No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

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APPENDIX A

Florida Supreme Court Opinion, SC2026-0574 (April 23, 2026)

Supreme Court of Florida

No. SC2026-0574

JAMES ERNEST HITCHCOCK,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

April 23, 2026

PER CURIAM.

James Ernest Hitchcock is a prisoner sentenced to death. The Governor signed a warrant for his execution, set to occur April 30, 2026. Hitchcock appeals the denial of his successive motion for postconviction relief. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const.; *see also State v. Fourth Dist. Ct. of Appeal*, 697 So. 2d 70, 71 (Fla. 1997) (holding "that in addition to our appellate jurisdiction over sentences of death, we have exclusive jurisdiction to review all types of collateral proceedings in death penalty cases").

For the reasons below, we affirm the denial of postconviction relief and deny his motion for a stay of execution.

I

In 1976, James Ernest Hitchcock was indicted for murdering his brother Richard's thirteen-year-old stepdaughter. *Hitchcock v. State* (*Hitchcock I*), 413 So. 2d 741, 743 (Fla. 1982); *Hitchcock v. State* (*Hitchcock VI*), 755 So. 2d 638, 640 (Fla. 2000). Hitchcock was living with Richard and Richard's family—including the victim. On the night of the murder, Hitchcock watched television with Richard and his family until around 11:00 p.m. Hitchcock then left the house, went to Winter Garden, and drank beer and smoked marijuana with his friends.

Hitchcock told police post-arrest that he returned to the home around 2:30 a.m. and entered through a dining room window. He then went to the victim's room and had sexual intercourse with her. The victim told Hitchcock she was hurt and was going to tell her mother. The victim started to yell because Hitchcock would not let her leave the bedroom. Hitchcock then choked her and carried her outside. When she still refused to be quiet, Hitchcock choked and

beat the victim until she was silent and pushed her body into some bushes. He returned to the home, showered, and went to bed.

At trial in January 1977, Hitchcock recanted his prior statement to police confessing to the murder. Contrary to his prior statement, Hitchcock claimed that the victim let him into the house and agreed to have sexual intercourse. Hitchcock claimed that after having intercourse, Richard entered the bedroom, dragged the victim outside, and began choking her. Hitchcock said that by the time he got Richard away from the victim, she was already dead. According to Hitchcock, Richard said he did not mean to kill her, and that Hitchcock would cover up for Richard. In explanation for his prior admission, Hitchcock said he was trying to protect Richard.

The jury found him guilty of first-degree murder and recommended that he be sentenced to death. *Hitchcock I*, 413 So. 2d at 743. After weighing the aggravating and mitigating circumstances, the court agreed with the jury's recommendation and imposed the death penalty. *Id.*[1]

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1. The court found three aggravating circumstances: (1) the murder was committed in the course of an involuntary sexual

We affirmed Hitchcock's judgment and sentence on direct appeal in 1982, rejecting the many issues he raised. *Id.*[2] The U.S.

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battery; (2) the purpose of the murder was to eliminate a witness to avoid arrest; and (3) the murder was especially heinous, wicked, or cruel. *Hitchcock I*, 413 So. 2d at 746.

2. Hitchcock argued the following in that direct appeal: (1) the trial court improperly restricted his presentation of evidence corroborating his defense theory, his impeachment of a key prosecution witness, and his explanation of his false confession; (2) the trial court improperly communicated with the jury during deliberations; (3) the exemption of mothers with young children from jury service denied his right to a jury drawn from a fair cross-section of the community; (4) the evidence was insufficient to convict him of first-degree murder because it did not show premeditation or felony murder; (5) the trial court erred by denying Hitchcock's motion for judgment of acquittal, claiming insufficiency of the evidence to show either premeditation or felony murder; (6) the trial court sentenced him to death because he exercised his right to a jury trial; (7) the conviction and sentence must be overturned because, before trial, he had no notice of the aggravating circumstances that the State intended to show and on which the judge and jury relied; (8) the trial judge improperly assessed the aggravating and mitigating factors; (9) the rape portion of section 921.141(5)(d), Florida Statutes (1977), is so vague and confusing as to be unconstitutional because the crime of "rape" no longer exists in this state ("Ch. 74–121, Laws of Florida, amended ch. 794, Fla. Stat., to replace the former rape statute with the crime of sexual battery." *Hitchcock I*, 413 So. 2d at 747 n.7); (10) section 921.141 unconstitutionally limits the consideration of mitigating factors and that he was improperly limited in presenting mitigating evidence; and (11) section 921.141 is unconstitutional on its face, that the death penalty is inconsistently applied, and that there are no standards for weighing aggravating and mitigating factors. *Hitchcock I*, 413 So. 2d at 744-48.

Supreme Court denied certiorari review. *Hitchcock v. Florida*, 459 U.S. 960 (1982).

In 1983 Governor Graham denied Hitchcock's clemency request and signed his death warrant. *Hitchcock v. State* (*Hitchcock II*), 432 So. 2d 42, 43 (Fla. 1983). Hitchcock then filed a motion to vacate his judgment and sentence under Florida Rule of Criminal Procedure 3.850. In the postconviction court, Hitchcock raised two claims[3] that the postconviction court summarily denied. Hitchcock appealed, repeating his claims made in the trial court and arguing the trial court erred in denying his motion. We affirmed, finding that the motion and record conclusively showed that Hitchcock was not entitled to relief. *Id.*

Hitchcock then petitioned for federal habeas relief. After the U.S. District Court for the Middle District of Florida denied relief and the Eleventh Circuit Court of Appeals affirmed, the U.S.

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3. Hitchcock argued that his death sentence violated his Sixth, Eighth, and Fourteenth Amendment rights for two reasons: "[(1)] the then-current state of the law prevented his trial counsel from presenting nonstatutory mitigating evidence at his sentencing proceeding; and [(2)] the death penalty statute fail[ed] to channel jury discretion and permit[ted] the interjection of irrelevant factors into the sentencing process." *Hitchcock II*, 432 So. 2d at 43.

Supreme Court granted review. *Hitchcock v. Dugger*, 481 U.S. 393, 394 (1987). Hitchcock argued that he was sentenced to death under a Florida statute that operated in a way that prevented the sentencing jury and judge from considering relevant mitigating evidence—that being mitigating circumstances not listed in the statute. *Id.* The Supreme Court reversed, finding that in Hitchcock's case "the advisory jury was instructed not to consider, and the sentencing judge refused to consider, evidence of nonstatutory mitigating circumstances," all of which ran contrary to the requirements of *Skipper v. South Carolina*, 476 U.S. 1 (1986), *Eddings v. Oklahoma*, 455 U.S. 104 (1982), and *Lockett v. Ohio*, 438 U.S. 586 (1978) (plurality opinion), as Hitchcock was precluded from presenting all relevant mitigating evidence. *Hitchcock*, 481 U.S. at 398-99.

After the Supreme Court's decision in *Hitchcock v. Dugger*, 481 U.S. at 399, the State proceeded with a new penalty phase. *Hitchcock v. State* (*Hitchcock III*), 578 So. 2d 685, 688 (Fla. 1990). A jury again recommended sentencing Hitchcock to death. *Id.* The trial court imposed the death penalty after finding four aggravating

factors[4] and finding the aggravating factors to outweigh the mitigation.[5] *Id.*

After his resentencing, Hitchcock appealed his death sentence, again raising many issues.[6] We affirmed Hitchcock's death

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4. The court found the crime was committed while Hitchcock was under sentence of imprisonment, was committed during a sexual battery, was committed to avoid or prevent arrest, and was especially heinous, atrocious, or cruel (HAC). *Hitchcock III*, 578 So. 2d at 688.

5. The court considered as mitigation Hitchcock's age, deprivations, character traits, and use of drugs and alcohol. *Id.*

6. He argued (1) the trial court improperly refused to grant his challenges for cause to three prospective jurors; (2) the trial court prevented him from presenting mitigating evidence; (3) the trial court erred in allowing the State to read into evidence the trial transcript of a hair analyst's testimony; (4) it was improper to introduce his original confession and a letter to his mother confessing to the murder; (5) testimony about the victim and her characteristics was improper; (6) he was prejudiced by having eight death row inmates testify on his behalf; (7) "the jurors' and potential jurors' knowledge of his previous sentence from pretrial publicity was unlawfully prejudicial and that the court's refusing his proposed instruction compounded that prejudice;" (8) the court erred in instructing the jury on the aggravating circumstance of murder committed during the commission of a felony because "[t]here is no conviction for sexual battery in this case;" (9) the court erred in finding four aggravating circumstances and that his death sentence is disproportionate; (10) instructing the jury in terms of "sexual battery" rather than "rape" is an ex post facto violation; (11) the trial court's finding of the "under sentence of imprisonment" aggravator was an ex post facto violation and constitutes double jeopardy; and (12) the delay between his arrest (1976) and

sentence, *id.* at 693, and the U.S. Supreme Court denied Hitchcock's petition for writ of certiorari, *Hitchcock v. Florida*, 502 U.S. 912 (1991). But eight months later, the U.S. Supreme Court granted petitions for rehearing and for writ of certiorari, vacating the judgment and remanding the case to this Court for further consideration in light of *Espinosa v. Florida*, 505 U.S. 1079 (1992). *Hitchcock v. Florida*, 505 U.S. 1215 (1992).

On remand from the U.S. Supreme Court, we determined that the trial court gave the jury an inadequate instruction on the especially heinous, atrocious, or cruel (HAC) aggravator under *Espinosa*. *Hitchcock v. State* (*Hitchcock IV*), 614 So. 2d 483, 484 (Fla. 1993). Because this Court could not determine the extent to which the instruction factored into the jury's consideration of the recommended sentence, we vacated Hitchcock's death sentence and

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resentencing (1988) violates his right to a speedy trial and his due process rights and constitutes cruel and unusual punishment. *Hitchcock III*, 578 So. 2d at 688-93 (alteration in original). The Court added that Hitchcock argued some issues that did not merit discussion: unconstitutionality of the instruction on HAC; unconstitutionality of Florida's death penalty statute; and jury instructions regarding sympathy toward the defendant. *Id.* at 688 n.2.

directed the trial court to empanel a jury for a new penalty phase. *Id.*

Hitchcock was resentenced to death—following a unanimous jury recommendation—and he appealed to this Court. *Hitchcock v. State* (*Hitchcock V*), 673 So. 2d 859, 860 (Fla. 1996).[7] We again reversed and remanded for resentencing because "evidence portraying Hitchcock as a pedophile, including unverified allegations of Hitchcock's sexual abuse of a number of children, was erroneously made a feature of his resentencing proceeding" and "deprived Hitchcock of a fair sentencing." *Id.* at 860.

Hitchcock's third resentencing began in September 1996. *Hitchcock VI*, 755 So. 2d at 640. The jury recommended sentencing Hitchcock to death by a 10-2 vote. *Id.* The court sentenced Hitchcock to death after finding four aggravating circumstances.[8]

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7. The trial court found four aggravators: (1) the capital felony was committed while Hitchcock was under a sentence of imprisonment; (2) the capital felony was committed while Hitchcock was engaged in the commission of a sexual battery; (3) the capital felony was committed for the purpose of avoiding a lawful arrest; and (4) the capital felony was HAC. *Hitchcock V*, 673 So. 2d at 861 n.2.

8. The court found that (1) the crime was committed by a person under sentence of imprisonment (parole); (2) the crime was

The court found one statutory mitigating factor, Hitchcock's age (twenty).[9] *Id.*

On appeal from this new death sentence, Hitchcock raised eighteen claims.[10] This Court rejected all his claims as either

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committed during commission of the felony of sexual battery; (3) the crime was committed for the purpose of avoiding arrest; and (4) the crime was especially HAC. *Hitchcock VI*, 755 So. 2d at 640.

9. "As to nonstatutory mitigation, the court in an amended sentencing order assigned 'very little weight' to six circumstances surrounding the instant crime, 'some weight' to nine circumstances concerning Hitchcock's background, and 'some weight' to eight circumstances concerning Hitchcock's 'positive character traits.' " *Id.* at 640-41.

10. Hitchcock claimed that: (1) the trial court erred in permitting the State to put into evidence a three-page narrative report concerning results of a psychological test; (2) the trial court erred in overruling the defense objection to the State's closing argument as to Hitchcock's mitigation evidence; (3) the trial court erred in overruling the defense objection to the State's argument as to a defense expert witness; (4) fundamental error occurred in the State's final argument to the jury; (5) resentencing is required because the judge in Hitchcock's new trial was removed from the bench during an investigation of bribery charges, and it was error for a substitute judge to rule on Hitchcock's motion for resentencing; (6) the trial court erred in instructing upon, allowing the State to argue, and finding the aggravating circumstance of avoiding or preventing arrest; (7) the trial court erred in denying Hitchcock's constitutional challenges to the sentence of imprisonment and felony-murder aggravating circumstances as applied; (8) the State failed to prove the felony-murder aggravating circumstance based on the underlying felony of rape or sexual battery, and this aggravating circumstance is unconstitutional; (9)

procedurally barred or without merit and affirmed. *Id.* at 641. The U.S. Supreme Court denied Hitchcock's petition for writ of certiorari. *Hitchcock v. Florida*, 531 U.S. 1040 (2000).

In 2001, Hitchcock filed a motion for postconviction DNA testing under section 925.11, Florida Statutes, and Florida Rule of Criminal Procedure 3.853. *Hitchcock v. State* (*Hitchcock VII*), 866 So. 2d 23, 25 (Fla. 2004). The postconviction court denied Hitchcock's motion, finding that the motion did not "set forth the evidentiary value of the evidence to be tested or explain how the results would exonerate Defendant or mitigate his sentence." *Id.* at

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the trial court erred in using the HAC aggravating circumstance and in giving an unconstitutional instruction as to HAC; (10) the trial court erred in refusing to instruct the jury as to improper doubling of aggravating circumstances; (11) the trial court erred in considering both the felony-murder and avoid-arrest aggravating circumstances; (12) the trial court's findings as to mitigation were deficient; (13) Hitchcock's death sentence is disproportionate; (14) the trial court erred in permitting testimony showing that his appellate attorney had represented Hitchcock on clemency; (15) the trial court erred in denying relief based on newly discovered evidence without considering corroborating evidence and circumstances; (16) the trial court (a substitute judge) erred in ruling on and denying Hitchcock's motion for a new sentencing proceeding; (17) the trial court erred in excluding from evidence and refusing to consider the State's prior offer of a life sentence; and (18) conducting Hitchcock's sentencing proceeding many years after his crime was unconstitutional. *Id.*

26. Hitchcock appealed the denial of his motion, and we affirmed. *Id.* at 27-28.

Hitchcock also filed a rule 3.850 motion in 2001, raising thirteen claims. *Hitchcock v. State* (*Hitchcock VIII*), 991 So. 2d 337, 342-44 (Fla. 2008).[11] The postconviction court denied all of

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11. He argued (1) resentencing counsel was ineffective for failing to object to the testimony of a witness; (2) guilt-phase counsel and resentencing counsel were ineffective for failing to object to testimony and argument that the victim was a virgin at the time of the offense; (3) guilt-phase counsel was ineffective for failing to spend adequate time preparing for trial and thus opened the door to negative character evidence about him and for failing to admit evidence implicating Richard in the murder; (4) resentencing counsel was ineffective for failing to recall a doctor to explain the Minnesota Multiphasic Personality Inventory narrative report introduced by the State; (5) resentencing counsel was ineffective for failing to have him evaluated for neuropsychological impairment; (6) resentencing counsel was ineffective for failing to fully develop available statutory and nonstatutory mitigating evidence; (7) the State violated his constitutional rights by destroying exculpatory physical evidence; (8) the trial court's instructions diminished the jury's role in sentencing in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985), and counsel was ineffective for not objecting to the instructions; (9) newly discovered evidence demonstrated that Richard committed the murder; (10) the State failed to disclose the deficiencies of hair analyst Diana Bass and then knowingly presented the analyst's incompetent and false testimony, guilt-phase counsel was ineffective for failing to challenge the admissibility of Bass's testimony, and this newly discovered evidence of Bass's incompetence undermined his conviction; (11) resentencing counsel was ineffective for failing to object to the court's felony-murder instruction and for failing to request a jury instruction on the elements of sexual battery; (12) his constitutional

Hitchcock's claims, and he appealed, raising eleven issues.[12] *Id.* at

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rights were violated because he was not present at the bench conference when peremptory challenges were exercised, trial counsel was ineffective for failing to ensure that Hitchcock was present during all critical stages of the proceedings, and the trial court erred by not ensuring that the transcript was complete; and (13) Florida's capital sentencing scheme is unconstitutional as applied to him. *Hitchcock VIII*, 991 So. 2d at 344 n.5.

12. He claimed (1) the circuit court erred in holding that his guilt-phase claims were procedurally barred; (2) the circuit court erred in denying his claim that resentencing counsel was ineffective for failing to object to the testimony of a witness; (3) the circuit court erred in denying his claim that guilt-phase counsel was ineffective for failing to spend adequate time preparing for trial and thus opened the door to negative character evidence about him and for failing to admit evidence implicating Richard in the murder; (4) the circuit court erred in denying his claim that resentencing counsel was ineffective for failing to present available evidence of statutory mitigating circumstances and organic brain damage; (5) the circuit court erred in denying his claim that the State violated his constitutional rights by destroying exculpatory physical evidence; (6) the circuit court erred in denying Hitchcock's claim that the trial court's instructions diminished the jury's role in sentencing, in violation of *Caldwell* and counsel was ineffective for not objecting to the instructions; (7) the circuit court erred in denying his claim that newly discovered evidence demonstrated that Richard committed the murder; (8) the circuit court erred in denying his claim that his constitutional rights were violated when the State failed to disclose the deficiencies of hair analyst Diana Bass and then knowingly presented the analyst's incompetent and false testimony, guilt-phase counsel was ineffective for failing to challenge the admissibility of Bass's testimony, and this newly discovered evidence of Bass's incompetence undermined his conviction; (9) the circuit court erred in denying his claim that resentencing counsel was ineffective for failing to object to the court's felony-murder instruction and for failing to request a jury

344. He also filed a petition for writ of habeas corpus, raising six issues.[13] *Id.* at 345. We affirmed the postconviction court's denial of Hitchcock's motion for postconviction relief and denied his petition for writ of habeas corpus. *Id.* at 364.

Hitchcock then unsuccessfully engaged in further federal and state litigation. *See Hitchcock v. Sec'y, Dep't of Corr.*, No. 6:08-CV-

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instruction on the elements of sexual battery; (10) the circuit court erred in denying his claim that his constitutional rights were violated when he was not present at the bench conference where peremptory challenges were exercised, trial counsel was ineffective for failing to ensure that he was present during all critical stages of the proceedings, and the trial court erred by not ensuring that the transcript was complete; and (11) the circuit court erred in denying his claim that he is entitled to relief under *Ring v. Arizona*, 536 U.S. 584 (2002), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Hitchcock VIII*, 991 So. 2d at 344 n.6.

13. Hitchcock argued (1) his constitutional rights were violated when he was deprived of notice of felony murder and a unanimous verdict identifying whether the jury found him guilty on the theory of felony murder or premeditated murder, and appellate counsel was ineffective for failing to raise this claim on direct appeal; (2) appellate counsel was ineffective for failing to raise on direct appeal the claim that his absence from crucial portions of his trial violated his constitutional rights; (3) appellate counsel was ineffective for failing to challenge on direct appeal the trial court's finding that the murder was committed during a sexual battery; (4) appellate counsel was ineffective for failing to raise on direct appeal the claim that the resentencing instructions violated *Caldwell*; (5) Florida's death penalty statute is unconstitutional because it violates *Ring* and *Apprendi*; and (6) he is incompetent to be executed. *Hitchcock VIII*, 991 So. 2d at 345 n.7.

1719-ORL-31KRS, 2012 WL 4339573 (M.D. Fla. Sept. 20, 2012) (denying federal habeas petition); *Hitchcock v. Sec'y, Florida Dep't of Corr.*, 745 F.3d 476 (11th Cir. 2014) (affirming denial of habeas corpus); *Hitchcock v. Crews*, 574 U.S. 939, 939 (2014) (denying petition for writ of certiorari); *Abdool v. Bondi*, 141 So. 3d 529 (Fla. 2014) (unsuccessfully challenging "Timely Justice Act of 2013").

Most recently, Hitchcock argued in a successive rule 3.851 motion for postconviction relief that his death sentence—which became final in 2000—was unconstitutional under *Hurst v. Florida*, 577 U.S. 92 (2016), and this Court's decision on remand in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *receded from in part by State v. Poole*, 297 So. 3d 487 (Fla 2020). *Hitchcock v. State* (*Hitchcock IX*), 226 So. 3d 216, 216-17 (Fla. 2017). The postconviction court summarily denied Hitchcock's motion, a denial we affirmed because precedent foreclosed relief and *Hurst* did not apply retroactively to Hitchcock's sentence, which had become final when the U.S. Supreme Court decided *Ring*. The U.S. Supreme Court denied Hitchcock's petition for writ of certiorari on December 4, 2017. *Hitchcock v. Florida*, 583 U.S. 1019 (2017).

