

When people ask whether Jamaal deserves to live, I want to ask whether we deserve to decide that another person no longer does.

Look at the chamber. Someone built the table. Someone designed the restraints. Someone installed the glass. Someone writes the letter telling a man when he will die. Someone unlocks the door. Someone checks the clock. Someone turns on the lights.

The part I fear most is the ordinary life that surrounds the machinery. After the execution, the chamber will be cleaned. Someone will clock out. Restaurants will open. The world will absorb the death the way a road absorbs rain. That is what a government can do once enough people grow used to it. It can turn a human death into a scheduled event. Then it can send everyone home for dinner.

The state does not permit a death to happen. It prepares for it.

We are the state. We prepare for it.

We built the room. We own the room. We kill in the room.

Stop asking whether Jamaal deserves to live...

The better question is whether we do.

The Vending Machine Eucharist: The Incarnation and Jamaal Howard

October 7, 2026

Today at six o'clock, Texas intends to execute Jamaal Howard. The state speaks about his life in a language of absolute precision. There is a conviction, a sentence, a warrant, a date, an hour. An execution requires this kind of certainty. Everyone involved has to know what happens next. God is not beholden to our categories.

Behind the Glass

For ministers who work with people on Texas death row, the physical restrictions are an unavoidable part of the relationship. Death row prisoners do not have contact visits. The person across from me sits behind thick glass. Ordinary gestures are not permitted. I cannot shake Jamaal's hand. I cannot put a hand on his shoulder. I cannot embrace him when he is frightened. I cannot put anything into his hands.

Yesterday, I bought a honey bun and a bottle of Powerade from the vending machines. They were the only things I could get to him. I handed them to the guard to take back to him. The only things I could offer Jamaal were a packaged pastry and a bottle of sports drink. That was all we had, so it became all that we needed.

We celebrated the Eucharist through the glass. When we reached the consecration, I said, "This is my body." Jamaal held the honey bun. He opened the wrapper himself. He broke it with his own hands. He received it. When we came to the cup, I said, "This is my blood." Jamaal lifted the Powerade to the heavens and drank.

There was no sacred architecture around us. There was no altar, no chalice, no communion rail. There was a honey bun from a vending machine and a bottle of Powerade. The prison remained a prison. The glass between us remained glass. Nothing about the room became more beautiful or less controlled.

Christ was there.

He Broke It

I keep returning to that because it is difficult to separate the Eucharist from the place where we celebrated it. Death row is built around separation and control. It determines where Jamaal can sit, who can approach him, what can pass between us, how close another human being is allowed to come. The state has enormous power over his body. Later today, it intends to exercise the ultimate expression of that power: an execution.

Jamaal's inability to understand did not prevent Christ from meeting him. The Eucharist did not answer the questions surrounding his past. It did not explain the years that brought him here. It did not tell him what death would feel like. It gave him Christ in the middle of it.

Faith is often asked to explain suffering, to make sense of death or to turn uncertainty into certainty. There was no explanation in that room. There was a honey bun. There was Powerade. There were the words of consecration. There was Jamaal, opening the wrapper and breaking the bread.

So much of Jamaal's life has been defined by what other people have done to his body and by decisions other people have made about his future. A court sentenced him to death. Institutions have determined where he lives, how he visits, what he can receive. Prison rules determine everything about his life.

He broke the bread himself.

The state imposed the glass. It could determine when Jamaal's visit ended. It could determine when the guard carried the food across the room. It could determine when the lights came on and when the doors opened. It could not determine what Christ would do on the other side of the glass. It could not determine what happened between Jamaal and God in that moment.

In the Middle of It

Jamaal still does not know what will happen to him today. The Eucharist did not give him an answer. It did not promise that his fear would disappear or that death would become comprehensible. It gave him something else. It gave him Christ. Not Christ after the uncertainty has been resolved. Not Christ after the prison has become humane. Not Christ after the glass has disappeared. Christ in the middle of the uncertainty, in the middle of the prison, in the middle of the restrictions and the fear.

Texas will execute Jamaal Howard. There will be procedures, witnesses, paperwork, a body. The state will know what time it intends to begin and what it intends to accomplish.