On March 30, 2026, Governor DeSantis signed a death warrant for Hitchcock's execution. The execution is set for April 30, 2026, at 6:00 p.m. On April 1, 2026, under the circuit court's separate scheduling order, Hitchcock filed demands for additional public records directed to the Florida Department of Corrections (FDOC) and the Florida Department of Law Enforcement (FDLE). In his requests, he clarified that he was "not arguing that the protocol *itself* is unconstitutional. Mr. Hitchcock seeks records which support the colorable claim that FDOC's failure to follow its own policies and procedures violates his Eighth Amendment rights." (Emphasis omitted.) Both state agencies filed written objections, and after conducting a hearing, the circuit court sustained FDOC's and FDLE's objections.

Timely under this Court's scheduling order, Hitchcock filed the successive motion for postconviction relief at issue here, raising the following two issues: (1) the denial of access to lethal injection records violates his rights under article I, section 24 of the Florida Constitution, and the Fifth and Fourteenth Amendments of the U.S. Constitution, ultimately preventing him from proving a viable claim that his execution would violate the Eighth Amendment; and (2) his

execution would be the unconstitutional execution of an innocent man in violation of the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution under *Herrera v. Collins*, 506 U.S. 390, 417 (1993), as well as the corresponding provisions in the Florida Constitution. In support he attached an affidavit of Dr. Daniel Buffington, which also had accompanied his public records requests. In the affidavit, Dr. Buffington provided his "expert opinion as to the significance and importance" of the information requested, stating that certain errors or deviation from lethal injection protocol "could result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death." Hitchcock also moved for a stay of execution.

The circuit court held a *Huff*[14] hearing on April 9, 2026, to decide whether Hitchcock's motion required an evidentiary hearing. That same day, the court denied Hitchcock's request for an evidentiary hearing. On April 13, 2026, the circuit court entered its order summarily denying Hitchcock's successive motion for postconviction relief and denying his motion for stay. Hitchcock

14. *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

now timely appeals the circuit court's order.

II

"Summary denial of a successive postconviction motion is appropriate '[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief.' " *Bogle v. State*, 322 So. 3d 44, 46 (Fla. 2021) (alteration in original) (quoting Fla. R. Crim. P. 3.851(f)(5)(B)); *see* Fla. R. Crim. P. 3.851(h)(6). In reviewing a circuit court's summary denial, "this Court must accept the defendant's allegations as true to the extent that they are not conclusively refuted by the record." *Tompkins v. State*, 994 So. 2d 1072, 1081 (Fla. 2008) (citing *Rolling v. State*, 944 So. 2d 176, 179 (Fla. 2006)). Still, "[t]he defendant bears the burden to establish a prima facie case based on a legally valid claim; mere conclusory allegations are insufficient." *Franqui v. State*, 59 So. 3d 82, 96 (Fla. 2011) (citing *Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000)). A circuit court's decision whether to grant an evidentiary hearing on a rule 3.851 motion "is tantamount to a pure question of law, subject to de novo review." *Marek v. State*, 8 So. 3d 1123, 1127 (Fla. 2009) (citing *State v. Coney*, 845 So. 2d 120, 137 (Fla. 2003)).

A

In his first argument on appeal, Hitchcock argues the circuit court erred when it sustained FDOC's and FDLE's objections to his demands for public records filed on April 1, 2026, and denied his requests. Hitchcock clarifies in his initial brief that he does not present this argument as a newly discovered evidence claim but as "a violation of Mr. Hitchcock's rights which renders his execution unconstitutional." In essence, Hitchcock presents a procedural due process claim ultimately seeking the ability to pursue an Eighth Amendment method-of-execution claim. We conclude Hitchcock is not entitled to relief.

1

The first reason Hitchcock's argument fails is that his public records-based claim is not one aimed at the validity of the judgment or sentence. Instead, he asserts what is essentially a freestanding due process claim, untethered to any claim that is cognizable under rule 3.851.[15]

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15. Hitchcock's initial brief states: "Mr. Hitchcock has not raised either an 'as-applied' or 'method of execution' challenge to the use of lethal injection for the State's planned execution, but rather [argues] that he is being prevented from obtaining the

By insisting that he has a right to discovery in the absence of a claim that could give rise to relief under rule 3.851, Hitchcock mirrors the strategy pursued by several defendants in federal court. But no constitutional right exists to discover grievances or to litigate effectively once in court. *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (disclaiming prior statements appearing to suggest that the State must enable a prisoner to discover grievances, and to litigate effectively in court); *Hill v. Dailey*, 557 F.3d 437, 439 (6th Cir. 2009) (citing *Lewis*, 518 U.S. at 354, and discussing that the State does not have an obligation to ensure prisoners "litigate effectively once in court").

So courts presented with similar scenarios have rejected due process and other rights-based arguments to execution-related information. *See, e.g.*, *Trottie v. Livingston*, 766 F.3d 450, 452 (5th Cir. 2014) ("[W]e have held that an uncertainty as to the method of execution is not a cognizable liberty interest." (citing *Sepulvado v. Jindal*, 729 F.3d 413, 420 (5th Cir. 2013))); *First Amend. Coal. of Ariz., Inc. v. Ryan*, 938 F.3d 1069, 1081 (9th Cir. 2019) (rejecting

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necessary records to prove any legitimate challenge." Initial Brief of the Appellant at 16-17.

arguments that First Amendment entitles inmates to access to information regarding execution drugs and personnel to discover whether they have a colorable claim that their executions will be carried out in violation of the Eighth and Fourteenth Amendments); *Jones v. Comm'r, Georgia Dep't of Corr.*, 812 F.3d 923, 929 (11th Cir. 2016) ("Jones has not identified any cognizable liberty interest infringed by the Georgia secrecy law nor has he even begun to describe the framework for analyzing this novel constitutional right."); *Sepulvado*, 729 F.3d at 420 ("There is no violation of the Due Process Clause from the uncertainty that Louisiana has imposed on [the inmate] by withholding the details of its execution protocol."); *Zink v. Lombardi*, 783 F.3d 1089, 1109 (8th Cir. 2015) (agreeing with the Fifth and Eleventh Circuits that "a prisoner's assertion of necessity—that the State must disclose its protocol so he can challenge its conformity with the Eighth Amendment—does not substitute for the identification of a cognizable liberty interest" (citation modified)).

For example, in 2014, Ohio enacted a law treating the identity of individuals and entities that participate in the lethal injection process as confidential and privileged under law. *Phillips v.*

DeWine, 841 F.3d 405, 410 (6th Cir. 2016). The law also prohibited the information from being disclosed as a public record or subject to disclosure during judicial proceedings, with few exceptions. *Id.* Prisoners challenged the new law, arguing in part that it violated their equal protection and due process rights and their right to access the courts because it "denie[d] [them] an opportunity to discover and litigate non-frivolous claims." *Id.* at 412, 420 (second alteration in original). But those arguments were rejected because "no constitutional right exists to discover grievances or to litigate effectively once in court." *Id.* at 420 (citing *Lewis*, 518 U.S. at 354, and *Hill*, 557 F.3d at 439, and collecting cases).

Likewise, Hitchcock has not raised a claim that is cognizable under rule 3.851. As a result, his constitutional arguments grounded in denial of discovery do not form a valid basis on which to vacate his death sentence. *Jones*, 812 F.3d at 930 (holding that a stand-alone claim that a Georgia statute infringed on defendant's ability to "discover grievances, and to litigate effectively once in court" was untethered to an Eighth Amendment claim and therefore did not "implicate[] any constitutional right").

So even if the circuit court erred in denying the public records

requests, Hitchcock would not be entitled to relief from his sentence.

2

Hitchcock's claim fails for a second reason though. Even if the denial of public records on its own could "render[] his execution unconstitutional" as Hitchcock argues, the circuit court did not err in denying his requests. To explain why, and before addressing each of Hitchcock's sub-arguments on this point, we will provide an overview of Florida's public records law in the context of capital postconviction proceedings.

a

Section 27.7081, Florida Statutes, and Florida Rule of Criminal Procedure 3.852 currently govern public records production for capital postconviction inmates. We adopted the current rule 3.852 following an extensive review process and a statutory repeal. *Sims v. State*, 753 So. 2d 66, 69 (Fla. 2000). Initially, though, capital collateral representative (CCR) attorneys were encountering discovery problems under then-existing public records laws because there was no formal discovery mechanism under rule 3.850. CCR had to file incomplete rule 3.850 motions to

meet the one-year deadline for filing a motion under that rule, reserving the right to supplement the motion upon the receipt and review of belated public records.

Our opinion adopting the original rule highlighted that it was a "carefully tailored discovery rule for public records production ancillary to rule 3.850 and 3.851 proceedings." *See id.* (citing *In re Amend. to Fla. Rules of Crim. Proc.—Cap. Postconviction Pub. Recs. Prod.*, 683 So. 2d 475, 476 (Fla. 1996)). We also noted "[t]he rule does not affect, expand, or limit the production of public records for any purposes other than use in a 3.850 or 3.851 proceeding" and that any public records not obtained under rule 3.852 must still be admissible, suggesting public records obtained outside of the postconviction discovery process. *See In re Amend. to Fla. Rules of Crim. Proc.—Cap. Postconviction Pub. Recs. Prod.*, 683 So. 2d at 476 n.1.

Subsequently, the Legislature repealed our rule and passed chapter law 98-198, codified at section 119.19, Florida Statutes (Supp. 1998). *Sims*, 753 So. 2d at 69. The newly passed statute codified the response to the public record conundrum. We adopted a revised version of rule 3.852, again stating that the rule should

"serve as a basis for providing to the postconviction process all public records that are relevant or would reasonably lead to documents that are relevant . . . to postconviction issues." *Amends. to Fla. Rules of Crim. Proc. 3.852 (Cap. Postconviction Pub. Recs. Prod.) & Rule 3.993 (Related Forms)*, 754 So. 2d 640, 642 (Fla. 1999). Since 1998, the relevant statute has undergone revisions and is now renumbered as section 27.7081, Florida Statutes (2025).

In their present-day forms, the rule and statute impose special requirements on state officials to make documents relevant to postconviction claims readily accessible through a repository. § 27.7081(3), Fla. Stat. The scheme further streamlines the process for obtaining "additional" public records that have not already been set aside by state officials, providing strict timelines for an agency or person served with a request under the statute to object and for the circuit court already assigned to the case to resolve the dispute. § 27.7081(8), Fla. Stat.; Fla. R. Crim. P. 3.852(g). This alleviates the need for a capital postconviction inmate to pursue records separately under chapter 119. *Cf.* § 27.7081(11), Fla. Stat. The statute is not unqualified though.

Throughout each iteration of the statute, it has required

counsel for a postconviction inmate to demonstrate that records sought beyond those contained in the repository are "relevant to the subject matter of a proceeding under Rule 3.850 or Rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence." § 119.19(8)(b)(3), Fla. Stat. (Supp. 1998). Separately, section 27.708 restricts collateral counsel from requesting public records on behalf of a capital postconviction inmate except from the records repository and through the additional avenues provided by section 27.7081. § 27.708(3), Fla. Stat. (2025).

b

It is against this backdrop that we now address Hitchcock's arguments. First, Hitchcock argues that rule 3.852 and section 27.7081, Florida Statutes, hinder his access to public records because the rule and statute require defendants to overcome hurdles that are not imposed on members of the general public. He argues that he is a member of the public, but his access to public records is being denied based entirely on his status as a capital postconviction inmate because of the "additional hoops" the statute and rule require he jump through.

Hitchcock's argument on this point fails because it appears to

be based on the inaccurate view that Hitchcock is limited to seeking public records under rule 3.852, to the exclusion of chapter 119. But rule 3.852 and section 27.7081 are there to supplement chapter 119 in the context of postconviction litigation—not to supplant. The plain language of both the rule and statute confirms this conclusion, stating they "do[] not affect, expand, or limit the production of public records for any purpose other than use in a proceeding held pursuant to Rule 3.850 or Rule 3.851." § 27.7081(2), Fla. Stat.; Fla. R. Crim. P. 3.852(a).

The rule's provisions must be read in context though. And in the overall context of Florida's postconviction scheme, rule 3.852 is a discovery rule. *See, e.g.*, *Sims*, 753 So. 2d at 69 (referring to rule 3.852 as a "discovery rule"). It follows that to benefit from the rule's streamlined process, the normal constraints of discovery apply. Those constraints include a categorical limitation on the types of records a postconviction defendant may seek—that is, those documents that appear "reasonably calculated to lead to the discovery of admissible evidence." Fla. R. Crim. P. 3.852(i)(1)(C). Section 27.7081 echoes that limitation. § 27.7081(9)(a)3., Fla. Stat. And our precedent echoes it too, clarifying that if a postconviction

defendant avails himself of rule 3.852's streamlined process, he is prohibited from conducting a "fishing expedition" and the records must relate to a "colorable claim." *Sims*, 753 So. 2d at 70. Those limitations are characteristic of discovery in all types of litigation in state and federal courts. There is nothing problematic or even unexpected about the constraining language in rule 3.852.

Wyatt v. State, 71 So. 3d 86 (Fla. 2011), supports this conclusion. There, a postconviction movant, through counsel, argued that Florida Rule of Criminal Procedure 3.852 and section 27.7081, Florida Statutes (2006), unconstitutionally restricted his right to public records access under the Florida and U.S. constitutions because both provisions impermissibly mandate that his demand for public records not be "overly broad or unduly burdensome" and that he make his own search for records. *Wyatt*, 71 So. 3d at 110-11. We concluded that the requirement that a defendant make a diligent search through records already produced and narrow his or her request to provide adequate notice to the agency from which a defendant seeks information is reasonable in the context of capital postconviction claims. *Id.* at 111.

Hitchcock's constitutional arguments related to the colorable

claim requirement also fail. There is no equal protection violation—Hitchcock is not being treated differently based on his status as an inmate whose conviction has become final. *See also Willacy v. State,* No. SC2026-0519, 2026 WL 1021168, at *6 (Fla. Apr. 15, 2026) (holding denial of public records request relating to Florida's lethal injection protocol did not violate equal protection, where request was not related to any colorable claim for postconviction relief), *cert. denied*, No. 25-7220, 2026 WL 1074143 (U.S. Apr. 21, 2026). And to the extent Hitchcock alleges an Eighth Amendment violation, we reject that argument too. Instead, his status as a capital postconviction movant makes available to him a streamlined method of seeking public records, if those documents are reasonably calculated to lead to the discovery of admissible evidence. Because rule 3.852 only supplements instead of supplants chapter 119, the circuit court did not err in denying Hitchcock's requests.

c

Hitchcock next argues that even if the colorable claim limitation applies to his public records requests, he has met it. Again, Hitchcock is mistaken.

Hitchcock's alleged colorable claim is a method-of-execution claim. To challenge a method of execution under the Eighth Amendment's prohibition of cruel and unusual punishment, Hitchcock must "(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)); *Bucklew v. Precythe*, 587 U.S. 119, 139-40 (2019) (reconfirming that anyone bringing a method-of-execution claim alleging the infliction of unconstitutionally cruel pain must meet the *Baze*[16]-*Glossip* test).

The most obvious defect with Hitchcock's position is that he has not even attempted to identify a known and available alternative method of execution that entails a significantly less severe risk of pain. There is no viable claim alleged to which his public records requests would be relevant.

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16. *Baze v. Rees*, 553 U.S. 35 (2008) (plurality opinion).

Secondly, his allegations that the public records would be relevant to establishing the first prong of the *Baze-Glossip* framework rely on a speculative leap that we have recently rejected. Hitchcock argues that the affidavit of Dr. Buffington attached to his postconviction motion supports the assertion that maladministration of the lethal injection protocol and "error or deviation could result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death." But the affidavit contains the same logical gaps evident in the affidavits relied on in *Trotter v. State*, 428 So. 3d 68, 73 (Fla.), *cert. denied*, 146 S. Ct. 755 (2026), and *Heath v. State*, 426 So. 3d 1253, 1262 (Fla. 2026) ("The question is not whether protocol deviations occurred but whether the defendant's allegations would demonstrate a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering. Heath's allegations would not demonstrate such a risk."), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026). We reject that argument again here.

d

Because we conclude Hitchcock's failure to establish that the

public records he sought were related to a colorable claim for relief, the circuit court did not err in denying an in-camera inspection or in sustaining objections from FDOC and FDLE.

B

Finally, we reject Hitchcock's remaining arguments on appeal. Hitchcock asserts his actual innocence claim, contending his execution in turn would be cruel and unusual. We have already said that we do not recognize an independent claim of actual innocence in postconviction proceedings. *Sweet v. State*, 293 So. 3d 448, 453-54 (Fla. 2020) (citing *Elledge v. State*, 911 So. 2d 57, 78 (Fla. 2005)). We have also held that Florida's refusal to recognize postconviction actual innocence claims does not violate the Eighth Amendment. *Id.* at 454 (citing *Tompkins*, 994 So. 2d at 1088-89). Hitchcock does little to acknowledge our precedent on this issue, let alone provide any reason we should recede from it. So we reject his argument.

We likewise reject his argument that declining to consider the merits of his actual innocence claim results in a manifest injustice because it violates his due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution. Hitchcock has

received the process due to him, has been adjudicated guilty, and has been sentenced to death. Hitchcock has also had the opportunity to pursue claims of newly discovered evidence. *See, e.g.*, *Tompkins*, 994 So. 2d at 1089. There is no due process violation, and the circuit court correctly rejected this claim.

III

We affirm the summary denial of Hitchcock's successive motion for postconviction relief and the order denying his public records requests. We also deny his motion for stay of execution. No oral argument is necessary, and no motion for rehearing will be considered by this Court. The mandate shall issue immediately.

It is so ordered.

MUÑIZ, C.J., and LABARGA, COURIEL, GROSSHANS, FRANCIS, SASSO, and TANENBAUM, JJ., concur.

An Appeal from the Circuit Court in and for Orange County,
Keith Carsten, Judge
Case No. 481976CF001942000AOX

Eric Pinkard, Capital Collateral Regional Counsel, Joshua P. Chaykin, Assistant Capital Collateral Regional Counsel, Cortney L. Hackett, Assistant Capital Collateral Regional Counsel, and Christopher Clemente, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida,

for Appellant

James Uthmeier, Attorney General, Tallahassee, Florida, Timothy A. Freeland, Special Counsel, Assistant Attorney General, and Jennifer A. Davis, Senior Assistant Attorney General, Tampa, Florida,

for Appellee

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX B

Demand for Additional Records FDOC (April 1, 2026)

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

vs.

JAMES E. HITCHCOCK,

Defendant.

----------/

CASE NO.: 1976-CF-1942

**DEATH WARRANT
Execution Scheduled for
April 30, 2026, at 6:00 P.M.**

To: **Ricky D. Dixon, Secretary**
Florida Department of Corrections
501 South Calhoun Street,
Tallahassee, FL 32399-2500
kristen.lonergan@fdc.myflorida.com
CO-GCCapLit@fdc.myflorida.com

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS FLORIDA DEPARTMENT OF CORRECTIONS ("FDOC")

COMES NOW, James Hitchcock ("Mr. Hitchcock"), by and through undersigned counsel, and make this request from **RICKY D. DIXON, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS ("FDOC")**, under Florida Rule of Criminal Procedure 3.852(i) and (h), for additional public records pertinent to this case.

1. Mr. Hitchcock is under a sentence of death and subject to execution by lethal injection under Florida Statute § 922.105. Florida's governor signed Mr. Hitchcock's death warrant on March 30, 2026. The governor scheduled Mr. Hitchcock's execution for April 30, 2026, at 6:00 P.M.
2. Undersigned counsel attests that the requested records detailed below are reasonably calculated to lead to the discovery of admissible evidence in that such records demonstrate that the Florida Department of Corrections has repeatedly

failed to carry out executions in compliance with the lethal injection protocol prescribed by Chapter 922 of the Florida Statutes, and FDOC's non-compliance subjects Mr. Hitchcock to unnecessary suffering and cruelty in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution.

3. Undersigned counsel attests that:
   a. counsel has made a timely and diligent search of the records repository;
   b. counsel has identified with specificity the public records that are not at the records repository; and,
   c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.
4. A capital post-conviction defendant "bears the burden of demonstrating that the records sought [pursuant to Fla. R. Crim. P. 3.852] relate to a colorable claim for postconviction relief." *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (citing *Chavez v. State*, 132 So. 3d 826, 829 (Fla. 2014) and *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013)). This Court may order the production of records if "the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and ... the additional records request is not overly broad or unduly burdensome." Fla. R. Crim. P. 3.852(i). The records that undersigned counsel are requesting relate to colorable claims for postconviction relief as discussed below. The records requested are neither overly broad nor unduly burdensome.

5. The requested records are reasonably calculated to lead to the discovery of admissible evidence which would support, Mr. Hitchcock's claim that the FDOC has repeatedly deviated from its lethal injection procedures/protocol and therefore creates unreasonable suffering and cruelty in violation of the Eight Amendment of the United States Constitution and the corresponding Florida Constitution provisions. This is a cognizable claim. Furthermore, a successive Rule 3.851 motion based on discoverable issues would be timely and relevant to issues related to the availability of drugs specifically approved for use in the execution process, as well as the legitimacy of the specific lethal injection procedures employed by FDOC at the time of execution. (See, Appendix A, Signed Affidavit, Dr. Buffington, PharmD, MBA, Jan. 27, 2026).
6. For purposes of this Demand, Mr. Hitchcock is *not* asserting the lethal injection procedures/protocol *itself* is unconstitutional, **but rather that the failure to comply with the specified protocol** violates his Eighth Amendment guarantee to be free from cruel and unusual punishment. **In other words, Mr. Hitchcock demands that the Florida Department of Corrections follow the self-imposed protocols put in place to prevent such unconstitutional suffering and cruelty.** (See Appendix B, "Execution by Lethal Injection Procedures," dated Feb. 18, 2025).
7. FSC precedent does not preclude this Court from finding Mr. Hitchcock has met his burden for demonstrating the records sought below pertain to a colorable claim for relief. Although the FSC has upheld the constitutionality of Florida's protocol. *Asay v. State*, 224 So. 3d 695 (Fla. 2017). However, the Florida Supreme Court's precedent relates to an *entirely different issue than is presented*

here. **Mr. Hitchcock is not arguing that the protocol *itself* is unconstitutional.** Mr. Hitchcock seeks records which support the colorable claim that FDOC's **failure to follow its own policies and procedures** violates his Eighth Amendment rights. Specifically, this Demand concerns the FDOC's failure to follow its own protocols as opposed to focusing on the separate issue of whether those protocols are constitutional.

8. Recently, in a similar Public Records Demand, FDOC argued extensively that they are entitled to the "presumption" that it is acting accordingly with State and federal law when implementing the protocol. *State of Florida v. Ronald Heath*, Case No. 1989-CF-3026, Eighth Judicial Circuit, Alachua County, "Department of Corrections' Objections to Defendant's Demand for Additional Public Records," filed Jan. 14, 2026. However, recent filings and records obtained by the late Frank Walls' counsel, negate any alleged presumption to which the FDOC claims it is entitled, because the records demonstrate that FDOC has not, in fact, been following the procedure/protocol.

9. The following violations of the procedure/protocol can **plainly** be seen from the records obtained in *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025):

    a. FDOC administered the pharmaceutical, lidocaine - a drug not specifically included in the official protocol – in the executions of at least 2 men executed in 2025. During the executions of Edward James and Michael Tanzi, FDOC administered injectable lidocaine, an anesthetic drug not called for in the lethal injection protocol. *Id*. at ¶ 83.

b. FDOC administered expired drugs during the execution of at least four men executed in 2025. FDOC administered etomidate - with an expiration date of January 31, 2025 - during the executions of Victor Jones on September 30, 2025, David Pittman on September 17, 2025; Curtis Windom on August 28, 2025; and Kayle Bates on August 19, 2025. *Id.* at ¶ 84.

c. FDOC recorded the removal (from supply) of three drugs used during executions, on an *ad hoc* basis, in violation of the specified lethal injection protocol. Thomas Gudinas was executed on June 24, 2025. FDOC recorded the removal (from supply) of all three drugs used on June 25, 2025; despite the execution taking place on June 24, 2025. *Id.* at ¶ 79. Anthony Wainwright was executed on June 10, 2025. FDOC waited until June 12, 2025, to record the removal (from supply) of the three drugs allegedly used in the June 10, 2025, execution of Anthony Wainwright. *Id.* at ¶ 79.

d. FDOC has given incorrect dosages to at least two of the men executed in 2025 in violation of the lethal injection protocol. On June 25, 2025, a date corresponding to Thomas Gudinas's execution (which actually occurred on June 24, 2025), the inventory logs only show 10 x 10ml vials of rocuronium bromide were removed (1000mg), suggesting that FDOC only prepared half of the required amount of the paralytic drug, in violation of the written protocol which requires 2000mg, administered through 20 x 10ml vials. *Id.* ¶ 81. On June 12, 2025, a date corresponding to Anthony Wainwright's execution (which occurred on June 10, 2025), seven vials of potassium acetate were removed from FDOC's inventory, suggesting that FDOC prepared only

280 milliequivalents of potassium acetate in violation of the protocol, which requires 480 milliequivalents (12 x 20ml vials). *Id*. at ¶ 82.

e. FDOC has failed to contemporaneously document and accurately log or record the drugs used during the execution in violation of the lethal injection protocol. FDOC did not record removing rocuronium bromide or potassium acetate until =July 16, 2025, the day following the late Michael Bell's execution on July 15, 2025, and the logs contain no entry for the removal of etomidate during that execution, leaving the source and quantity of the drug used in Bell's execution unknown. *Id*. at. ¶ 79.

10. FDOC has repeatedly mocked and ridiculed the facts cited above in 9(a)-(e) in recent demands for records using conclusory accusations without actually pointing to a fact that is incorrect or why a conclusion is untenable. *State of Florida v. Ronald Heath*, Case No. 1989-CF-3026, Eight Judicial Circuit, Alachua County, "Department of Corrections' Objections to Defendant's Demand for Additional Public Records," filed Jan. 14, 2026. Undersigned counsel anticipates FDOC will: assert that "the Defendant misrepresents the information shown in those records out of context[1];" the Defendant's position is "conclusory and imagined readings of those records[2];" that "Defendant's argument amounts to essentially the assertion of a conspiracy between multiple individual agencies with no evidence to support such an absurd conclusion[3];" and FDOC will refuse to give any proof that any of the plainly seen facts are false. By blocking access to records that would demonstrate protocols are being followed, FDOC has prevented defendants from being able to refute FDOC's arguments.

11. FDOC has recently relied upon *Lightbourne v. McCollum*, which was decided 19 years ago, for the proposition that FDOC is entitled to a presumption that they will properly carry out their duties as it relates to executions. 969 So. 2d 326, 342 (Fla. 2007). The state can no longer be protected by a finding from nearly 20 years ago when *present day* records support the conclusion that the Florida Department of Corrections is no longer, or at the very least, having problems with following the official protocol and carrying out executions by lethal injection reliably and without deviation. The question really becomes, why would the State stand in the way of releasing records which *could* support they are in fact following the rule of law. The secrecy they demand serves no public purpose other than to conceal FDOC's errors and/or failures to follow protocols when administering lethal injection. An agency that is doing what the law requires should be happy to share proof of that compliance. Withholding relevant information only enables an agency to evade accountability. The limited records discovered by federal counsel representing the late Frank Walls, call into question the reliability of FDOC's "take our word for it" argument.

12. The requested records below are necessary to determine whether FDOC's failure to comply with their protocol and procedures would be "very likely to cause serious illness and needless suffering," and whether there is a "substantial risk of serious harm." *Glossip v. Gross*, 576 U.S. 863, 877 (2015).

13. Mr. Hitchcock is entitled to information about the reliability and effectiveness of the drugs and procedures being used to execute him. Denying him the opportunity to access records that directly relate to how the state of Florida intends to carry out his execution on April 30, 2026, violates his right to due process and access to the

courts under the First, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

14. An affidavit pursuant to Fla. R. Crim. P. 3.852(i) is attached to and hereby incorporated into this Demand. Mr. Hitchcock demands that the records requested be copied, indexed, and delivered to the records repository by your agency pursuant to the trial court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

15. On February 18, 2025, FDOC Secretary Ricky Dixon provided Florida's governor his certification of FDOC's "EXECUTION BY LETHAL INJECTION PROCEDURES" and outlined the procedures and policies surrounding its carrying out executions by lethal injection. (See Appendix B, "Execution by Lethal Injection Procedures," dated Feb. 18, 2025).

16. **The public records from January 1, 2025, to present, are requested are as follows**:

    a. Written records/checklists, logs, and/or memorandums of training activities including simulations, execution process, preparation of carrying out execution process, and effects of each lethal chemical as required in subsection (4) of FDOC's procedure, "Training of the Execution Team and Executioners;"

    b. Written records/checklists, logs, and/or memorandums documenting "completion of each step in the process," as required in subsection (5) of FDOC's procedure, "Use of Checklists;"

    c. "Signed forms attesting" the team warden's verification that all steps in the process have been performed properly prior to

the administration "pharmaceutical agents (lethal injection chemicals)," and the that the remaining steps in the process were performed properly," as required in subsection (5) of FDOC's procedure, "Use of Checklists;"

d. Written records/checklists, logs, and/or memorandums documenting and tracking whether the "pharmaceutical agents (lethal injection chemicals)" are within their "date range" for use, have reached, or surpassed their expiration dates" and documenting the maintenance and proper storage of the "pharmaceutical agents (lethal injection chemicals)" as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;"

e. Written records/checklists, logs, and/or memorandums documenting the need for refrigeration, proper temperature range for storage, and/or monitoring for compliance of temperature and handling of the lethal chemicals;

f. Internal policies and procedures for handling and maintenance of the "pharmaceutical agents (lethal injection chemicals)" should there be power loss or other circumstances (such as water, temperature, humidity, etc.) which may compromise the pharmaceutical agents (lethal injection chemicals;

g. Polices/procedures, written logs, and/or memorandums documenting the disposal of expired and otherwise compromised "pharmaceutical agents (lethal injection chemicals);"

h. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the first FDLE agent charged with monitoring and responsible for observing the preparation of the "pharmaceutical agents (lethal injection chemicals)" and documenting

and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals" as required in subsection (7)(b) of FDOC's procedure, "FDLE Monitors;"

i. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the second FDLE agent charged with keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals" as required in subsection (7)(c) of FDOC's procedure, "FDLE Monitors;"

j. Memorandums, records, checklists, and/or logs from execution team member and independent observer from FDLE documenting their observations and compliance with the preparation of each "pharmaceutical agent (lethal injection chemical)" used in the lethal injection process as found in subsection (9)(f) of FDOC's procedure, "On the Day of Execution;"

k. Procedures, directives, documentation, and memorandum of the execution team members preparation and placement of the "aseptic technique" and "extension set that will be used to infuse the lethal chemicals into the primary injection line." (See subsection (9)(h) of FDOC's procedure, "On the Day of Execution");

l. Procedures, directives, documentation, and memorandum of the execution team members utilization of "aseptic technique" and the placement of the "IV extension set that will be used to infuse the pharmaceutical agents (lethal injection chemicals) into the primary injection line." (See subsection (10)(h) and (i) of FDOC's procedure, "Approximately Thirty (30) Minutes Prior to Execution"); and

m. Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and monitor the inmate's depth and sustained level of consciousness ("consciousness checks") including the training, level of competency, and proficiency.

n. Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and affirm the inmate's death including the training, level of competency, and proficiency.

o. Documentation, checklists, and memorandum of the team warden's "debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution, as required by as required in subsection (13)(f) of FDOC's procedure, "Immediate Post-Execution Procedures;"

p. Protocols, procedures, directives, and checklists regarding:

   i. Mixing of the "pharmaceutical agents (lethal injection chemicals)" and their respective sterile IV solutions ("diluent fluids")

   ii. flushing the syringe if same syringe is used;

   iii. when and how syringes are organized, staged, and labeled; and

   iv. insertion of venous access and how the site is secured.

17. Should this Court find that the records requested in this demand are exempt from disclosure, Mr. Hitchcock requests this Court exercise its discretion in ordering disclosure via a confidential protective order including the Defense and any confidential experts hired by the Defense.

18. As recognized by Justice Sotomayor, this Court:

> appears to be placing prisoners in a Catch-22: It has affirmed the denial of requests for records on these issues, at least in part, because the prisoners do not yet have enough information to raise a "colorable" Eighth Amendment claim. Ibid. The very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable Eighth Amendment claim.

Trotter v. State of Florida, et. al, 607 U.S. ____ (2026) (statement respecting the denial of the application for stay and petition for certiorari).

19. Justice Sotomayor also wrote:

> Individuals seeking to challenge the method of their execution should not have to guess at whether the State is, or is not, following its execution protocol. Nor does the State appear to have any legitimate confidentiality interest in shielding from inspection basic facts about the implementation of its execution protocol, such as whether the State is using expired drugs. If the protocol is in fact being followed, then transparency instills confidence in the protocol for everyone—prisoners, the courts, and the public alike. If it is not, then secrecy is intolerable, and disclosure of the relevant records is indispensable for determining whether the lapses at issue are likely to lead to an Eighth Amendment violation.

Trotter v. State of Florida, et. al, 607 U.S. ____ (2026).

WHEREFORE, Mr. James Hitchcock, by and through undersigned counsels, respectfully requests this Court enter an order directing the Florida Department of Corrections to produce the records as described above.

Respectfully Submitted,

/s/ Joshua P. Chaykin
Joshua P. Chaykin
Florida Bar No. 1019578
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Law Office of the Capital Collateral Regional Counsel – Middle Region
12973 N. Telecom Parkway
Temple Terrace, FL 33637
813-558-1600
support@ccmr.state.fl.us

Attorneys for Mr. James Hitchcock

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 1st day of April, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court using the Florida Courts e-portal filing system, which will send a notice of electronic filing to the following: The Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **99orange@ninthcircuit.org**; the Honorable Keith Carsten, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **19orange@ninthcircuit.org**; Timothy A Freeland, Special Counsel, Assistant Attorney General, and Jennifer A. Davis, Senior Assistant Attorney General, **timothy.freeland@myfloridalegal.com**, **jennifer.davis@myfloridalegal.com**, **paula.montlary@myfloridalegal.com**, **elizabeth.bueter@myfloridalegal.com**, **lourdes.parodi@myfloridalegal.com**, **capapp@myfloridalegal.com**, **marilyn.muir@myfloridalegal.com**, **scott.browne@myfloridalegal.com**, **stephen.ake@myfloridalegal.com**; Kristen J. Lonergan, Florida Department of Corrections, Office of the General Counsel, **kristen.lonergan@fdc.myflorida.com** and **CO-GCCapLit@fdc.myflorida.com**; Monique H. Worrell, State Attorney, and Jacqueline Brown, Assistant State Attorney, Orange County State Attorney's Office, 415 North Orange Avenue, Orlando, FL 32802, **mhworrell@sao9.org**, **jbrown@sao9.org**; and the Florida Supreme Court, **warrant@flcourts.org**, **canovak@flcourts.org**.

/s/ Joshua P. Chaykin
Joshua P. Chaykin
Attorney for Mr. James Hitchcock

AFFIDAVIT OF COLLATERAL COUNSEL

I, Joshua P. Chaykin, having been duly sworn or affirm, do hereby depose and say that the above statements are true and correct.

Joshua P. Chaykin
Assistant Capital Collateral Regional Counsel
Attorney for Mr. Hitchcock

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

Sworn to or affirmed and subscribed before me by means of ☒physical presence or ☐online notarization, this 1ST day of April, 2026, by Joshua P. Chaykin who is personally known to me or has shown the following identification:

COLEEN KNECHT
Commission # HH 679794
Expires September 21, 2029

NOTARY PUBLIC, STATE OF FLORIDA

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

CASE NO.: 1976-CF-1942

vs.

**DEATH WARRANT
Execution Scheduled for
April 30, 2026, at 6:00 P.M.**

JAMES E. HITCHCOCK,

Defendant.

----------/

To: **Ricky D. Dixon, Secretary**
Florida Department of Corrections
501 South Calhoun Street,
Tallahassee, FL 32399-2500
kristen.lonergan@fdc.myflorida.com
CO-GCCapLit@fdc.myflorida.com

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS FLORIDA DEPARTMENT OF CORRECTIONS ("FDOC")

Appendix A

Signed Affidavit, Dr. Buffington

DANIEL E. BUFFINGTON, PharmD, MBA
Clinical Pharmacology Services, Inc.
6285 E. Fowler Ave
Tampa, FL 33617

AFFIDAVIT

I, Daniel E. Buffington, PharmD, MBA, am the president and CEO of the American Institute of Pharmaceutical Sciences, Inc. since 2007, as well as a clinical associate professor at the University of South Florida, Colleges of Medicine and Pharmacy. Please see attached Curriculum Vitae.

I have been retained by Capital Collateral Regional Counsel – Middle Region to consult with their postconviction team in Case No. 411986CF001225A, *State of Florida v. Melvin Trotter.* I reviewed Mr. Trotter's Demand for Records from the Florida Department of Corrections, (FDOC). I have been asked to consider what information a defendant, and the public for that matter, would want to know to have confidence that an execution by lethal injection would be carried out humanely and precisely. Below are the demands for records to be requested by Mr. Trotter followed by my expert opinion as to the significance and importance of this information.

Public records from January 1, 2025 to present, should be requested are as follows:

a. Written records/checklists, logs, and/or memorandums of training activities including simulations, execution process, preparation of carrying out execution process, and effects of each lethal chemical as required in subsection (4) of FDOC's procedure, "Training of the Execution Team and Executioners;"
[**Importance and impact**: To confirm that the Corrections staff are properly qualified, trained, and repeatedly demonstrating skill and proficiency with the FDOC approved protocol and to reduce the risk of errors or deviation from the critical design and infrastructure that ensures and humane and effective outcome.]

b. Written records/checklists, logs, and/or memorandums documenting "completion of each step in the process," as required in subsection (5) of FDOC's procedure, "Use of Checklists;"

[**Importance and impact**: To confirm that the Corrections staff are properly qualified, trained, and repeatedly demonstrating skill and proficiency with the FDOC approved protocol and to reduce the risk of errors or deviation from the critical design and infrastructure that ensures and humane and effective outcome.]

c. "Signed forms attesting" the team warden's verification that all steps in the process have been performed properly prior to the administration of the "pharmaceutical agents (lethal injection chemicals)," and the that the remaining steps in the process were performed properly," as required in subsection (5) of FDOC's procedure, "Use of Checklists;"
[**Importance and impact**: To confirm that the Corrections staff are properly qualified, trained, and repeatedly demonstrating skill and proficiency with the FDOC approved protocol and to reduce the risk of errors or deviation from the critical design and infrastructure that ensures and humane and effective outcome.]

d. Written records/checklists, logs, and/or memorandums documenting and tracking whether the "pharmaceutical agents (lethal injection chemicals)" are within their "date range" for use, have reached, or surpassed their expiration dates" and documenting the maintenance and proper storage of the "pharmaceutical agents (lethal injection chemicals)" as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;"
[**Importance and impact**: To confirm that the Corrections staff has an organized, accurate, and effective tracking model to ensure that the correct substances, as approved within the FDOC, have been properly acquired and that product dating and aging are being tracked for substances that are awaiting future executions. Utilization of substances that are expired may have reduced pharmacologic effect or produce unanticipated or unnecessary complications. Such an error or deviation could result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death.]

e. Written records/checklists, logs, and/or memorandums documenting the need for refrigeration, proper temperature range for storage, and/or monitoring for compliance of temperature and handling of the lethal chemicals.

[**Importance and impact**: To confirm that the Corrections staff has an organized, accurate, and effective tracking model to ensure that the correct substances, as approved within the FDOC, have been properly acquired and that product storage condition have been identified, thresholds for storage conditions, and monitoring for variances or deviations for substances that are awaiting future executions. Utilization of substances that have not been stored properly may produce reduced pharmacologic effect or produce unanticipated or unnecessary complications. Such an error or deviation could result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death.]

f. Internal policies and procedures for handling and maintenance of the "pharmaceutical agents (lethal injection chemicals)" should there be power loss or other circumstances (such as water, temperature, humidity, etc.) which may compromise the pharmaceutical agents (lethal injection chemicals);
[**Importance and impact**: To confirm that the Corrections staff has an organized, accurate, and effective tracking model to ensure the adherence to industry recommended guidelines for the proper storage conditions for the substances, as approved within the FDOC, have that established protocols to ensure proper climate and cold chain conditions (respectively) during power outages or adverse conditions, have been implemented and tracked by all prior vendors and post product acquisition for substances that are awaiting future executions. Such an error or deviation could result in the use of an adulterated of chemically altered substance and produce reduced pharmacologic effects or unexpected complications including the early or acute termination of the execution procedure.]

g. Polices/procedures, written logs, and/or memorandums documenting the disposal of expired and otherwise compromised "pharmaceutical agents (lethal injection chemicals);"
[**Importance and impact:** To confirm that Corrections staff have appropriates tracking methods, record keeping systems, and procedural protocols to ensure that expired or otherwise compromised substances are accurately identified, rapidly separated from the inventory, and precluded from use in a future execution. Failure to properly monitor and remove expired

substances could result in the use of substances with reduced pharmacologic effect or produce unnecessary complications for the inmate or the abrupt and early termination of an execution procedure.]

h. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the first FDLE agent charged with monitoring and responsible for observing the preparation of the "pharmaceutical agents (lethal injection chemicals)" and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals" as required in subsection (7)(b) of FDOC's procedure, "FDLE Monitors;"

[**Importance and impact**: To confirm that the designated Corrections staff is trained, oriented, present, attentive, accurately monitoring the preparation of the substances and recording the events within the executioner's room at proper intervals so that an accurate record is preserved of the events and that in the event of errors, deviations, or complications occur that they can be properly reviewed and analyzed in a timely manner to determine a "root cause analysis" following an adverse event.]

i. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the second FDLE agent charged with keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals" as required in subsection (7)(c) of FDOC's procedure, "FDLE Monitors;"

[**Importance and impact**: To confirm that the designated Corrections staff is trained, oriented, present, attentive, accurately monitoring the preparation of the substances and recording the events within the executioner's room at proper intervals so that an accurate record is preserved of the events and that in the event of errors, deviations, or complications occur that they can be properly reviewed and analyzed in a timely manner to determine a "root cause analysis" following an adverse event.]

j. Memorandums, records, checklists, and/or logs from execution team member and independent observer from FDLE documenting their observations and compliance with the preparation of each

"pharmaceutical agent (lethal injection chemical)" used in the lethal injection process as found in subsection (9)(f) of FDOC's procedure, "On the Day of Execution;"

[**Importance and impact**: To confirm that the designated Corrections staff is trained, oriented, present, attentive, accurately monitoring the preparation of the substances and recording the events within the executioner's room at proper intervals so that an accurate record is preserved of the events and that in the event of errors, deviations, or complications occur that they can be properly reviewed and analyzed in a timely manner to determine a "root cause analysis" following an adverse event.]

k. Procedures, directives, documentation, and memorandum of the execution team members utilization of "aseptic technique" and the placement of the "IV extension set that will be used to infuse the pharmaceutical agents (lethal injection chemicals) into the primary injection line." (See subsection (9)(h) of FDOC's procedure, "On the Day of Execution");

[**Importance and impact**: To confirm that the Corrections staff properly understand and have received effective training and demonstrated ongoing proficiency regarding the proper identification, preparation, placement, and securing of IV injection and administration sites, including the ability to setup and maintain IV tubing and related apparatus in to primary and alternative ("redundant sites") in order to reduce substantial risk of ineffective or loss of IV access prior to or during a lethal injection procedure. Loss of IV access can result in acute complication, pain, or reason to abort an execution process.]

l. Procedures, directives, documentation, and memorandum for venous access, both through a central line or if necessary, without or without a venous cut-down." (See subsection (10)(h) and (i) of FDOC's procedure, "Approximately Thirty (30) Minutes Prior to Execution"); and

[**Importance and impact**: To confirm that the Corrections staff have been properly trained, oriented, and develop proficiency in the different venous access locations, supplies, techniques, and management of potential site-specific complications to ensure the successful administration of substances and to avoid or divert from known potential complications or difficulties. Ineffective IV site

selection, maintenance, or loss of IV access is a known potential risk factor for unnecessary complications or reason to abort an execution process.]

m. Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and monitor the inmate's depth and sustained level of consciousness ("consciousness checks") including the training, level of competency, and proficiency.