Christ already got around all of Texas' plans. He already got behind the glass. He was in the honey bun. He was in the Powerade. He was with Jamaal. He will be with Jamaal. And Jamaal will forever be with him.

God Will Wipe Away the Tears from Every Face

October 11, 2026

"GOD will wipe away the tears from every face."

Isaiah 25:8

THE SILENCE AFTER AN EXECUTION

I have been thinking about these words since coming home from Huntsville.

There is a particular kind of silence that follows an execution. It is not the silence of peace. It is not the silence of something settled. It is the silence of a world that keeps moving while something inside you has stopped. The traffic still moves. The lights still come on. People still ask what you would like for dinner. Your phone keeps ringing. Somewhere, someone is laughing at a joke you cannot hear. The world has not noticed that you have come home carrying something you do not know how to put down.

I know how to be present with a man who is dying. I know how to sit in a visitation room and listen. I know something about the strange concentration that comes when a life is approaching its end. Everything becomes immediate. The words spoken. The silences. A hand held against glass. There is no need to pretend that tomorrow will be ordinary when everyone in the room knows that tomorrow may not come.

Coming home is different.

At home, the urgency disappears but the weight remains. There is no execution clock to watch. No guard waiting outside the door. No reason to keep your attention fixed on the next thing that must happen. You are left with yourself and sometimes that is the hardest place to be.

I have wondered whether this is part of what Isaiah means when he speaks of God wiping away the tears from every face. Not only the tears that fall in the terrible moment itself but the tears that come later, when everyone else has gone home and the one who witnessed the suffering is left trying to understand how to live with what he has seen.

There are tears that arrive on schedule. We know what has happened. We know why we are grieving. We can tell the story. We can point to the moment when everything changed.

Then there are the tears that have no obvious beginning. The heaviness that settles over an ordinary afternoon. The exhaustion that sleep does not touch. The difficulty of answering a simple question because some part of you is still somewhere else. The feeling that you ought to be grateful to be home, ought to be relieved that the waiting is over, ought to be ready to return to the life that was waiting for you.

But you are not ready.

You are home in the physical sense. Your body has returned. Your keys are on the table. Your clothes are in the closet. Your bed is where you left it. Yet some part of you remains behind, in a place that no longer appears on the calendar. You carry the

memory of a man's face into rooms where nobody knows his name. You sit at your own table while remembering a man who was not allowed to sit at his. You try to take part in the ordinary business of living while some part of you remains occupied with the extraordinary business of death.

No Ceremony for Coming Home

I have spent years with people on death row. I have witnessed executions. I have stood close enough to the machinery of the state to know that an execution is not an abstraction. It is a human being's life coming to an end while other human beings stand nearby and watch.

I have learned how to be useful in those moments. There is a person to sit with. There are words to speak. There are prayers to offer. There is a sacred responsibility to bear witness, to refuse the lie that a condemned person has become less than human because the state has decided to kill him.

But there is no comparable ceremony for coming home.

Nobody hands you a prayer book for the first night back. Nobody explains what to do when you find yourself standing in your kitchen unable to remember why you walked into it. Nobody tells you how to explain the distance between the person you were before you left and the person who has returned. There is no official recognition of the grief that follows the witness. The world knows how to name a death. It

has far less language for the people who keep living after standing near one.

Then there is the guilt.

How do you come home to your own bed when another man cannot go home to his? How do you eat when you remember the restrictions placed on the man you were visiting? How do you complain about an ordinary inconvenience when the person whose face you cannot stop seeing had so little control over the conditions of his own life?

You know that your grief is not the same as his suffering. You know that the burden you carry is not the burden he carried. You know that making your own sadness the center of the story would be a terrible mistake. But knowing these things does not make the sadness disappear. Sometimes it makes it harder to admit that you are struggling at all.

There is a loneliness in this work that I have never learned how to explain. It is not that nobody cares. The experience itself is hard to bring home in words. People want to know what happened. They want to know what was said. They want to know how you are doing. You try to answer. You give them the pieces you can carry into conversation. The deepest parts resist translation.