[**Importance and impact**: To confirm that the Corrections staff have been trained, oriented, and developed proficiency with industry standard and clinically effective methods or medical instruments utilized to determine an individual's depth or level of unconsciousness. This is imperative as it is the method to determine if the individual has successfully reached a depth or level of unconsciousness to reduce their awareness or sensations sufficient to progress to the administration of the following lethal injection drug.]

n. Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and affirm the inmate's death including the training, level of competency, and proficiency.

[**Importance and impact**: To confirm if the Corrections staff has been properly trained, oriented and developed proficiency and provided industry standard medical devices and telemetry equipment to affirm an inmate's death. This is imperative as it is essential to continue with the sequence and administration of approved substances and in the ascribed manner and pattern until the inmate's death is demonstrated as a formal endpoint. Anything less would risk an incomplete procedure and risk of the medication wearing off prior to the inmate's death.]

o. Documentation, checklists, and memorandum of the team warden's "debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution, as required by as required in subsection (13)(f) of FDOC's procedure, "Immediate Post-Execution Procedures;"

[**Importance and impact**: To confirm that the Corrections staff was properly trained and prepared to perform their roles, document the sequence of steps, and record the procedure in a manner that could identify errors, protocol deviations, or complications that occurred to aid in avoiding future negative outcomes and spare a inmate the risk for future unnecessary pain or discomfort.]

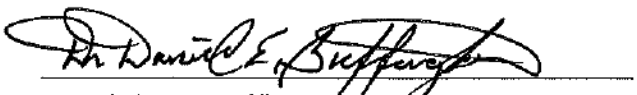
p. Protocols, procedures, directives, and checklists regarding:
   i. Mixing of the "pharmaceutical agents (lethal injection chemicals)" and their respective sterile IV solutions ("diluent fluids");
   ii. Proper flushing the syringe if same syringe is used;
   iii. When and how syringes are organized, staged, and labeled;
   iv. Insertion of needle venous access and how the site is secured.

[**Importance and impact**: To confirm that the Corrections staff have developed effective internal procedures to ensure that the proper protocols, procedures, directives, and checklists have been implemented to ensure that staff roles and skills have been allocated to guarantee the proper mixing of substances and respective IV fluids, accurate manipulation and handling of the medication administration supplies and that the preparation and administration of the substances via primary and alternate venous access routes is optimized. This is critical to avoid the highest risk for complications with lethal injection protocols, which is ineffective or lost IV access during the execution procedure.

It would not be necessary to know the identity of any individual involved with carrying out the lethal injection protocols or any company involved with this process.

Sincerely,
Daniel E. Buffington, PharmD, MBA

I, Daniel E. Buffington, having been duly sworn or affirm, do hereby depose and say that the above statements are true and correct.



Daniel E. Buffington, PharmD, MBA

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 27th day of January 2026, by Daniel E. Buffington who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA



**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

CASE NO.: 1976-CF-1942

vs.

**DEATH WARRANT
Execution Scheduled for
April 30, 2026, at 6:00 P.M.**

JAMES E. HITCHCOCK,

Defendant.

----------/

To: **Ricky D. Dixon, Secretary**
Florida Department of Corrections
501 South Calhoun Street,
Tallahassee, FL 32399-2500
kristen.lonergan@fdc.myflorida.com
CO-GCCapLit@fdc.myflorida.com

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS FLORIDA DEPARTMENT OF CORRECTIONS ("FDOC")

Appendix B

Execution by Lethal Injection Procedures, dated Feb. 18, 2025

FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary

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TALLAHASSEE, FLORIDA 32399-2500
FDC.MYFLORIDA.COM

EXECUTION BY LETHAL INJECTION PROCEDURES

PURPOSE: To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

APPLICATION: This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

DEFINITIONS:

(1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.

(2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.

(3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.

(4) **Minister of religion**, where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor's Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a

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review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

(5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

SPECIFIC PROCEDURES:

(1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.

(2) **Selection of the Executioners:**

(a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.

(b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.

(3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved

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staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

(a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.

(f) The team warden shall select other execution team members to carry out the following tasks:

1. Showering and preparation of the inmate.
2. Ensuring that the equipment necessary for an execution is in proper working order.
3. Escorting the inmate from his/her cell to the execution chamber.
4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.

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5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minster of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

(4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

(a) Issues related to problems with equipment needed to carry out an execution.

(b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.

(c) The inmate is not rendered unconscious after the administration of the etomidate injection.

(d) Combative inmate.

(e) Incapacity of any execution team member or executioner.

(f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.

(g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.

(h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.

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(5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) **FDLE Monitors:**

(a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.

(b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.

(c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) **Approximately One (1) Week Prior to Execution:**

(a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.

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(b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) **On the Day of Execution:**

(a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars ($40) or less, is available at the institution, and is approved by the food service director.

(b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

(c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.

(d) A designated execution team member will ensure that the PA system is fully functional.

(e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.

(f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:

(1) Etomidate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

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(2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who

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prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

(h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

(i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.

(j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.

(k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) **Approximately Thirty (30) Minutes Prior to Execution:**

(a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.

(b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.

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(c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.

(d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.

(e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

(f) Designated members of the execution team will secure the restraining straps.

(g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.

(h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.

(i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.

(j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) **Approximately Fifteen (15) Minutes Prior to Execution:**

(a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.

(b) Authorized media witnesses will be secured in the witness room of the execution chamber.

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(c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.

(d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.

(e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.

(f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

(a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.

(b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.

(c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:

(1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

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(2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).

(5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.

(6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension

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set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.

(d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.

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(e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.

(f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.

(g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.

(h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

(i) The designated team member will close the window covering to the witness gallery.

(j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

(a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.

(b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.

(c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.

(d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.

(e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.

(f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

(a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.

(b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.

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(c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

(15) **Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Ricky D Dixon

RICKY D. DIXON
SECRETARY

2/18/2025

DATE

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No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX C

Demand for Additional Records FDLE (April 1, 2026)

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT
Execution Scheduled for
April 30, 2026, 6:00 P.M.**

JAMES E. HITCHCOCK,

Defendant.

----------/

To: **Mark Glass, Commissioner**
Florida Department of Law Enforcement
Attn: Office of the General Counsel
P.O. Box 1489
Tallahassee, FL 32302
erinambrose@fdle.state.fl.us
kateholmes@flde.state.fl.us

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS FLORIDA DEPARTMENT OF LAW ENFORCEMENT ("FDLE")

COMES NOW, the Defendant, James Hitchcock ("Mr. Hitchcock"), by and through undersigned counsel, makes this request from **MARK GLASS, COMMISSIONER, FLORIDA DEPARTMENT OF LAW ENFORCEMENT ("FDLE")**, under Florida Rule of Criminal Procedure 3.852 (i) and (h), for additional public records pertinent to this case.

1. Mr. Hitchcock is under a sentence of death and subject to execution by lethal injection under Florida Statute § 922.105. Florida's governor signed Mr. Hitchcock's death warrant on March 30, 2026, and scheduled Mr. Hitchcock's execution for April 30, 2026, at 6:00 P.M.

2. Undersigned counsel attests that the requested records detailed below are reasonably calculated to lead to the discovery of admissible evidence in that such records demonstrate that the Florida Department of Corrections ("FDOC") has repeatedly failed to carry out executions in compliance with the lethal injection protocol prescribed by Chapter 922 of the Florida Statutes, and FDOC's non-compliance subjects Mr. Hitchcock to unnecessary suffering and cruelty in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution.

3. Undersigned counsel attests that:

    a. counsel has made a timely and diligent search of the records repository;

    b. counsel has identified with specificity the public records that are not at the records repository; and,

    c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

4. According to the Florida Supreme Court ("FSC"), capital post-conviction defendant "bears the burden of demonstrating that the records sought [pursuant to Fla. R. Crim. P. 3.852] relate to a colorable claim for postconviction relief." *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (citing *Chavez v. State*, 132 So. 3d 826, 829 (Fla. 2014) and *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013)). This Court may order the production of records if "the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and ... the additional records request is not overly broad or unduly

burdensome." Fla. R. Crim. P. 3.852(i). The records that undersigned counsel are requesting relate to colorable claims for postconviction relief as discussed below. The records requested are neither overly broad nor unduly burdensome.

5. The requested records are reasonably calculated to lead to the discovery of admissible evidence which would support Mr. Hitchcock's claim that the FDOC has repeatedly deviated from its lethal injection protocol, and that such deviation creates an increased risk of unreasonable suffering and cruelty in violation of the Eight Amendment of the United States Constitution and the corresponding Florida Constitution provisions. This is a cognizable claim. Furthermore, a successive Rule 3.851 motion based on discoverable issues would be timely and relevant to issues related to the availability of the drugs specifically approved for use in the execution process, as well as the legitimacy of the specific lethal injection procedures employed by FDOC at the time of execution. (See, Appendix A, Signed Affidavit, Dr. Buffington, PharmD, MBA, Jan. 27, 2026).
6. For the limited purposes of this Demand, Mr. Hitchcock is *not* asserting that the lethal injection protocol *itself* is unconstitutional, **but rather that the failure to comply with the specified protocol** violates his Eighth Amendment guarantee to be free from cruel and unusual punishment. **In other words, Mr. Hitchcock demands that the Florida Department of Corrections follow the self-imposed protocols put in place to prevent such unconstitutional suffering and cruelty.** (See Appendix B, "Execution by Lethal Injection Procedures," dated Feb. 18, 2025).
7. FSC precedent does not preclude this Court from finding Mr. Hitchcock has met his burden for demonstrating the records sought below pertain to a colorable

claim for relief. Although the FSC has upheld the constitutionality of Florida's protocol. *Asay v. State*, 224 So. 3d 695 (Fla. 2017). However, the Florida Supreme Court's precedent relates to an *entirely different issue than is presented here*. **Mr. Hitchcock is not arguing that the protocol *itself* is unconstitutional.** Mr. Hitchcock seeks records which support the colorable claim that FDOC's **failure to follow its own policies and procedures** violates his Eighth Amendment rights. Specifically, this Demand concerns the FDOC's failure to follow its own protocols as opposed to focusing on the separate issue of whether those protocols are constitutional.

8. The following violations of the lethal injection protocol can **plainly** be seen from the records obtained in *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025):

    a. FDOC administered the pharmaceutical, lidocaine - a drug not specifically included in the official lethal injection protocol - in the executions of at least two men executed in 2025. During the executions of Edward James and Michael Tanzi, FDOC administered injectable lidocaine, an anesthetic drug not called for in the lethal injection protocol. *Id.* at ¶ 83.

    b. FDOC administered expired drugs during the execution of at least four men executed in 2025. FDOC administered etomidate - with an expiration date of January 31, 2025 - during the executions of Victor Jones on September 30, 2025, David Pittman on September 17, 2025; Curtis Windom on August 28, 2025; and Kayle Bates on August 19, 2025. *Id.* at ¶ 84.

    c. FDOC recorded the removal (from supply) of three drugs used during executions, on an *ad hoc* basis, in violation of the specified lethal injection

protocol. Thomas Gudinas was executed on June 24, 2025. FDOC recorded the removal (from supply) of all three drugs used on June 25, 2025; despite the execution taking place on June 24, 2025. *Id.* at ¶ 79. Anthony Wainwright was executed on June 10, 2025. FDOC waited until June 12, 2025, to record the removal (from supply) of the three drugs allegedly used in the June 10, 2025, execution of Anthony Wainwright. *Id.* at ¶ 79.

d. FDOC has given incorrect dosages to at least two of the men executed in 2025 in violation of the lethal injection protocol. On June 25, 2025, a date corresponding to Thomas Gudinas's execution (which actually occurred on June 24, 2025), the inventory logs only show 10 x 10ml vials of rocuronium bromide were removed (1000mg), suggesting that FDOC only prepared half of the required amount of the paralytic drug, in violation of the written protocol which requires 2000mg, administered through 20 x 10ml vials. *Id.* ¶ 81. On June 12, 2025, a date corresponding to Anthony Wainwright's execution (which occurred on June 10, 2025), seven vials of potassium acetate were removed from FDOC's inventory, suggesting that FDOC prepared only 280 milliequivalents of potassium acetate in violation of the protocol, which requires 480 milliequivalents (12 x 20ml vials). *Id.* at ¶ 82.

e. FDOC has failed to contemporaneously document and accurately log or record the drugs used during the execution in violation of the lethal injection protocol. FDOC did not record removing rocuronium bromide or potassium acetate until =July 16, 2025, the day following the late Michael Bell's execution on July 15, 2025, and the logs contain no entry for the

removal of etomidate during that execution, leaving the source and quantity of the drug used in Bell's execution unknown. *Id*. at. ¶ 79.

9. The requested records below are necessary to determine whether FDOC's failure to comply with their protocol and procedures would be "very likely to cause serious illness and needless suffering," and whether there is a "substantial risk of serious harm." *Glossip v. Gross*, 576 U.S. 863, 877 (2015).

10. Mr. Hitchcock is entitled to information about the reliability and effectiveness of the drugs and procedures being used to execute him. Denying him the opportunity to access records that directly relate to how the state of Florida intends to carry out his execution on April 30, 2026, violates his right to due process and access to the courts under the First, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

11. An affidavit pursuant to Fla. R. Crim. P. 3.852(i) is attached to and hereby incorporated into this Demand. Mr. Hitchcock demands that the records requested be copied, indexed, and delivered to the records repository by FDLE, pursuant to the trial court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

12. **The public records from January 1, 2025, to present, are requested are as follows**:

    a. Copies of the "logs provided to the team warden and available at the post execution debriefings," documenting the first FDLE agent charged with monitoring and who is responsible for observing the preparation of the "pharmaceutical agents (lethal injection chemicals)," and documenting and keeping a detailed log as to what occurs in the executioner's room at a

minimum of two (2) minute intervals" as required in subsection (7)(b) of FDOC's procedure, "FDLE Monitors;"

b. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the second FDLE agent charged with keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals" as required in subsection (7)(c) of FDOC's procedure, "FDLE Monitors."

13. Should this Court find that the records requested in this demand are exempt from disclosure, Mr. Hitchcock requests this Court exercise its discretion in ordering disclosure via a confidential protective order including the Defense and any confidential experts hired by the Defense.

14. As recognized by Justice Sotomayor, this Court:

> appears to be placing prisoners in a Catch-22: It has affirmed the denial of requests for records on these issues, at least in part, because the prisoners do not yet have enough information to raise a "colorable" Eighth Amendment claim. Ibid. The very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable Eighth Amendment claim.

Trotter v. State of Florida, et. al, 607 U.S. ___ (2026) (statement respecting the denial of the application for stay and petition for certiorari).

15. Justice Sotomayor also wrote:

> Individuals seeking to challenge the method of their execution should not have to guess at whether the State is, or is not, following its execution protocol. Nor does the State appear to have any legitimate confidentiality interest in shielding from inspection basic facts about the implementation of its execution protocol, such as whether the State is using expired drugs. If the protocol is in fact being followed, then transparency instills

> confidence in the protocol for everyone—prisoners, the courts, and the public alike. If it is not, then secrecy is intolerable, and disclosure of the relevant records is indispensable for determining whether the lapses at issue are likely to lead to an Eighth Amendment violation.

Trotter v. State of Florida, et. al, 607 U.S. ___ (2026).

WHEREFORE, Mr. James Hitchcock, by and through undersigned counsel, respectfully requests this Court enter an order directing the Florida Department of Law Enforcement to produce the records described above.

Respectfully Submitted,

/s/ Joshua P. Chaykin
Joshua P. Chaykin
Florida Bar No. 1019578
Assistant CCRC-M
chaykin@ccmr.state.fl.us

/s/ Cortney L. Hackett
Cortney L. Hackett
Florida Bar No. 1018035
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Christopher Clemente
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clemente@ccmr.state.fl.us

Law Office of the Capital Collateral Regional Counsel – Middle Region
12973 N. Telecom Parkway
Temple Terrace, FL 33637
813-558-1600
support@ccmr.state.fl.us

Attorneys for Mr. James Hitchcock

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court using the Florida Courts e-portal filing system, which will send a notice of electronic filing to the following: The Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **99orange@ninthcircuit.org**; the Honorable Keith Carsten, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **19orange@ninthcircuit.org**; Timothy A Freeland, Special Counsel, Assistant Attorney General, and Jennifer A. Davis, Senior Assistant Attorney General, **timothy.freeland@myfloridalegal.com**, **jennifer.davis@myfloridalegal.com**, **paula.montlary@myfloridalegal.com**, **elizabeth.bueter@myfloridalegal.com**, **lourdes.parodi@myfloridalegal.com**, **capapp@myfloridalegal.com**, **marilyn.muir@myfloridalegal.com**, **scott.browne@myfloridalegal.com**, **stephen.ake@myfloridalegal.com**; Erin Ambrose & Kate Holmes, Florida Department of Law Enforcement, Office of the General Counsel, **erinambrose@fdle.state.fl.us**, **kateholmes@flde.state.fl.us**; Monique H. Worrell, State Attorney, and Jacqueline Brown, Assistant State Attorney, Orange County State Attorney's Office, 415 North Orange Avenue, Orlando, FL 32802, **mhworrell@sao9.org**, **jbrown@sao9.org**; and the Florida Supreme Court, **warrant@flcourts.org**, **canovak@flcourts.org**.

/s/ Joshua P. Chaykin
Joshua P. Chaykin

Counsel for Mr. James Hitchcock

AFFIDAVIT OF COLLATERAL COUNSEL

I, Joshua P. Chaykin, having been duly sworn or affirm, do hereby depose and say that the above statements are true and correct.

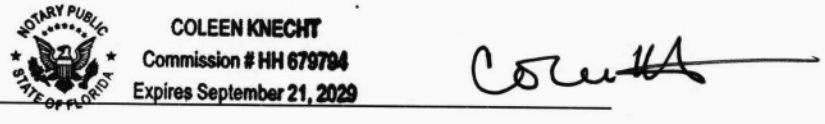


Joshua P. Chaykin
Assistant Capital Collateral Regional Counsel
Attorney for Mr. Hitchcock

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

Sworn to or affirmed and subscribed before me by means of ☒physical presence or ☐online notarization, this 1st day of April, 2026, by Joshua P. Chaykin who is personally known to me or has shown the following identification:



NOTARY PUBLIC, STATE OF FLORIDA

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT
Execution Scheduled for
April 30, 2026, 6:00 P.M.**

JAMES E. HITCHCOCK,

Defendant.

----------/

To: **Mark Glass, Commissioner**
Florida Department of Law Enforcement
Attn: Office of the General Counsel
P.O. Box 1489
Tallahassee, FL 32302
erinambrose@fdle.state.fl.us
kateholmes@flde.state.fl.us

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS FLORIDA DEPARTMENT OF LAW ENFORCEMENT ("FDLE")

Appendix A

Signed Affidavit, Dr. Buffington

DANIEL E. BUFFINGTON, PharmD, MBA
Clinical Pharmacology Services, Inc.
6285 E. Fowler Ave
Tampa, FL 33617

AFFIDAVIT

I, Daniel E. Buffington, PharmD, MBA, am the president and CEO of the American Institute of Pharmaceutical Sciences, Inc. since 2007, as well as a clinical associate professor at the University of South Florida, Colleges of Medicine and Pharmacy. Please see attached Curriculum Vitae.

I have been retained by Capital Collateral Regional Counsel – Middle Region to consult with their postconviction team in Case No. 411986CF001225A, *State of Florida v. Melvin Trotter.* I reviewed Mr. Trotter's Demand for Records from the Florida Department of Corrections, (FDOC). I have been asked to consider what information a defendant, and the public for that matter, would want to know to have confidence that an execution by lethal injection would be carried out humanely and precisely. Below are the demands for records to be requested by Mr. Trotter followed by my expert opinion as to the significance and importance of this information.

Public records from January 1, 2025 to present, should be requested are as follows:

a. Written records/checklists, logs, and/or memorandums of training activities including simulations, execution process, preparation of carrying out execution process, and effects of each lethal chemical as required in subsection (4) of FDOC's procedure, "Training of the Execution Team and Executioners;"
[**Importance and impact**: To confirm that the Corrections staff are properly qualified, trained, and repeatedly demonstrating skill and proficiency with the FDOC approved protocol and to reduce the risk of errors or deviation from the critical design and infrastructure that ensures and humane and effective outcome.]

b. Written records/checklists, logs, and/or memorandums documenting "completion of each step in the process," as required in subsection (5) of FDOC's procedure, "Use of Checklists;"

[**Importance and impact**: To confirm that the Corrections staff are properly qualified, trained, and repeatedly demonstrating skill and proficiency with the FDOC approved protocol and to reduce the risk of errors or deviation from the critical design and infrastructure that ensures and humane and effective outcome.]

c. "Signed forms attesting" the team warden's verification that all steps in the process have been performed properly prior to the administration of the "pharmaceutical agents (lethal injection chemicals)," and the that the remaining steps in the process were performed properly," as required in subsection (5) of FDOC's procedure, "Use of Checklists;"
[**Importance and impact**: To confirm that the Corrections staff are properly qualified, trained, and repeatedly demonstrating skill and proficiency with the FDOC approved protocol and to reduce the risk of errors or deviation from the critical design and infrastructure that ensures and humane and effective outcome.]

d. Written records/checklists, logs, and/or memorandums documenting and tracking whether the "pharmaceutical agents (lethal injection chemicals)" are within their "date range" for use, have reached, or surpassed their expiration dates" and documenting the maintenance and proper storage of the "pharmaceutical agents (lethal injection chemicals)" as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;"
[**Importance and impact**: To confirm that the Corrections staff has an organized, accurate, and effective tracking model to ensure that the correct substances, as approved within the FDOC, have been properly acquired and that product dating and aging are being tracked for substances that are awaiting future executions. Utilization of substances that are expired may have reduced pharmacologic effect or produce unanticipated or unnecessary complications. Such an error or deviation could result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death.]

e. Written records/checklists, logs, and/or memorandums documenting the need for refrigeration, proper temperature range for storage, and/or monitoring for compliance of temperature and handling of the lethal chemicals.

[**Importance and impact**: To confirm that the Corrections staff has an organized, accurate, and effective tracking model to ensure that the correct substances, as approved within the FDOC, have been properly acquired and that product storage condition have been identified, thresholds for storage conditions, and monitoring for variances or deviations for substances that are awaiting future executions. Utilization of substances that have not been stored properly may produce reduced pharmacologic effect or produce unanticipated or unnecessary complications. Such an error or deviation could result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death.]

f. Internal policies and procedures for handling and maintenance of the "pharmaceutical agents (lethal injection chemicals)" should there be power loss or other circumstances (such as water, temperature, humidity, etc.) which may compromise the pharmaceutical agents (lethal injection chemicals);
[**Importance and impact**: To confirm that the Corrections staff has an organized, accurate, and effective tracking model to ensure the adherence to industry recommended guidelines for the proper storage conditions for the substances, as approved within the FDOC, have that established protocols to ensure proper climate and cold chain conditions (respectively) during power outages or adverse conditions, have been implemented and tracked by all prior vendors and post product acquisition for substances that are awaiting future executions. Such an error or deviation could result in the use of an adulterated of chemically altered substance and produce reduced pharmacologic effects or unexpected complications including the early or acute termination of the execution procedure.]

g. Polices/procedures, written logs, and/or memorandums documenting the disposal of expired and otherwise compromised "pharmaceutical agents (lethal injection chemicals);"
[**Importance and impact:** To confirm that Corrections staff have appropriates tracking methods, record keeping systems, and procedural protocols to ensure that expired or otherwise compromised substances are accurately identified, rapidly separated from the inventory, and precluded from use in a future execution. Failure to properly monitor and remove expired

substances could result in the use of substances with reduced pharmacologic effect or produce unnecessary complications for the inmate or the abrupt and early termination of an execution procedure.]

h. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the first FDLE agent charged with monitoring and responsible for observing the preparation of the "pharmaceutical agents (lethal injection chemicals)" and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals" as required in subsection (7)(b) of FDOC's procedure, "FDLE Monitors;"

[**Importance and impact**: To confirm that the designated Corrections staff is trained, oriented, present, attentive, accurately monitoring the preparation of the substances and recording the events within the executioner's room at proper intervals so that an accurate record is preserved of the events and that in the event of errors, deviations, or complications occur that they can be properly reviewed and analyzed in a timely manner to determine a "root cause analysis" following an adverse event.]

i. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the second FDLE agent charged with keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals" as required in subsection (7)(c) of FDOC's procedure, "FDLE Monitors;"

[**Importance and impact**: To confirm that the designated Corrections staff is trained, oriented, present, attentive, accurately monitoring the preparation of the substances and recording the events within the executioner's room at proper intervals so that an accurate record is preserved of the events and that in the event of errors, deviations, or complications occur that they can be properly reviewed and analyzed in a timely manner to determine a "root cause analysis" following an adverse event.]

j. Memorandums, records, checklists, and/or logs from execution team member and independent observer from FDLE documenting their observations and compliance with the preparation of each

"pharmaceutical agent (lethal injection chemical)" used in the lethal injection process as found in subsection (9)(f) of FDOC's procedure, "On the Day of Execution;"

[**Importance and impact**: To confirm that the designated Corrections staff is trained, oriented, present, attentive, accurately monitoring the preparation of the substances and recording the events within the executioner's room at proper intervals so that an accurate record is preserved of the events and that in the event of errors, deviations, or complications occur that they can be properly reviewed and analyzed in a timely manner to determine a "root cause analysis" following an adverse event.]

k. Procedures, directives, documentation, and memorandum of the execution team members utilization of "aseptic technique" and the placement of the "IV extension set that will be used to infuse the pharmaceutical agents (lethal injection chemicals) into the primary injection line." (See subsection (9)(h) of FDOC's procedure, "On the Day of Execution");

[**Importance and impact**: To confirm that the Corrections staff properly understand and have received effective training and demonstrated ongoing proficiency regarding the proper identification, preparation, placement, and securing of IV injection and administration sites, including the ability to setup and maintain IV tubing and related apparatus in to primary and alternative ("redundant sites") in order to reduce substantial risk of ineffective or loss of IV access prior to or during a lethal injection procedure. Loss of IV access can result in acute complication, pain, or reason to abort an execution process.]

l. Procedures, directives, documentation, and memorandum for venous access, both through a central line or if necessary, without or without a venous cut-down." (See subsection (10)(h) and (i) of FDOC's procedure, "Approximately Thirty (30) Minutes Prior to Execution"); and

[**Importance and impact**: To confirm that the Corrections staff have been properly trained, oriented, and develop proficiency in the different venous access locations, supplies, techniques, and management of potential site-specific complications to ensure the successful administration of substances and to avoid or divert from known potential complications or difficulties. Ineffective IV site

selection, maintenance, or loss of IV access is a known potential risk factor for unnecessary complications or reason to abort an execution process.]

m. Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and monitor the inmate's depth and sustained level of consciousness ("consciousness checks") including the training, level of competency, and proficiency.

[**Importance and impact**: To confirm that the Corrections staff have been trained, oriented, and developed proficiency with industry standard and clinically effective methods or medical instruments utilized to determine an individual's depth or level of unconsciousness. This is imperative as it is the method to determine if the individual has successfully reached a depth or level of unconsciousness to reduce their awareness or sensations sufficient to progress to the administration of the following lethal injection drug.]

n. Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and affirm the inmate's death including the training, level of competency, and proficiency.

[**Importance and impact**: To confirm if the Corrections staff has been properly trained, oriented and developed proficiency and provided industry standard medical devices and telemetry equipment to affirm an inmate's death. This is imperative as it is essential to continue with the sequence and administration of approved substances and in the ascribed manner and pattern until the inmate's death is demonstrated as a formal endpoint. Anything less would risk an incomplete procedure and risk of the medication wearing off prior to the inmate's death.]

o. Documentation, checklists, and memorandum of the team warden's "debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution, as required by as required in subsection (13)(f) of FDOC's procedure, "Immediate Post-Execution Procedures;"

[**Importance and impact**: To confirm that the Corrections staff was properly trained and prepared to perform their roles, document the sequence of steps, and record the procedure in a manner that could identify errors, protocol deviations, or complications that occurred to aid in avoiding future negative outcomes and spare a inmate the risk for future unnecessary pain or discomfort.]

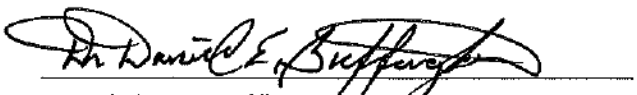
p. Protocols, procedures, directives, and checklists regarding:
    i. Mixing of the "pharmaceutical agents (lethal injection chemicals)" and their respective sterile IV solutions ("diluent fluids");
    ii. Proper flushing the syringe if same syringe is used;
    iii. When and how syringes are organized, staged, and labeled;
    iv. Insertion of needle venous access and how the site is secured.

[**Importance and impact**: To confirm that the Corrections staff have developed effective internal procedures to ensure that the proper protocols, procedures, directives, and checklists have been implemented to ensure that staff roles and skills have been allocated to guarantee the proper mixing of substances and respective IV fluids, accurate manipulation and handling of the medication administration supplies and that the preparation and administration of the substances via primary and alternate venous access routes is optimized. This is critical to avoid the highest risk for complications with lethal injection protocols, which is ineffective or lost IV access during the execution procedure.

It would not be necessary to know the identity of any individual involved with carrying out the lethal injection protocols or any company involved with this process.

Sincerely,
Daniel E. Buffington, PharmD, MBA

I, Daniel E. Buffington, having been duly sworn or affirm, do hereby depose and say that the above statements are true and correct.



Daniel E. Buffington, PharmD, MBA

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 27th day of January 2026, by Daniel E. Buffington who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA



**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT
Execution Scheduled for
April 30, 2026, 6:00 P.M.**

JAMES E. HITCHCOCK,

Defendant.

----------/

To: **Mark Glass, Commissioner**
Florida Department of Law Enforcement
Attn: Office of the General Counsel
P.O. Box 1489
Tallahassee, FL 32302
erinambrose@fdle.state.fl.us
kateholmes@flde.state.fl.us

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS FLORIDA DEPARTMENT OF LAW ENFORCEMENT ("FDLE")

Appendix B

Execution by Lethal Injection Procedures, dated Feb. 18, 2025

FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary

501 SOUTH CALHOUN STREET
TALLAHASSEE, FLORIDA 32399-2500
FDC.MYFLORIDA.COM

EXECUTION BY LETHAL INJECTION PROCEDURES

PURPOSE: To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

APPLICATION: This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

DEFINITIONS:

(1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.

(2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.

(3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.

(4) **Minister of religion**, where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor's Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a

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review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

(5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

SPECIFIC PROCEDURES:

(1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.

(2) **Selection of the Executioners:**

(a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.

(b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.

(3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved

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staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

(a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.

(f) The team warden shall select other execution team members to carry out the following tasks:

1. Showering and preparation of the inmate.
2. Ensuring that the equipment necessary for an execution is in proper working order.
3. Escorting the inmate from his/her cell to the execution chamber.
4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.

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5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minster of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

(4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

(a) Issues related to problems with equipment needed to carry out an execution.

(b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.

(c) The inmate is not rendered unconscious after the administration of the etomidate injection.

(d) Combative inmate.

(e) Incapacity of any execution team member or executioner.

(f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.

(g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.

(h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.

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(5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) **FDLE Monitors:**

(a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.

(b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.

(c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) **Approximately One (1) Week Prior to Execution:**

(a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.

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(b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) **On the Day of Execution:**

(a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars ($40) or less, is available at the institution, and is approved by the food service director.

(b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

(c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.

(d) A designated execution team member will ensure that the PA system is fully functional.

(e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.

(f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:

(1) Etomidate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

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(2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who

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prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

(h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

(i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.

(j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.

(k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) **Approximately Thirty (30) Minutes Prior to Execution:**

(a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.

(b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.

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(c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.

(d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.

(e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

(f) Designated members of the execution team will secure the restraining straps.

(g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.

(h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.

(i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.

(j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) **Approximately Fifteen (15) Minutes Prior to Execution:**

(a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.

(b) Authorized media witnesses will be secured in the witness room of the execution chamber.

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(c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.

(d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.

(e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.

(f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

(a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.

(b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.

(c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:

(1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

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(2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).

(5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.

(6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension

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set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.

(d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.

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(e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.

(f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.

(g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.

(h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

(i) The designated team member will close the window covering to the witness gallery.

(j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

(a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.

(b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.

(c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.

(d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.

(e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.

(f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

(a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.

(b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.

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(c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

(15) **Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Richard D. Dixon

RICKY D. DIXON
SECRETARY

2/18/2025

DATE

501 SOUTH CALHOUN STREET
TALLAHASSEE, FLORIDA 32399-2500
FDC.MYFLORIDA.COM

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX D

Motion for In-Camera Inspection (April 1, 2026)

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT**
Execution Scheduled: April 30, 2026, at 6:00 P.M.

JAMES E. HITCHCOCK,

Defendant.

----------/

DEFENDANT'S MOTION FOR IN-CAMERA INSPECTION

COMES NOW, James E. Hitchcock ("Mr. Hitchcock"), by and through undersigned counsel requests that this Court, under Florida Rule of Criminal Procedure 3.852(j)(2), conduct an in-camera inspection of the records requested in the Defendant's demands for additional public records from the Florida Department of Law Enforcement ("FDLE") and the Florida Department of Corrections ("FDOC") that were filed on April 1, 2026.

1. On April 1, 2026, the Defendant filed demands for additional public records from FDLE and FDOC.
2. It is anticipated that both agencies will file objections to the disclosure of the requested records On April 2, 2026.
3. This Court is set to hold a hearing regarding these demands and objections on April 2, 2026.
4. The Defendant urges this Court to conduct an *in-camera* inspection of the requested records, to assist the Court in evaluating the validity of the agencies' objections, prior to ruling on the Defendant's demands for additional public records from FDLE and FDOC.
5. Pursuant to Florida Rule of Criminal Procedure 3.852(j):

> In proceedings under this rule the trial court may:
> (1) **compel or deny disclosure of records**;
> (2) **conduct an in-camera inspection**;
> (3) extend the times in this rule upon a showing of good cause;
> (4) require representatives from government agencies to appear at status conferences to address public records issues;
> (5) impose sanctions upon any party, person, or agency affected by this rule including initiating contempt proceedings, taxing expenses, extending time, ordering facts to be established,
> and granting other relief; and
> (6) resolve any dispute arising under this rule unless jurisdiction is in an appellate court.

(Emphasis added).

ARGUMENT

This Court should conduct *in-camera* review of the requested records rather than taking the assertions of FDLE and FDOC at face value. *See*, *Everglades Law Center v. South Florida Water Management District*, 290 So. 3d 123, 133-4 (Fla. 4th DCA 2019) (*holding*, "the trial court erred in denying the petition for writ of mandamus without conducting an *in-camera* review of the transcript to determine if redactions of claimed mediation communications are appropriate"). In fact, the Fourth District Court of Appeal found the error was "fundamental error." *Id.*, at 133. The failure of this Court to conduct an *in-camera* inspection amounts to "fundamental error." *Id.* at 133.

The Florida Supreme Court ("FSC") has also held that "where doubt existed as to whether the State must disclose a particular document, the proper procedure is to have a trial judge conduct an *in-camera* review of the documents." *Rose v. State*, 774 So. 2d 629 (Fla. 2000) (receded from on other grounds, citing *Ragsdale v. State*, 720 So.2d 203, 206 (Fla. 1998)). *See also State v. Kokal*, 562 So.2d 324, 327 (Fla. 1990) (when certain statutory exemptions are claimed by the party against whom the records have been filed or when doubt exists as to whether a particular document must be disclosed, the proper procedure is to furnish the document to the trial judge for an in-camera

inspection). After *in-camera* inspection, the party from whom records are sought must turn over the nonexempt materials. *Ragsdale*, 720 So.2d at 206.

WHEREFORE, Mr. Hitchcock respectfully requests that this Court conduct an *in-camera* inspection of the requested records before ruling on the disclosure of the requested records.

/s/ Joshua P. Chaykin
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/s/ Cortney L. Hackett
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Attorneys for Mr. James Hitchcock

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court using the Florida Courts e-portal filing system, which will send a notice of electronic filing to the following: The Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **99orange@ninthcircuit.org**; the Honorable Keith Carsten, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **19orange@ninthcircuit.org**; Timothy A Freeland, Special Counsel, Assistant Attorney General, and Jennifer A. Davis, Senior Assistant Attorney General, **timothy.freeland@myfloridalegal.com**, **jennifer.davis@myfloridalegal.com**, **paula.montlary@myfloridalegal.com**, **elizabeth.bueter@myfloridalegal.com**, **lourdes.parodi@myfloridalegal.com**, **capapp@myfloridalegal.com**, **marilyn.muir@myfloridalegal.com**, **scott.browne@myfloridalegal.com**, **stephen.ake@myfloridalegal.com**; Kristen J. Lonergan, Florida Department of Corrections, Office of the General Counsel, **kristen.lonergan@fdc.myflorida.com** and **CO-GCCapLit@fdc.myflorida.com**; Monique H. Worrell, State Attorney, and Jacqueline Brown, Assistant State Attorney, Orange County State Attorney's Office, 415 North Orange Avenue, Orlando, FL 32802, **mhworrell@sao9.org**, **jbrown@sao9.org**; and the Florida Supreme Court, **warrant@flcourts.org**, **canovak@flcourts.org**.

/s/ Joshua P. Chaykin
Joshua P. Chaykin
Attorney for Mr. James Hitchcock

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX E

FDOC Objections to Demand (April 2, 2026)

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v. **CASE NO.: 1976-CF-1942**
DEATH PENALTY CASE

JAMES E. HITCHCOCK,

Defendant.
_____/

DEPARTMENT OF CORRECTIONS' OBJECTIONS TO DEFENDANT'S DEMANDS FOR ADDITIONAL PUBLIC RECORDS

COMES NOW, the Department of Corrections ("Department" or "FDC"), through undersigned, and hereby files its objections to Defendant's Demand for Public Records filed on April 1, 2026, pursuant to Florida Rules of Criminal Procedure 3.852(i) and (h). In support thereof, the Department states as follows:

PRELIMINARY STATEMENT

In paragraph 16 of this demand, Defendant has requested records related to the Department's lethal injection protocol, procedures, and process. Nothing in the Defendant's demand overcomes the Florida Supreme Court rulings made in numerous postconviction cases addressing the constitutionality of the etomidate lethal injection procedures. The current lethal injection protocol has been fully litigated; the Florida Supreme Court has ruled that the current Etomidate protocol

is constitutional and that record demands relating to it are not related to a colorable claim for postconviction relief. See Dailey v. State, 283 So.3d 782, 792 (2019).

The Florida Supreme Court has recently, and repeatedly, found that identical claims that FDC is not complying with the lethal injection protocol amounting to an Eighth or Fourteenth Amendment violation are unavailing. See Heath v. State, 426 So. 3d 1253 (Fla. 2026) (as to demand for same records to support an Eighth Amendment claim generally); Trotter v. State, --- So. 3d ---, 51 Fla. L. Weekly S37 (Fla. 2026) (as to similar demand for records to support an Eighth Amendment as applied claim); King v. State, --- So. 3d ---, 51 Fla. L. Weekly S71 (Fla. Mar. 10, 2026) (as to similar demand for records to support both an Eighth Amendment as applied claim and Fourteenth amendment due process and equal protection claims). The records referenced from the Walls federal litigation have been attached to each of the demands in Heath, Trotter, and King, the Florida Supreme Court has seen the exact same speculative and meritless claims based on misreading of those same records that Defendant references, and have consistently upheld denial of these demands.

As such, FDC objects to the entirety of the demand and requests that the Court deny the request for records based upon well-established law.[1]

[1] FDC does not waive the right to put forth other applicable exemptions and/or conduct any applicable redactions pursuant to Florida Statutes should the Court grant any part of the Demand.