Sometimes you do not know what to say because you do not yet know what you feel.

That is where I find Isaiah's words waiting for me.

Every Face

"GOD will wipe away the tears from every face."

The prophet does not say that God will explain every sorrow. He does not say that God will make every memory bearable or give us a satisfying account of why human beings suffer. He offers an image of extraordinary tenderness. God comes close enough to touch a face.

I have thought about how much vulnerability that image contains. To have your tears wiped away, you must be close enough to be touched. You must be seen. You must allow someone to approach the place where your composure has failed.

Perhaps we have made faith too dependent on appearing strong. We speak about courage, endurance and the willingness to stand with those who suffer. We need those things. But what happens when the witness comes home and cannot keep standing? What happens when the person who has spent years accompanying the suffering of others discovers that he, too, is suffering?

Does God have room for that person?

I believe the answer is in the promise itself. Every face.

Not only the face of the man on death row. Not only the face of the family whose loved one has been taken from them. Not only the face of the person whose suffering is visible and whose grief can be named. Every face includes the person who comes

home and closes the door. It includes the person who cannot explain why the evening feels so heavy. It includes the person who has given everything he knows how to give and is beginning to wonder what remains.

This is no invitation to make ourselves the heroes of other people's suffering. It is an invitation to remember that we are human beings, too.

When I think about Jamaal, I return to his humanity. I remember the conversations, the restrictions, the glass. I remember that a man facing death needed someone to sit with him, someone who would not reduce him to the judgment passed upon his life. I remember our Eucharist, the honey bun, the Powerade, the words of Christ spoken in a place where so much had been taken away.

Christ was present there. I believe that.

But the Christ who was present with Jamaal does not disappear when I come home. The same Christ who meets us in the visitation room must also meet us in the quiet house, in the sleepless night, in the depression that can settle over a person after the demands of a terrible experience have passed. The God who receives our prayers for the dying must also receive the prayers we can hardly form for ourselves.

Perhaps that is one of the hardest lessons of this love. Presence is not something we offer only to others. We must learn to receive it, too.

I cannot tell you that I have found a way to come home without carrying the people I have accompanied. I cannot promise that the sadness will resolve itself into wisdom or that every hard memory will become something useful. Some things remain painful. Some things resist explanation. There are days when the distance between what I have witnessed and the ordinary life I am expected to resume feels impossible to cross.

Faith does not require me to pretend otherwise.

Isaiah's promise is not that we will never cry. It is not that faithful people will be spared the weight of what they have seen. It is that the tears will not be abandoned. God will not turn away from the face that bears them.

I hold onto that because coming home can feel like being left alone with everything that happened. The urgency has passed. The people who needed you are no longer standing in front of you. There is no immediate task to keep your hands occupied. There is only the quiet and whatever the quiet allows you to hear.

Perhaps this is where the promise begins to reach us. Not by making us forget. Not by telling us to be grateful that we survived. Not by insisting that our pain must become a sermon before it is allowed to exist.

Perhaps God begins by remaining near.

I think about Jamaal. I think about the people who have trusted me with their lives in the shadow of death. I think about the families whose grief continues long after the public attention has moved elsewhere. I think about the witnesses who return to their homes and try to become ordinary people again. I think about the tears that fall in public and the ones that never find their way out.

The promise is for all of them.

It is for me, too.

I am still learning how to come home. I am still learning that returning to a familiar place does not mean returning unchanged. I am still learning that there are days when the most faithful thing I can do is admit that I am tired, that I am sad, that I do not know what to do with what I have seen.

Perhaps I am still learning to believe that God does not love me less on those days.

"GOD will wipe away the tears from every face."

I do not know when every tear will be wiped away. I do not know how long it takes for a wounded spirit to find its footing again. I know only that the promise does not end when we leave the prison. It follows us home.

Tonight, there may be no one waiting at the door to ask what we need. The house may be quiet. The sadness may still be there when we turn out the lights. The faces of those we love may remain with us in the darkness.

We do not have to make that darkness holy. We do not have to pretend it is easy.

We only have to remember that we are not abandoned to it.