MEMORANDUM OF LAW

I. General Grounds for Denial of Defendant's Demand Against FDC

i. Recent Florida Supreme Court Rulings.

These claims have been recently denied by the Florida Supreme Court, and Defendant does not assert anything that would permit this Court to divert from that binding precedent. FDC is entitled to a presumption that they are performing their duties correctly, and nothing the Defendant raises in this case under the Eighth or Fourteenth Amendments meets the burden to overcome that presumption, as explained in Heath, Trotter, and King.

Defendant requests these records asserting that the colorable claims he seeks the records to support are alleging violation of his rights under the Eighth and Fourteenth Amendments. Defendant's entire argument is predicated on speculation and assumption regarding what records will show presented under the guise of certainty which is insufficient to establish their burden "of demonstrating that the records sought relate to a colorable claim for postconviction relief." See Branch v. State, 236 So. 3d 981, 984 (Fla. 2018) (citing Chavez v. State, 132 So. 3d 826, 829-30 (Fla. 2014) and Mann v. State, 112 So. 3d 11 58, 11 63 (Fla. 2013)). See also Muhammad v. State, 132 So. 3d 176, 202 (Fla. 2013) ("[R]equests related to actions of lethal injection personnel in past executions do not relate to a colorable claim concerning future executions because there is a presumption that members of

the executive branch will perform their duties properly."); Valle v. State, 70 So. 3d 530, 549 (Fla. 2011) (holding that records of past five executions were "not related to a colorable Eighth Amendment claim."). Nor does their speculation overcome the strong presumption that FDC is following their execution protocol. See also Long v. State, 271 So. 3d 938, 946 (Fla. 2019). "'The DOC is entitled to a presumption that it will properly perform its duties while carrying out an execution.... [and] our 'role is not to micromanage the executive branch in fulfilling its own duties relating to executions.'" Id. (citing Hannon v. State, 228 So. 3d 505, 509 (Fla. 2017) (quoting Troy v. State, 57 So.3d 828, 840 (Fla. 2011)); see also Baze v. Rees, 553 U.S. 35, 53-54 (2008); Cole v. State, 392 So. 3d 1054, 1065 (Fla. 2024); Branch, 236 So. 3d at 985 ("Specifically, with respect to Branch's assertion that the DOC's supply of execution drugs may be expired, this Court has stated that it will presume 'the DOC will act in accordance with its protocol and carry out its duties properly.'").

The Defendant must allege legally sufficient facts to overcome that presumption that the Department is complying with the protocol as written or to demonstrate that the records sought would relate to a colorable claim. See Hannon v. State, 228 So. 3d 505, 509 (Fla. 2017) (affirming summary denial of a claim that

FDOC is "inconsistent with its protocol" because the allegations were insufficient to overcome the presumption that FDOC complies with the protocol).[2]

Moreover, as the Florida Supreme Court wrote in their decision in Heath v. State:

> [S]peculative and conclusory allegations that lethal injection protocols present a substantial risk of serious harm are insufficient ... [t]he question is not whether protocol deviations occurred but whether the defendant's allegations would demonstrate a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering.

Heath v. State, 426 So. 3d 1253 (Fla. 2026) (citing Cole v. State, 392 So. 3d 1054, 1065 n.18 (Fla. 2024 and Jimenez v. State, 265 So. 3d 462, 475 (Fla. 2018)), cert. denied, 145 S. Ct. 109 (2024).

Further, the Florida and United States Supreme Courts have held that prison staff are entitled to a strong presumption that they follow their method-of-execution protocol. See e.g., Baze, 553 U.S. at 53-54; Cole v. State, 392 So. 3d 1054, 1065 (Fla. 2024). (citing Glossip v. Gross, 576 U.S. 863, 868-69 (2015)). See also Valle v. State, 70 So. 3d 530, 545-49 (Fla. 2011); Davis v. State, 742 So.

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[2] Inasmuch as the records sought to be produced relate to past executions, the speculation of what happened in past executions has no bearing on an upcoming execution. See Lightbourne v. McCollum, 969 So. 2d 326, 341 (Fla. 2007) (noting, despite allegations that FDC repeatedly failed to follow protocol in prior executions, the court refused to stay an execution when nothing established the prior executions "caused unnecessary and wanton pain" or involved "torture or a lingering death"); Schwab v. State, 995 So. 2d 922, 928 (Fla. 2008) (finding even

2d 233, 236 (Fla. 1999); Provenzano v. State, 739 So. 2d 1150, 1153 (Fla. 1999). Where an Eighth Amendment cruel and unusual punishment claim alleges the risk of future harm at an execution, "the conditions presenting the risk must be 'sure or very likely to cause serious illness and needless suffering,' and give rise to 'sufficiently imminent dangers.'" Baze, 553 U.S. at 50 (quoting Helling v. McKinney, 509 U.S. 25, 33, 34–35 (1993)); Wellons v. Comm'r, Ga. Dep't of Corr., 754 F.3d 1260, 1265 (11th Cir. 2014) (noting that mere speculation "cannot substitute for evidence that the use of the drug is sure or very likely to cause serious illness and needless suffering").

Accordingly, since controlling precedent has already determined that Defendant's allegations are insufficient to show a colorable claim even taking those allegations regarding what the records sought would show as true *arguendo*, Defendant cannot show entitlement to those records at this stage.

Finally, denial of this demand for records by sustaining FDC's objections is not, as asserted by Defense in the demand, a violation of due process in and of itself. King v. State, --- So. 3d ---, 51 Fla. L. Weekly S71 (Fla. 2026). ("This Court has previously rejected efforts to morph a challenge to the denial of a public records demand into a constitutional challenge.") (citing Randolph v. State, 422 So. 3d 166, 172 (Fla. 2025).

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if the defense were correct in listing all these past executions and errors it would

ii. Failure to relate to a colorable claim

Pursuant to Rule 3.852, Fla. R. Crim. P., a court must find: (a) counsel has made a timely and diligent search of the records repository; (b) counsel's written demand identifies with specificity those additional public records that are not in the repository; (c) the additional public records sought are either relevant to the subject matter of a Rule 3.851 proceeding, or appear reasonably calculated to lead to the discovery of admissible evidence; and (d) the additional records request is not overly broad or unduly burdensome. "The Defendant bears the burden of demonstrating that the records sought relate to a colorable claim for postconviction relief." See Mann v. State, 112 So.3d 1158, 1163 (Fla. 2013).

As to Defendant's intended Eighth Amendment claim, the Department relies on the argument throughout these objections based on well-established law. As to Defendant's purported intention to bring a claim under the Fourteenth Amendment as to alleged equal protection[3] violations depicted in the Walls records, such a claim has also been rejected by the Florida Supreme Court recently.

> Here, in assessing King's Fourteenth Amendment claim, our reasoning is similar: alleged failures in documenting the movement of drugs into and out of inventory does not give rise to a cognizable equal protection or due process injury . . . even an allegation that there was a difference in the quantity of the specific drugs administered

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not rise to a colorable claim as to this defendant).

[3] This is included in an abundance of caution, as Defendant does not specify under what theory he seeks to raise a Fourteenth Amendment claim in this case.

would not constitute disparate treatment for Fourteenth Amendment purposes.

See King v. State, --- So. 3d ---, 51 Fla. L. Weekly S71 (Fla. 2026).

a. **Potential "As-Applied" Arguments**

The Florida Supreme Court has routinely and unwaveringly affirmed trial court orders sustaining FDC's objections to the disclosure of records related to the lethal injection protocol since the current protocol was established in 2017.[4] These opinions have established that such records requests do not relate to a colorable claim and such records necessarily contain information that is confidential and exempt pursuant to the Florida Statutes, specifically §945.10(1)(g) and §945.10(1)(j). This is true of exactly the same claims that Defendant purportedly now seeks these records to make, which have been found by the Florida Supreme Court in warrants earlier this year to not relate to a colorable claim. See Heath, Trotter, and King, supra.

A defendant seeking to mount a successful Eighth Amendment challenge to a state's lethal injection protocol must demonstrate that "the conditions presenting the risk [of cruel and unusual punishment] must be 'sure or very likely to cause serious illness and needless suffering,' and give rise to 'sufficiently imminent

[4] Asay v. State, 224 So.3d 695 (Fla. 2017); Hannon v. State, 228 So.3d 505 (Fla. 2017); Branch v. State, 236 So.3d 981 (Fla. 2018); Jimenez v. State, 265 So.3d 462 (Fla. 2018); Long v. State, 271 So.3d 938 (Fla. 2019), Bowles v. State, 276 So.3d 791 (Fla. 2019); Dailey v. State, 283 So.3d 782 (Fla. 2019).

dangers.'" Baze v. Rees, 553 U.S. 35, 49-50 (2008) (*quoting* Helling v. McKinney, 509 U.S. 25, 33, 34-35 (1993)) (plurality opinion). Additionally, "speculation cannot substitute for evidence that the use of the drug is 'sure or very likely to cause serious illness and needless suffering.*'"* Brewer v. Landrigan, 131 S. Ct. 445 (2010) (*quoting* Baze, 553 U.S. at 50). These types of claims need to be supported by specific facts and evidence.

To prevail on an "as-applied" claim under Glossip v. Gross, 576 U.S. 863 (2015), "a condemned prisoner must: (1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain." Long, 271 So.3d at 944. In Long, the trial court concluded after an evidentiary hearing that there had been no showing that any alternatives to the current protocol involving a significantly less severe risk of pain were available to FDC. Id. at 945. Additionally, the trial court found that Long failed to show that the current execution method presents a substantial and imminent risk of needless suffering, even after alleging that he suffered from specific medical conditions. In this case the Defendant fails to sufficiently meet both prongs of the Glossip-Baze test.

A recent postconviction case that addressed an as-applied challenge to lethal injection was State v. Loran Cole, Marion County Case No. 94-CF-498. In this

case, Mr. Cole's as-applied challenge centered around his Parkinson's disease and placement of the intravenous needle. The Court found that, "the Defendant's claim is speculative. . . he merely speculates that he will suffer because of his involuntary body movements. This is insufficient to establish a 'substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering' or to require an evidentiary hearing." The Court in Cole relied on Jiminez v. State, 265 So.3d 462 (Fla. 2018), where the Florida Supreme Court held that speculative and conclusory allegations that lethal injection protocols present a substantial risk of serious harm were insufficient and a defendant's mere speculation that his medical condition may make it more difficult to follow the current protocols is "insufficient to require revisiting [the Florida Supreme Court's] holding in *Asay IV*…". Jiminez at 475. The Court in Cole also quoted Baze for the proposition that "[s]imply because an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of 'objectively intolerable risk of harm' that qualifies as cruel and unusual." Baze, at 50.

In this case, the Defendant did not articulate any specific facts or offer any evidence in his demand to support his claim as applied to him personally. Accordingly, Defendant has not demonstrated that he seeks records related to a claim not previously considered, and rejected, by the Florida Supreme Court. The

Department maintains that requests of this nature are fishing expeditions[5] to obtain confidential and exempt information regarding Florida's lethal injection protocol.

This demand is similar in substance to all of the other (g), (h), or (i) demands that are typically filed in postconviction litigation. It is also similar to the demands filed in 2023, 2024, and 2025 post-warrant cases[6] and identical to those raised in 2026 post-warrant cases.[7] In all such cases, the trial courts consistently ruled that the defendants failed to state a claim to which the requested records might be related, much less establish that they would be entitled to relief, where similar demands have been held by the Florida Supreme Court to have been properly denied. Precedent is well-settled in Florida with respect to the etomidate protocol; the current lethal injection records discussion has been fully litigated, and the Florida Supreme Court has found that these types of demands do not lead to a colorable claim. The Defendant's arguments, the same arguments that have been

[5] The Florida Supreme Court has repeatedly stressed and long held that collateral post-conviction public records requests are not to be used for fishing expeditions and that the defendant bears the burden of proving that the records he requests are, in fact, related to a colorable claim for post-conviction relief. See Moore v. State, 820 So. 2d 199, 204 (Fla. 2002).

[6] See e.g. State v. Dillbeck, Leon County Case No.1990-CF- 2795; State v. Gaskin, Flagler County Case No. 1990-CF-01; State v. Barnes, Brevard County Case No.2006-CF-014592; State v. Barwick, Bay County Case No. 86-0940-CFMA; State v. Owen, Palm Beach County Case No. 50-1984-CF-004000; State v. Zack, Escambia County Case No. 1996-CF-2517; State v. Loran Cole, Marion County Case No. 94-CF-498; and State v. Ford, Charlotte County Case No. 97-CF-000351.

presented before other Florida courts, do not justify a departure from this well-established precedent.

iii. Statutory Exemptions

In addition to the record-specific objections asserted below, the Defendant's demand for most of the lethal injection records relates to information that is confidential and exempt from public records disclosures pursuant to Florida law. Section 945.10 of the Florida Statutes establishes a broad restriction on the disclosure of records and information relating to executions and FDC's operations for carrying them out. Section 945.10(1)(g) exempts from public disclosure "[i]nformation which identifies an executioner, or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection." In 2022, the Florida Legislature broadened this protection and added an additional subsection. Section 945.10(1)(j), F.S., exempts from disclosure:

> (j)1. Information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including persons or entities administering, compounding, dispensing, distributing, maintaining, manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with chapter 922.

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[7] See Heath v. State, 426 So. 3d 1253 (Fla. 2026); Trotter v. State, --- So. 3d ---, 51 Fla. L. Weekly S37 (Fla. 2026); King v. State, --- So. 3d ---, 51 Fla. L. Weekly S71 (Fla. Mar. 10, 2026).

> 2. The exemption in subparagraph 1. Applies to information and records held by the department before, on, or after the effective date of the exemption. […]

Section 945.10(1)(j), Fla. Stat. (2022-current).

Not only have courts consistently overruled the disclosure of lethal injection records as cited below, but the Florida Legislature has also taken further steps to maintain the confidentiality of these records, and those persons and entities "administering, compounding, dispensing, distributing, maintaining, manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with Chapter 922." The language used in §945.10(1)(j)(2) expresses the desire of the Legislature for these protections to be retroactively applied. In passing the amended language, the Legislature found:

> that it is a public necessity that information or records that identify or could reasonably lead to the identification of those persons or entities that participate in an execution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information or records that identify or that could reasonably lead to the identification of those persons or entities that participate in an execution could jeopardize the safety of such persons or entities by exposing them to potential harassment, intimidation, or harm and could also thwart the ability of the Department of Corrections to obtain the necessary personnel, drugs, chemicals, supplies, or equipment needed to carry out executions. Therefore, the Legislature finds that it is a public necessity that this information be kept confidential and exempt from public disclosure.

See Laws of Fla., Ch. 2022-115, Section 2. These findings demonstrate that "persons or entities that participate in an execution" should remain anonymous. The Defendant's demand states he is seeking "public" records relating to the lethal injection protocol; however, much of the information he seeks has been deemed confidential and exempt from public disclosure by the Florida Legislature. Records requested in the demand would, if they exist, necessarily contain this statutorily confidential and exempt information.

II. **Specific Grounds for Denial of Defendant's Individual Demand Requests Against FDC**

Record demands for execution and lethal injection records were squarely addressed by the Florida Supreme Court in Dailey v. State, 283 So.3d 782 (Fla. 2019). In Dailey, the defendant requested records from several agencies, including FDC and the Medical Examiner. After hearing objections and argument, the trial court denied Dailey's request, specifically for record requests related to the lethal injection protocol. On appeal to the Florida Supreme Court, Dailey argued that the trial court erred in denying his requests for records related to the lethal injection protocol from the Department and from the Medical Examiner. The Florida Supreme Court ruled that the argument was without merit. See Dailey at 792. ("Because we have upheld the constitutionality of the current lethal injection protocol, such records are 'unlikely to lead to a colorable claim of relief'") (citing Hannon, 228 So.3d at 512). The Court reiterated that as recognized in Long, "[t]he

DOC is entitled to a presumption that it will properly perform its duties while carrying out an execution ... [and] *our 'role is not to micromanage the executive branch in fulfilling its own duties relating to executions.'"* Long, 271 So. 3d at 946 (quoting Hannon, 228 So. 3d at 509 (Emphasis added)).

iv. Records Relating to the Protocol Drugs

The current Lethal Injection Protocol adopted and certified by FDC requires that the chemicals have not reached or surpassed their expiration dates:

> Purchase and Maintenance of Lethal Chemicals: A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

See FDC's Execution by Lethal Injection Procedures at pg. 5, available at https://www.fdc.myflorida.com/institutions/death-row.

Demands for records relating to how FDC selects, obtains, and stores the drugs used in the lethal injection protocol have been consistently found to be unrelated to a colorable claim for relief.[8] Both the United States Supreme Court and the Florida Supreme Court have held that post-conviction claims based on

[8] See e.g. Asay v. State, 224 So.3d 695 (Fla. 2017); Hannon v. State, 228 So.3d 505 (Fla. 2017); Branch v. State, 236 So.3d 981 (Fla. 2018); Jimenez v. State, 265

nothing more than the source of lethal injection drugs do not present a cognizable claim that a lethal injection procedure is unconstitutional. Brewer v. Landrigan, 131 S. Ct. 445 (2010) (vacating a stay of execution that was based upon a finding that the condemned inmate had a substantial likelihood of success on the merits of his claim that the use of sodium thiopental obtained from a foreign source and not approved by the FDA creates a substantial and unnecessary risk of serious harm in violation of the Eighth Amendment*);* Valle v. State, 70 So. 3d 530, 549 (Fla. 2011) (requests for records to demonstrate that pentobarbital may have been procured illegally are speculative and conclusory and amount to no more than a "fishing expedition" for which Rule 3.852 is not intended).

To the extent that Defendant points to confidential and highly redacted records that were inappropriately filed by federal counsel in previous warrant litigation for the proposition that there is reason for this Court to depart from this well-established precedent, the Department respectfully contends that Defendant misrepresents the information shown in those records out of context to support a meritless and untenable position which has been repeatedly found meritless by the Florida Supreme Court. See Heath, Trotter, and King, supra. Nothing in Defendant's conclusory and imagined readings of those records supports the position that the Department has engaged in any of the conduct that Defendant

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So.3d 462 (Fla. 2018); Long v. State, 271 So.3d 938 (Fla. 2019), Bowles v. State,

alleges. Defendant's position relies on his taking records out of context to support a specious argument. Contrary to the suppositions and assumptions that Defendant presents as though they are fact, nothing in those records reflects which drugs were used for which execution, what the expiration dates of drugs used in a particular execution were, or any of the conclusory allegations that Defendant has asserted based on assumptions and incorrect readings of those records. Contrary to what Defendant would have this Court believe as it would be the only way to render his reading of the records possible, usage is not the only reasonable conclusion for a reduction in an inventory log.

Notably, the blatant misuse of those records in an attempt to have this Court engage in the same untenable logical leap that Defendant has engaged in to come to the conclusions he asserts, which are in no way supported by said records, is one of the various reasons why it is important that these records retain the confidentiality afforded to them by the Florida legislature.

As addressed above, the constitutional Lethal Injection Protocol requires a number of safeguard steps to ensure that the drugs actually utilized for an execution are stored, maintained, and handled correctly and have not reached or surpassed their expiration date. The Department is entitled to a presumption that it will properly perform these duties while carrying out an execution, as reiterated by

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276 So.3d 791 (Fla. 2019); Dailey v. State, 283 So.3d 782 (Fla. 2019).

the Court in Long, as are the other agencies involved in ensuring the process is handled in accordance with the protocol and the law, and Defendant's argument amounts to essentially the assertion of a conspiracy between multiple individual agencies with no evidence to support such an absurd conclusion. Defendant's attempts to use the confidential records inappropriately filed in another court to rebut that presumption must fail as they do not actually assert any information to support the conclusions that Defendant claims to draw from them.

Accordingly, FDC objects to the disclosure of any records regarding the drugs used in the lethal injection procedure because the Florida Supreme Court has held that this information is of insufficient relevance to a colorable Eighth Amendment claim.

v. Records Relating to Training & Experience of the Execution Team Members Involved in Defendant's Execution and/or Involved in Prior Executions

Defendant requests records related to training for team members participating in an execution. Any information which identifies an executioner is confidential pursuant to Fla. Stat. §945.10(1)(g). See Correll v. State, 184 So.3d 478 (Fla. 2015) (holding that a death row inmate is not entitled to know the identities or backgrounds of his execution team members). In Correll, the Defendant argued that Florida Statutes Section 945.10 was unconstitutional by

exempting information and identities of the execution team members. The Correll Court held:

> [T]his Court has previously rejected constitutional challenges to section 945.10, as well as claims that an inmate facing execution has the right to know the identities of execution team members. *See, e.g., McLean,* 147 So.3d at 513; *Darling v. State,* 45 So.3d 444, 447–48 (Fla.2010) ("Darling simply requests that we recede from prior precedent so that he may engage in an in-depth review of his executioners' qualifications and training. We refuse to do so."); *Henyard v. State,* 992 So.2d 120, 130 (Fla.2008) ("We [have] previously found section 945.10 facially constitutional and decline to recede from our decision now."). We have further explained, "there is a presumption that the members of the executive branch will properly perform their duties in carrying out an execution." *Lightbourne v. McCollum,* 969 So.2d 326, 343 (Fla.2007) (quoting *Provenzano v. State,* 761 So.2d 1097, 1099 (Fla.2000)). Moreover, the recent executions of Johnny Kormondy, Chadwick Banks, Eddie Davis, John Henry, and Robert Hendrix have been carried out with no subsequent allegations of difficulties.
>
> Correll has failed to justify reconsideration of prior rulings that have upheld the constitutionality of section 945.10 and determined that death row inmates do not have a right to know the identities and qualifications of execution team members. Accordingly, we reject this claim.

See Correll, 184 So.3d at 486.

In addition to holding that inmates are not entitled to know the identities and background of execution team members, the Florida Supreme Court has repeatedly upheld the presumption that the Department will properly carry out its duties related to executions. Lightbourne v. McCollum, 969 So.2d 326, 343 (Fla.2007).

Defendant has failed to articulate any reason that this Court should, or could, break with this precedent. Accordingly, these objections should be sustained.

vi. Records Relating to Prior Executions

Defendant requests records related to multiple prior executions. Much like a demand for records relating to drugs used in the lethal injection protocol, the issue of production of records related to prior executions has previously been litigated and the Florida Supreme Court has ruled that records from past executions are not related to a colorable claim.

In the Jimenez post-warrant litigation, the defense requested records of four prior executions. In Hannon, defendant requested "…logs, notes, memoranda, letters, electronic mail, and facsimiles" relating to the executions of eight different inmates and records relating to "execution training exercises." When considering such a request in Hannon, the Florida Supreme Court affirmed its prior holding in Valle which held records of the last five executions were "not related to a colorable Eighth Amendment claim." See Hannon at 512. (*citing* Valle at 549). Similarly, the Court found no abuse of discretion in the denial of Jimenez's demand for execution records of previous prisoners. See Jimenez at 473.

Because the Defendant has failed to meet a threshold requirement of Fla. R. Crim. P. 3.852, Defendant's requests must be denied under controlling precedent.

CONCLUSION

The Florida Supreme Court has fully considered and rejected all constitutional challenges to Florida's current lethal injection protocol, and identical challenges to FDC's compliance with the protocol based on misreadings of the records filed in Walls. The records that Defendant seeks do not support cognizable claims. The Florida Supreme Court's opinions regarding this type of demand are clear: such demands cannot lead to a colorable claim and should be denied. The Department respectfully requests this Court to sustain the objections to Defendant's Demand for Additional Public Records.

Respectfully submitted,

/s/ Kristen J. Lonergan
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April, 2026, I electronically filed the foregoing via the Florida Courts e-portal filing system sending a notice of electronic filing to all registered parties and/or counsel of record.

/s/ Kristen J. Lonergan
Kristen J. Lonergan, Esq.

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX F

FDLE Objections to Demand (April 2, 2026)

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA

v.

Case No. 1976-CF-1942
Active Death Warrant

JAMES ERNEST HITCHCOCK,

Defendant. /

FLORIDA DEPARTMENT OF LAW ENFORCEMENT'S RESPONSE AND OBJECTIONS TO DEFENDANT'S DEMAND FOR PRODUCTION OF PUBLIC RECORDS RELATED TO LETHAL INJECTION PROTOCOL

COMES NOW, the Florida Department of Law Enforcement ("FDLE"), by and through undersigned counsel, who responds and objects to Defendant James Hitchcock's Demand for Public Records Related to Lethal Injection ("Demand"). The Demand is made pursuant to Florida Rule of Criminal Procedure 3.852(i). FDLE responds and objects as follows:

I. BACKGROUND

On April 1, 2026, the Defendant filed a Demand for Public Records directed to FDLE, pursuant to Florida Rules of Criminal Procedure 3.852(i). The Defendant seeks records regarding Florida's lethal injection protocols below:

The Public Records from January 1, 2025, to present are requested as follows:

A. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the first FDLE agent charged with monitoring and responsible for observing the preparation of the "pharmaceutical agents (lethal injections chemicals)" and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals" as required in subsection (7)(b) of FDOC's Procedure. "FDLE Monitors;"

B. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the second FDLE agent charged with keeping a detailed log of what is occurring in

> the execution chamber at a minimum of two (2) minute intervals" as required in subsection (7)(c) of FDOC's Procedure. "FDLE Monitors;"

Demand at Paragraph 12. A and B.

FDLE objects to the Demand as the Defendant failed to comply with Rule 3.852 and Florida Supreme Court precedent, and it should be denied in its entirety.

II. RESPONSE AND OBJECTIONS

To obtain post-death warrant records on lethal injection under Rule 3.852(i), the Defendant must demonstrate and this Court must find, each of the following:

(A) collateral counsel has made a timely and diligent search of the records repository;

(B) collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository;

(C) the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and

(D) the additional records request is not overly broad or unduly burdensome.

Fla. R. Crim. P. 3.852(i)(2)(A)-(D). This Court may not grant the Demand unless the Defendant demonstrates that the records are related to a colorable postconviction claim and "good cause" for failing to seek the records prior to the signing of the death warrant has been shown. *See Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019) (holding, the capital defendant under a death warrant must show ". . . good cause as to why the public records request was not made until after the death warrant was signed.") (quoting *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019)); *see also, Hannon v. State*, 228 So. 3d 505, 511 (Fla. 2017).

The Defendant failed to meet his burden to show a colorable claim for relief required by Rule 3.852(i)(1)(C). Postconviction counsel argues that the lethal injection-related records are necessary for the Defendant to investigate a claim. Demand at paragraph 6 through 8. Counsel cites *Glossip* while seeking records from previous executions to prove that the deviation from the current procedures are "very likely to cause serious illness and needless suffering,' and there is a "substantial risk of serious harm" to Mr. Hitchcock if the Florida Department of Corrections (FDOC) does not comply with current procedures. Demand at 9. The demand is clear that they are not making an eighth-amendment challenge to the procedures themselves and that they are seeking to be certain that the FDOC follows proper protocols.

To prevail on a constitutional challenge to the method of execution under *Glossip*, "a condemned prisoner must: (1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails significantly less severe risk of pain." *Asay v. State* (*Asay VI*), 224 So. 3d 695, 701 (Fla. 2017), *citing Glossip v. Gross*, 576 U.S. 863, 877 (2015). The Defendant failed to establish the first predicate as the Defendant's Demand makes clear that they are not asserting the lethal injection procedures/protocols are unconstitutional. Further, counsel is still investigating or awaiting the records to begin investigating a different speculative claim that FDOC somehow deviated from current protocols. Furthermore, beyond merely quoting the language from *Glossip*, the Defendant has certainly not *established*, as is required, that the lethal injection method of execution presents a "substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering." The defendant attempts to string together a claim made from records that are taken entirely out of context and does not even attempt to argue that, if FDOC did what they are being accused of, the

prisoners were caused needless suffering. The Demand does not list a single example of adverse reactions occurring because of this speculative "deviation from protocol." Additionally, the Defendant failed to identify a known and available alternative as required by precedent. The Defendant offered only boilerplate language without any evidence to support the claim. This speculative and vague stance fails to meet a "good cause" standard.

The Defendant fails to acknowledge the Florida Supreme Court's current precedent finding that lethal injection records requests do not relate to a colorable claim for postconviction relief. In fact, Defendant claims, Florida Supreme Court precedent does not preclude the court from finding he has met the burden for requesting records. Demand at 7. The Defendant's allegations of the speculative potential for challenges fall short of the standard established by Florida Supreme Court precedent. The Demand should be denied on this basis alone. *See Dailey* at 792.

The Florida Supreme Court has considered and rejected constitutional challenges to Florida's lethal injection protocol. In *Jimenez v. State*, 265 So. 3d 462 (Fla. 2018) the court upheld the trial court's decision to deny a records demand related to lethal injection protocol and explained,

> . . . production of records relating to lethal injection are "unlikely to lead to a colorable claim for relief [when] the challenge to the constitutionality of lethal injection as currently administered in Florida has been fully considered and rejected by the Court."

Jimenez, 265 So. 3d at 473, *quoting Hannon*, 228 So. 3d at 511-12, *quoting Walton v. State*, 3 So. 3d 1000, 1014 (Fla. 2009). The *Jimenez* court went on to reiterate its approval of use of etomidate as first drug in lethal injection protocol noting, "we have consistently rejected [the] challenge that the DOC should substitute the current three-drug protocol with a one-drug protocol." (alteration in original) (*quoting Hannon*, 228 So. 3d at 509). *Id.* at 475.

The Defendant has not presented either new argument or evidence that requires the Florida Supreme Court to revisit *Asay VI*. Challenges to the constitutionality of Florida's lethal injection protocol, as currently administered, have been fully considered and repeatedly rejected. *See Dailey* at 792 (recently observing "[b]ecause we have upheld the constitutionality of the current lethal injection protocol, such records 'are unlikely to lead to a colorable claim for relief.'"); *Long v. State*, 271 So. 3d 938, 943-46 (Fla. 2019) (stating, "[s]ince approving the current lethal injection protocol in *Asay VI*, we have repeatedly affirmed the summary denial of challenges to the protocol, including challenges to the use of etomidate as the first drug in the protocol.") *cert. denied* 139 S. Ct. 2635; *Asay VI*, 224 So. 3d at 700-02 (holding that use of etomidate as the first drug in Florida's lethal injection protocol *did not violate the Eighth Amendment* because it did not create a substantial risk of serious harm).

Moreover, the Florida Supreme Court has consistently held that records related to prior executions, execution protocols, personnel or other matters are not relevant to a colorable claim for relief. *See e.g.*, *Chavez v. State*, 132 So. 3d 826, 829-30 (Fla. 2014) (affirming the denial of demand for execution logs and notes created by FDLE agents who observed eleven prior executions); *Muhammad v. State*, 132 So. 3d 176, 202 (Fla. 2013) ("[R]equests related to actions of lethal injection personnel in past executions do not relate to a colorable claim concerning future executions because there is a presumption that members of the executive branch will perform their duties properly."); *Valle v. State*, 70 So. 3d 530, 549 (Fla. 2011) (holding that records of past five executions were "not related to a colorable Eighth Amendment claim.").

Recently, in *Cole v. State,* the Florida Supreme Court reiterated that a constitutional challenge to Florida's current lethal injection protocol is not a colorable claim. *Cole v. State,* 392 So. 3d 1054, 1066 (Fla. 2024). In *Cole,* the Florida Supreme Court agreed that existing precedent

demonstrates that records requests of this kind do not relate to a colorable claim for postconviction relief, and arguments of this kind are foreclosed by precedent. *Id.* The Court also rejected the argument that it should recede from that precedent. *Id.*

The Florida Supreme Court "has long acknowledged that the public records procedure under [Rule 3.852] 'is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief.'" *Long v. State*, 271 So. 3d 938, 948 (Fla. 2019), *cert. denied*, 139 S. Ct. 2635 (2019) (quoting *Muhammad* 132 So. 3d at 200). Instead, Rule 3.852 is "a carefully tailored discovery rule[,]" *In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Public Records Production*, 683 So. 2d 475, 476 (Fla. 1996) that is subject to the limitations imposed by Rule 3.852(k)(1) that the records sought are "not privileged or immune from production and are either relevant to the subject matter of the proceeding under rule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence."

I. Records from prior executions.

To this end, FDLE briefly addresses the Demand specifics, which is no more than an unauthorized fishing expedition, in the Defendant's speculative hope that he may uncover something to show cruel and unusual punishment, through further investigation:

Paragraph 12 a-b.: The Defendant seeks records relating to the two designated FDLE monitors required to be present during the Defendant's execution as well as records related to prior executions. The issue of production of records related to prior executions has been previously litigated, and the Florida Supreme Court has ruled that records from past executions are not related to a colorable claim. Records photos, and videos of prior executions are not likely to lead to a colorable constitutional challenge and should be denied "because there is a presumption that

members of the executive branch will perform their duties properly." *Muhammad*, 132 So. 3d at 202-03. The Defendant cannot overcome that presumption with his fishing expedition or unidentified speculations as to personnel's qualifications. Moreover, the Florida Supreme Court has repeatedly held that records related to prior executions are not relevant to a colorable Eighth Amendment claim. *See e.g.*, *Chavez*, 132 So. 3d at 826 (affirming the denial of demand for execution logs and notes created by FDLE agents who observed eleven prior executions); and *Valle*, 70 So. 3d at 549 (holding that records of past five executions were "not related to a colorable Eighth Amendment claim.")

FDLE directs this Court to recent circuit court post-warrant decisions denying similar demands on lethal injection. In *State v. Ronald Heath,* 1989-CF-3026, Alachua County, FL, the Defendant claimed that the Florida Department of Corrections had been failing to comply with the protocol and procedures for the administration and storage of the lethal injection pharmaceuticals. Much like this case, the defendant recited examples from records in *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025).

The Florida Department of Corrections argued that these records were taken completely out of context to support a "suspicious argument" and that nothing in the records reflect which drugs were used for which execution, what the expiration dates of the drugs used in a particular execution were. The Department stated that the conclusory allegations were based on assumptions and incorrect readings of the records which were highly redacted. The Court entered an order on January 15, 2026, denying the defendant's request for public records.

Similarly, in *State v. Melvin Trotter*, 1986 CF 1225, Manatee County, FL the Defendant made a nearly identical request as the request at issue in this case. Again, FDLE and FDOC argued that the records were taken out of context and that issue of logs from prior executions are not

relevant to a colorable claim. The Court issued an order sustaining the objections on January 29, 2026.

Further, on March 23, 2026, the Circuit Court in Brevard County denied the same requests for records where council for defendant went so far as to argue that the Government was colluding to keep these records secret by having the Governor sign a death warrant after a request for records had been made. *State v. Chadwick Willacy*, 1990 CF 016062, Brevard County, FL 2026.

II. Potential "as applied" arguments.

Mere "speculation cannot substitute for evidence that the use of the drug is 'sure or very likely to cause serious illness and needless suffering'" *Brewer v. Landrigan,* 131 S. Ct. 445 (2010) (quoting *Baze,* 553 U.S. at 50). These types of claims need to be supported by specific facts and evidence. Defendant relies on out of context, highly redacted records and does not produce any evidence of serious illness or needless suffering. The demand certainly does not identify a reasonable alternative or establish that the current method of execution presents substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering as required in *Glossip.* In fact, the defendant specifically states that he is not asserting that the current method of lethal injection protocols are unconstitutional. Defendant merely seeks to ensure that FDOC is following proper procedure, an act that they are presumed to be performing correctly.

In addition to meeting the two-part *Glossip* test, method of execution claims asserting that DOC fails to follow protocol must allege legally sufficient facts to pierce the well-established presumption the DOC follows protocols before a court may grant an evidentiary hearing. *Hannon v. State,* 228 So. 3d 505, 509. (Fla. 2017) (affirming summary

denial of a claim "DOC is inconsistent with its protocol" because the allegations were insufficient to "overcome the presumption" DOC complies "with the protocol")

There is no such thing as a failure to follow protocol Eighth Amendment claims that are exempted from the three requirements given in *Baze, Glossip and Hannon.* See *Baze,* 553 U.S. at 53-54 (rejecting the argument that the risk of state officials not properly following a lethal injection protocol constitutes an Eight Amendment violation). Defendant's speculative allegations and proffered evidence of highly redacted records are insufficient to overcome this presumption. The question is not whether protocol deviations occurred but were the deviations likely to cause needless suffering and was a known alternative proposed. *Baze* 553 U.S. at 49-51. Neither has been addressed in Defendant's demand.

Defendant's claim in summary states, that because FDOC has purportedly deviated from its protocols in the past, a claim that has yet to be proven, that FDOC will deviate in Defendant's execution in a way that would unreasonably cause unconstitutional suffering and cruelty. This speculative assumption does not satisfy the required two-prong test.

DEFENDANT'S REQUEST FOR IN-CAMERA REVIEW OF RECORDS

Defendant requests the judge review the requested records *in-camera* under Florida Rule of Criminal Procedure 3.852 (j)(2). Indeed, a court may conduct an *in-camera* inspection of records, however, the request fails to accept and/or address the fact that the defendant is not entitled to these records based on well established case law cited throughout this objection.

CONCLUSION

The Defendant failed to meet his burden to obtain the requested lethal injection records under Rule 3.852, as well as Florida and United States Supreme Court precedent. The Defendant failed to advise this Court why he waited until the death warrant was signed to request the records. The Defendant did not state a viable or colorable constitutional challenge to Florida's lethal injection protocol, other than referencing the Eighth Amendment. Finally, the Defendant failed to show that any of the records are relevant to a colorable postconviction claim or identify a known alternative. Instead, on its face, the Demand is no more than an overly broad and unduly burdensome prohibited fishing expedition.

WHEREFORE, based on the foregoing, the Florida Department of Law Enforcement respectfully requests that this Court deny the Defendant's Demand for Production of Additional Public Records and to Deny Defendant's Motion for In-Camera Inspection of records.

Respectfully submitted,

/s/ *Lindsey Brigham*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to counsel of record via the Florida Courts E-Filing Portal on 4/2/2026.

/s/ *Lindsey Brigham*

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No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX G

Transcript of Hearing for Public Records Objections on April 2, 2026

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

Plaintiff,

vs.

JAMES ERNEST HITCHCOCK,

Defendant.

CASE NO.: 48-1976-CF-001942-A-O

DIVISION NO.: 19

CASE MANAGEMENT CONFERENCE

BEFORE

THE HONORABLE KEITH CARSTEN

Orange County Courthouse
425 North Orange Avenue
Orlando, Florida 32801
Courtroom 19D
April 2, 2026
Stenographically reported

Appearances on following page:

A P P E A R A N C E S:

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TIMOTHY A. FREELAND, ESQUIRE
Office of the Attorney General
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On behalf of the Office of the Attorney General
(Via WebEx)

JOSHUA CHAYKIN, ESQUIRE
CORTNEY L. HACKETT, ESQUIRE
CHRISTOPHER CLEMENTE, ESQUIRE
Law Office of Capital Collateral
Regional Counsel-Middle Region
12973 North Telecom Parkway
Temple Terrace, Florida 33637
On behalf of the Defendant
(Via WebEx)

ALSO PRESENT:

WILLIAM ROBERT JAY, ESQUIRE
Assistant State Attorney
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On behalf of the State, Ninth Circuit

KRISTEN JENNIFER LONERGAN, ESQUIRE
Florida Department of Corrections
501 South Calhoun Street
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On behalf of the Florida Department of Corrections
(Via WebEx)

LINDSEY NICOL BRIGHAM, ESQUIRE
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Pensacola, Florida 32505-1869
On behalf of the Florida Department of Law Enforcement
(Via WebEx)

- - -

I N D E X

April 1, 2026

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P R O C E E D I N G S

(April 6, 2026; at 5:29 p.m.)

MR. CHAYKIN: Good afternoon, Your Honor.

Yes, I can hear you today.

THE COURT: Thank you, Mr. Chaykin.

MS. BRIGHAM: Yes, Your Honor. I can hear you as well.

THE COURT: All right. We have several folks that have joined us that have their microphones off, so I'm going to operate under the belief that everyone can hear the audio.

This matter is being recorded by a live court reporter. A couple of housekeeping matters. I've been assured that the courthouse facility will not lose power during the period of time that this hearing is scheduled and including the time in which the order is to be generated.

We had had a brief discussion, Mr. Chaykin, about Mr. Hitchcock joining remotely. Department of Corrections was present for that discussion. Is Mr. Hitchcock's appearance required for this proceeding or is it waived?

MR. CHAYKIN: No, Your Honor. His appearance is not required for this proceeding. I did request from

FDOC if he could be present via Zoom as we discussed from the last hearing, but it's because of the scheduling of the hearing that he would not be able to be present today because it's after hours. But they assured me that they would arrange for him to be present for the case management conference via Zoom understanding that that's also not required by the rule, but they did -- they explained that they would still be willing to effectuate that.

THE COURT: All right. I want to be clear that you're video conferencing in on a WebEx program, not

additional public records from the Florida Department of Law Enforcement, which will be referred to as FDLE. Contemporaneous to these filings, the defendant filed for an in-camera inspection of those records both from FDOC, and FDLE. The Florida Department of Corrections, FDOC and FDLE timely filed responses and objections to the demands for additional public records in compliance with paragraph three of the Court's scheduling order.

This hearing follows in accordance of paragraph four of the scheduling order. Court has set aside two hours for this hearing should it be necessary. The Court has, in advance of this hearing, received and reviewed the following: One, both Defendant's Demands for Additional Public Records. The Attached Appendixes A and B, the Affidavit of the Doctor of Pharmacy, Daniel Buffington, and Appendix B, the FDOC Execution by Lethal Injection Procedures. Two, the Defendant's Motion for an In-camera Inspection of Additional Public Records. Three, the response and objections from the FDOC and FDLE. Four, the Defendant's Notice of Authority. And, five, the Defendant's Notice of Supplemental Authority. And, finally, the State of Florida's Statement of Facts and Procedural History.

I'm going to ask that everyone go around the horn and please announce your appearances for the record.

I'm going to again ask that you spell your last name for clarity of the record.

How about we start with the State.

MR. JAY: William Jay for the State Attorney's Office, Ninth Judicial Circuit, J-a-y.