The God who meets us beside the dying is also the God who meets us when we come home. The God who sees the tears of the condemned sees the tears of those who have tried to accompany them. The God who promises to wipe away every tear does not ask us to stop being human before we come close.

Sometimes we go into the world to sit beside someone who is suffering.

Sometimes we come home and discover that we need someone to sit beside us.

God knows the difference. God sees both faces.

God has promised to wipe away the tears from every one of them.

GOD will wipe away the tears from every face.

The Former Things

October 8, 2026

I brought three passages of scripture into Huntsville on October 7. Nothing else would fit through the door.

Jamaal could not hold a sentence for long. He never could. Words went into him and did not come back whole. So, I did not ask him to hold anything. I held the words. I said them to him. When he could not say them back, I said them for him.

In the holding cell, I began with the valley. Yea, though I walk through the valley of the shadow of death, I will fear no evil: for thou art with me. I did not explain the valley to him. He had been walking it since a bullet entered his skull at seventeen. He walked it through the Chevron in Silsbee. He walked it through twenty-five years of Haldol. He was walking it now. I told him God was with him. I told him I was with him. The second promise was the smaller one.

The valley in Huntsville is short. It ends at a table.

In the chamber, I prayed the second passage over him. Blessed are the pure in heart: for they shall see God. Texas spent a quarter century measuring his mind. Doctors scored it. A jury could not decide what it was. A doctor decided for them. A judge signed what the state wrote.

Jesus did not say blessed are the competent. He did not say blessed are those who can tell you what a judge is for. He did not say blessed are those who know what day it is. He did not say blessed are the clean. Jamaal was not clean. He shot Vickie Swartout in the chest at her desk. She was forty-two. Her

family has waited twenty-six years. I will not pretend the gurney made that disappear.

Jesus said pure. The day before, Jamaal had lifted a bottle of Powerade to the heavens and drunk it as the blood of Christ. He broke a honey bun with his own hands. Whatever purity is, I saw it through the glass. They shall see God. I told him that was next.

They asked him for a final statement. He stumbled over it. Sentences had never worked for him. They did not start working on the gurney. He reached for the words. They came out in pieces. Inside them were the words I had been praying over him. I had not asked him to hold anything. He had held them. That was the one sentence I could not say for him. He said it himself. The state wrote down what it got.

Then came the last words I had. There shall be no more death, neither sorrow, nor crying, neither shall there be any more pain: for the former things are passed away. I prayed them in the chamber while the state did its work. The former things. A gun stolen from a grandfather. A videotape. A confession signed by a man who did not know the word appetite. A psychiatric unit. A maximum dose. Glass between us for every visit we ever had. A warrant with a date on it. A table. The straps. A final statement in pieces. The clock moving toward six.

I made the sign of the cross over him. My hand went down. It went across. The minutes refused to relent the body. I made it

again. The minutes refused. I made it again. It was the only prayer left that did not need words.

He was alive when the hour began. He was not when it ended.

I have been in fourteen executions now. I know what the chamber does to a man who understands it. I had said I did not want to learn what it does to a man who cannot. I learned. Most of it belongs to Jamaal. I am leaving it with him.

What belongs to me is what I said. The words reached him. He said so in the last words Texas allowed him. The state had to kill him with those sentences in the air.

Vickie Swartout's family has their own tears. The promise is for them too. I do not get to decide how God keeps it.

The former things are passed away. I said it over him. I have said it every night since, outside, looking up. When I close my eyes, he is still stumbling over his statement. I am still waiting for it to be true.

About the Author

The Rev. Dr. Jeff Hood is a death penalty abolitionist, author and spiritual advisor to people on death rows across the United States. He founded the Execution Intervention Project, the Institute for Death Row Correspondence and The New Theology School, where he serves as Dean. He holds the Rev. Charles Moore Professor of Prophetic Theology chair.

He has been present as a spiritual advisor in fourteen executions across five states, including the first nitrogen hypoxia execution in the United States. He was nominated for the 2025 Nobel Peace Prize for his battle against nitrogen executions. He has been profiled by Rolling Stone, USA Today, Newsweek, GQ, Slate and Der Spiegel.

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