MS. DAVIS: Jennifer Davis on behalf of the State with the Attorney General's Office, D-a-v-i-s.

THE COURT: Has Mr. Freeland joined us?

MR. FREELAND: (No audible response.)

MS. BRIGHAM: Lindsey Brigham on behalf of the Florida Department of Law Enforcement, B-r-i-g-h-a-m.

THE COURT: All right. Mr. Freeland, can you hear the Court?

MR. FREELAND: Your Honor, I'm having difficulty hearing the Court, but I've turned on -- I was able to read the closed captions. If you can hear me, I'm present.

THE COURT: Yes, we can hear you, Mr. Freeland.

MR. FREELAND: Yes, Your Honor, I can hear you.

THE COURT: Thank you.

All right. How about collateral counsel?

MR. CHAYKIN: Yes, Your Honor. Joshua Chaykin on behalf of Mr. James Hitchcok, and there are two other attorneys present. I'll let them put their name, for the record. And, Your Honor, additionally, there's a

capital collateral investigator that's present, that is Joe Garrido.

THE COURT: Mr. Chaykin, your last name is spelled C-h-a-y-k-i-n. And the investigator's name is spelled --

MR. CHAYKIN: Yes, Your Honor.

THE COURT: -- G-a-r-r-i-d-o, correct?

MR. CHAYKIN: Yes, Your Honor. My apologies. I forgot to spell them.

THE COURT: No worries.

MS. HACKETT: Cortney Hackett on behalf of Mr. Hitchcock; last name is H-a-c-k-e-t-t.

THE COURT: Thank you.

MR. CLEMENTE: Chris Clemente on behalf of Mr. Hitchcock, Your Honor. Good afternoon. C-l-e-m-e-n-t-e.

THE COURT: Thank you.

I think Ms. Geist has joined us. She is our Director of Court Operations for the Orange County Clerk of the Court.

Ms. Geist, can you hear the Court?

MS. GEIST: Yes, sir.

THE COURT: All right. Thank you.

And the unnamed staff attorney is joining us. He is with the Ninth Judicial Circuit, that's

Brian Massey.

All right. The Court has read the Defendant's Demands for Additional Public Records. It appears from the both demands that the demand for additional discovery is based on arguments that the defendant's -- or there are alleged violations of the defendant's First, Eighth, and Fourteenth Amendments, and defendant's right to equal protection, his due process rights, and his access to the courts. I have read the demands. I have read the responses, but I am going to ask that we begin with collateral counsel and have you walk me through your arguments and explain how the records relate to a colorable claim for postconviction relief. I'm a pretty compartmentalized thinker, so if you'll keep your arguments in silo, that will assist me.

MR. CHAYKIN: Yes, Your Honor. And so I have -- there are multiple objections to address from both agencies, and I can address them both at the same time, essentially, because a lot of this got intertwined, Your Honor. But would you like me to just focus on the colorable claim for now and then we'll go through the objections, or would you like me to just put forth my responses and arguments to all objections?

THE COURT: I'm happy if you can just break it

into chunks for me, I'll follow along.

MR. CHAYKIN: Yes, sir. I'll do that and I'll specify when I'm going to different sections.

THE COURT: Thank you.

MR. CHAYKIN: So to begin, Your Honor -- and with what Your Honor just mentioned is the first objection that's made by both agencies is that the defendant has failed to put forth a colorable claim. And so, Your Honor, Black's Law Dictionary defines colorable claim as a claim that is legitimate and that may reasonably be asserted given the facts presented and the current law.

Our position is based on what's been requested in the demands and what's been notated in the demands related to the *Frank Walls*' records is that the records from the plain view reading indicate that use of expired drugs or the wrong amount of drugs which the violation of the lethal injection protocol by going outside of what's required in the protocol would lead to an Eighth Amendment violation. It would subject Mr. Hitchcock to unnecessary pain and suffering under the Eighth Amendment, which is a cruel and unusual punishment.

And so these records do go towards a colorable claim, and especially as noted by Justice Sotomayor in

the *Melvin Trotter* case. The -- Mr. Hitchcock is being put in a Catch-22 situation by being forced to put forth a colorable claim by being denied access to the records that do show colorable claim which is that FDOC is not following the protocols that they're required to follow.

What -- the agencies are essentially trying to put our claim into something that it's not. They are arguing that we are making a challenge as to the lethal injection protocols as a whole, which is not the case. In fact, the claim that we're making, the colorable claim, is not that lethal injection as a whole is unconstitutional, but rather, their failure to follow their own protocols would be unconstitutional because it subjects Mr. Hitchcock to unnecessary pain and suffering.

And so, Your Honor, it's our position that we have put forth a colorable claim. I understand that they've cited to a lot of different cases that do go back in time to past claims to lethal injection protocols. The only cases that would be relevant are relevant to the records that have come out from the *Frank Walls* case. Because that is the claim that we're basing this off of is the records that have become evident from the *Frank Walls* case that show this failure to follow the

lethal injection protocol.

And so it's our position that, A, we have put forth a colorable claim, Your Honor. However, there are constitutional violations that we've implicated that are based on the requirement to put forth a colorable claim and I'll explain those. As the Court noted, the Constitutional Amendments being the First and the Fourteenth, and there's also a due process claim, Your Honor, so I would also invoke the Fifth Amendment.

And so, basically, in order to put forth this argument, Your Honor, it's important for me to go back to the Legislative history of Chapter 119 and how 3.852 came into play. Because originally a capital post-conviction defendant had to request records through Chapter 119. And so, Chapter 119 does still apply in post-conviction cases in the sense that the definitions that are within 119 also apply to a 3.852 request or a 27.7081 Florida Statute request, which is -- memorializes 3.82 in the Florida Statute.

And so going to the statute, Your Honor, neither the statute, nor 3.852, actually required the production of a colorable claim. That language is not found within the rule nor within the statute. That has been something that's been construed through Florida

Supreme Court case law, and it's our position it goes beyond what is required from the legislature. The legislature spoke and they spoke on 27.7081 when they specified that the records that we need to request only need to show that they are relevant to post-conviction proceeding or would reasonably lead to admissible evidence. And so it's our position that we've done just that through the same arguments I had made as to there being a colorable claim.

Now, further, Your Honor, as I explained, originally, these requests were done through Chapter 119, but that led to what has been since considered the Chapter 119 problem, and that is in the *Hill v. Butterworth* case, which is cited in the Notice of Authority. And in that case there's a -- what's called a Shevin report, and in the Shevin report it is a study of capital collateral representative and the reform of the Chapter 119 process. This report ultimately leads to the promulgation of 3.852 and 27.7081, and the reason that that's important is because it explains the legislative history of this rule and the statute.

And in the report, which is under the *Hill v. Butterworth* case, page 1157 and 1156, it notates that the purpose of this isn't of the new rule that would

eventually become the rule that we're arguing about today is to expedite the access to the information within Chapter 119, not to prevent disclosure. And this is ultimately seen within In re: Amendment to the Florida Criminal Rule of Procedure Capital Post-conviction Public Record Production, 683 So.2d 475, which is notated in the Notice of Authority as well or it may be the Supplemental Notice of Authority. But in that it affirms that 3.852 is not meant to hurt the rights to production of records under the Florida Constitution which would be under Article V Section 24 which grants a right to public access of records.

And so it's our position that these additional requirements are leading to the treatment of Mr. Hitchcock being different than that of any other member of the public despite the fact that Mr. Hitchcock is still a member of the public. And so this different treatment is a violation of his equal protection rights. It also violates his right to due process and to access -- access these records under the Fifth Amendment.

Additionally, it violates his First Amendment rights to the public access of these records and to eventually form free speech through the Eighth

Amendment challenge, Your Honor. Historically, executions have been open to the public and it's our position that these lethal injection records would fit that bill of being open to the public. Because without assurance that these drugs are being used properly as per the protocol, then we are living within a cloud of secrecy and Mr. Hitchcock's will be within a cloud of secrecy.

And so public access to these records and for Mr. Hitchcock, in particular, plays a positive role in the process. If these agencies are abiding by the protocol, they should have no issue providing transparency to show that they are doing so. I understand that they're relying on case law from quite a long time ago that they have a presumption that they're following the protocol. However, it's our position that that presumption had been overcome by the records that have since come out in the *Frank Walls* case and the records that are attached to the Notice of Authority. Additionally, including the Affidavit from Dr. Buffington. And so it's our position that they should be disclosed, Your Honor.

Now, I believe that that addresses the colorable claim argument, Your Honor, than there are -- I also address the presumption following the protocol argument

where it leads within that. There were two other objections that I noted to address, Your Honor.

The first of the next two being an argument that was made by the Florida Department of Law Enforcement was but not specifically made in the Florida Department of Corrections, and that was whether or not Mr. Hitchcock has purported good cause for not making this demand prior to the warrant existing.

Your Honor, this -- this demand would not have been ripe to Mr. Hitchcock prior to the warrant. Prior to the warrant, it would not be known which protocol would apply to Mr. Hitchcock when we don't know when he's going to be executed. When the warrant became signed, the issue became ripe because the current protocol that is under question based on the records is what would be applied to Mr. Hitchcock. And so, Your Honor, there is good cause to requesting these records because the issue ultimately does not become ripe until a warrant is signed.

Additionally, Your Honor, there's another objection that was made by FDOC and not by FDLE, and that is under Statute 945.10, and that was related to the identification of individuals related to the lethal injection process. And, Your Honor, our position is that we don't need any identifying information. All of

that information can be redacted. It's not necessary to us. What we're requesting is related to the expiration of these drugs based on -- based on the records that have come out from the *Frank Walls* case, so we don't need any identifying information.

The rule that they're citing to 945.10 is a rule of confidentiality. It doesn't exclude the entire record. And Florida Statute 119.072(a) requires that the agency shall produce the remainder of such record of inspection and examination. So that means that that information could be redacted, but we would still be entitled to the remainder. The legislature spoke, right, when they made 925.10, the legislature spoke because they limited this exemption to the identifying information. Had the legislature sought to make this information exempt they would have done so through legislative action, but they're failure to do so or, clearly, their intent to do so is recognized by 945.10 only implying to identifying information. It's very specific.

And so the records that we are seeking are within the definition of public records. Florida's public policy favors disclosure and the Public Records Act is construed literally in the favor of openness with disclosure. Exemption should be construed narrowly and

limited to the designated purpose.

It's also been our position and from our motion that we requested a protective order in the alternative. Should the Court find that the exemptions are valid and the objections are valid, we would request that the Court order a protective order, confidential protective order, that would still allow us access to records and to an independent confidential expert to review so that we can go further on the Eighth Amendment claim.

Additionally, we put forth a motion for in-camera inspection, and it's our position that this Court should conduct in-camera inspection of these records to see what these exemptions that are being made by these agencies are and whether or not they're being exercised properly.

This Court should be privy to the information to determining whether or not there's a colorable claim that's been put forth or whether or not, even just according to the statute, that we've put forth relevant -- a request for records that are relevant to a post-conviction proceeding or that are reasonably -- will reasonably lead to admissible evidence.

The only other thing I note, Your Honor, is that for the Constitutional arguments I made is that

compared to a typical member of the public, a typical member of the public does not have to provide any reason as to why they're requesting specific records and that cite -- that comes from a case of *Curry v. State*, which is in the Supplemental Notice of Authority. And from the Public Records Act, additionally, the law provides that the members of the public access the public records even the most heinous criminal, right, and so that's a little church of Scientology case which is in the Notice of Authority as well.

I do believe I've covered everything, Your Honor. If I could just have one brief moment?

THE COURT: Of course. And I'll give you an opportunity to rebut after the FDOC and FDLE have given their positions.

MR. CHAYKIN: Thank you, Your Honor.

THE COURT: All right. I think the Department of Corrections had, I think, a substantial pleading with objections, so would you like to go first?

MS. LONERGAN: Yes, Your Honor. And I do apologize, I think I got missed during appearances. Kristen Lonergan, L-o-n-e-r-g-a-n, Florida Department of Corrections.

THE COURT: Thank you, Ms. Lonergan.

MS. LONERGAN: So for the most part, we will rely on our written filing, not to repeat unnecessarily. I'll address some of the argument made by counsel, however. As an initial matter as to these records, these exact claims that we are not in compliance with the protocol, not challenges to the protocol but challenges that we are not acting in compliance with the protocol have already been ruled on and found insufficient by the Florida Supreme Court in multiple warrant litigation even this year.

Accordingly, these claims are not colorable. Counsel has not articulated anything different from the demands in those prior warrants. There's already binding precedent on this Court by the Florida Supreme Court which has consistently continued to apply the requirements that they demonstrate a colorable claim. Regardless of that language not being explicitly appearing in Rule 3.852.

The claim that there's some sort of Catch-22 ignores the fact that the Florida Supreme Court has already found that even taking their claims and what they're articulating about what the *Walls'* records show at face value, these are still not colorable claims.

In addition, they've not overcome our presumption. Misreading the *Walls'* records that were inappropriately

filed in that case, which those records have appeared, been presented to the Florida Supreme Court in record of those objections of those demands in all of the warrants so far this year. The Florida Supreme Court has seen those records, has seen these claims regarding those records and found them all the same. Misrepresenting those records that the Florida Supreme Court has already recognized don't show what counsel claim they show does not assist them in overcoming that presumption.

Finally, to the extent that counsel argues that regarding the purpose of Rule 3.852, that doesn't negate the fact that the Florida Supreme Court has construed and applied that rule since then in such a way that forecloses this demand. But even if we were just discussing a 119 public records request that wasn't subject to these additional requirements, these records are confidential, in total. There is no portion of those records that there is not a Constitution -- a statutory exemption that applies.

So to the extent that counsel's arguing that identifying information in those records can be redacted, they don't know what is or is not in those records. And FDOC asserts that those records are confidential, in total, there is no confidential

remainder to be provided with redactions to those records.

On that note, to the extent that counsel has sought in-camera review, in Rule 3.852, that only applies if the Court requires production of those records. We produce those records with redactions and then counsel challenges those redactions. That's not the case here. Right? That would require this Court to, first, determine that there is not a -- that there had been showing of a colorable claim. It would require this Court to determine that they have overcome our presumption, both of which there's binding precedent on this Court so that cannot occur.

And then to order FDOC to produce those records with confidential information redacted, the Department would produce records in that -- even in that situation fully redacted, but to ask for in-camera review is premature at this point. It requires findings that this Court has not made.

THE COURT: Thank you.

And, Ms. Brigham, for the Florida Department of Law Enforcement.

MS. BRIGHAM: Yes, Your Honor. The Florida Department of Law Enforcement would adopt DOC's arguments just made and also stand on our written

objection that we filed. You know, I think Ms. Lonergan touched on just about everything that I would have argued. I can't think of anything else because our objections are almost identical. You know, DOC has said many times. You know, CCRC has been trying to make this argument since January, and DOC has come in every time and said, no, you are misreading these documents. So, you know, they're not showing that these documents really to a colorable claim. They're relying on misrepresentation of these documents. So to that effect, you know, FDLE would just object to producing these documents.

THE COURT: Thank you.

All right. Ms. Davis, Mr. Freeland, any input from the State of Florida?

MR. FREELAND: Not at this time, Your Honor.

We do have a statement we would like to make to the Court at the conclusion of argument. It's not related to the argument.

THE COURT: Thank you.

Mr. Jay, anything on behalf of the Office of the State Attorney?

MR. JAY: No, Your Honor. Thank you.

THE COURT: Thank you.

Mr. Chaykin, do you wish to rebut or discuss

any --

MR. CHAYKIN: Yes, Your Honor, if I may?

THE COURT: -- additional argument?

No rebuttal? All right.

MR. CHAYKIN: No, I do have rebuttal, Your Honor. My apologies. I didn't mean to interrupt.

THE COURT: I didn't hear you. I'm sorry. Whenever you're ready.

MR. CHAYKIN: Yes, Your Honor. It's my fault, I interrupted while you were still talking, but I do have rebuttal.

So in terms of FDOC and FDLE argued that the defense is misrepresenting these records. This is based on a plain view of the records. The agencies are alleging that we are intentionally misrepresenting the records without providing what the actual representation of these records are. They continue to argue that these defense -- these defendants are arguing that these records -- are misapplying the records to their arguments. However, they fail to put forth what the reason or alternative is or what the explanation is, Your Honor.

Additionally, in terms of the Motion for In-camera Inspection, our request is under subsection J, which under subsection J of 3.852 very clearly specifies

that: The authority of the court in proceedings under this rule, the court may conduct an in-camera inspection. I understand that the FDOC is referring to a different section of the Rule where records are sent to the repository, that's in the initial 3.851 situation. What we're asking for is based on discretion of the Court, not pursuant to the initial public records production, so this is based on discretion of the Court.

And our position is that -- just what FDOC mentioned is that, technically, we don't know what's behind the wall on those records, right? We can't see those records until it's given. And that's why we're asking for a Motion for In-camera Inspection so this Court can see the records. And in doing so it, obviously, could affect the scheduling order this Court has put forth when the defense would urge this Court to conduct an in-camera inspection so that the Court can actually be privy to what these claims the FDOC and FDLE are making. And then we would rest on that.

THE COURT: Mr. Chaykin, can I ask collateral counsel, since the Florida Supreme Court's decision in *Trotter* and since the writ of cert was denied by the United States Supreme Court, what additional information are you putting forward that has not been

considered in the *Trotter* case?

MR. CHAYKIN: So, Your Honor, *Trotter* put forth a claim of an Eighth Amendment violation without having these records to put forth. And so our position is that -- is that we're being deprived access to these records to be able to put forth a claim, Your Honor, an Eighth Amendment claim. And so we are in this Catch-22 position just like Justice Sotomayer mentioned in the *Melvin Trotter* case, and that was a different claim than what we're making, they made an Eighth Amendment claim. Our position is we're being prevented from making an Eighth Amendment claim. So, ultimately, the cases and claims are different, Your Honor.

THE COURT: All right. Thank you for that clarification.

Does any party have any additional argument?

MS. BRIGHAM: No, Your Honor.

MS. LONERGAN: No, Your Honor.

THE COURT: Thank you.

All right. The Court will review the argument. I have already reviewed the pleadings and objections and I will be issuing a written ruling.

Another piece of housekeeping, I'm going to ask -- well, I'm going to order, that if the State or collateral counsel file any pleadings between now and

Monday morning at 9:00 a.m. that you please personally include me in the service. And I'm gonna -- so get out your pens, and I'm gonna give you an old-fashioned email address; KCarsten, c-a-r-s-t-e-n, at ninth, spelled out, n-i-n-t-h, circuit, c-i-r-c-u-i-t .org, so that should read Kcarsten@ninthcircuit.org.

There is some concern that our servers will be down, our access to the E-filing system will be down. I think old-fashioned email may work, so I've been assured that I'll be able to receive correspondence.

All right. Without anything further, that is going to conclude our hearing. Thank you for joining us at this late hour in the day.

MR. FREELAND: Your Honor?

THE COURT: Yes. Who's speaking?

MR. FREELAND: I did have a statement that I needed to make. This is Timothy Freeland speaking.

THE COURT: My apologies. Mr. Freeland.

MR. FREELAND: With the Office of Attorney General.

THE COURT: Yes, sir.

MR. FREELAND: My office has been advised that opposing counsel has been in communication with the victim's family. We're not at all suggesting that that's improper. The victim's family has advised us

that they would prefer not to be contacted further, and that actually is according to the rule. I'm just making the statement for the record.

MR. CHAYKIN: And, Your Honor, if I can interject. That person -- the one specific person asked us not to contact them and we've abided by that, so that's not an issue. Anybody who asked us not to communicate with them we have abided by that.

THE COURT: All right. Thank you. The Court's not been asked to take any action on that statement, so the statement is part of the record.

MR. CHAYKIN: Yes, Your Honor.

MS. BRIGHAM: Your Honor?

THE COURT: Yes.

MS. BRIGHAM: Just one additional note for the record. We were able to get a response from defense counsel that Mr. Hitchcock has agreed to remote appearance at any evidentiary hearing in the future that's issued. So that's why we have not yet provided a proposed transport order because it won't be necessary.

THE COURT: Thank you, Mr. Chaykin.

Has the details of that electronic appearance been ironed out because I don't want to find ourselves in a position where it doesn't work?

MR. CHAYKIN: My apologies, Your Honor. For some reason I couldn't hear that last statement that you said.

THE COURT: All right. Florida Department of Corrections has indicated that you on behalf of your client have spoke with Mr. Hitchcock and he agrees to appear remotely. I would like to test out those capabilities prior to any evidentiary hearing so we don't find ourselves with an inability to proceed.

MR. CHAYKIN: Yes, Your Honor. And I believe we'll have the opportunity through the case management conference where FDOC has indicated that they will be able to make him present, so...

And what they represented is true, Mr. Hitchcock indicated that, not Zoom, the Orange County link would work just fine.

THE COURT: All right. Excellent. We'll give it a test run at the case management hearing.

MS. BRIGHAM: Yes, Your Honor. And we have successfully used WebEx before at the prison, so there should be no issue.

THE COURT: All right. Any other matters for the Court?

MR. CHAYKIN: No, Your Honor, not at this time.

THE COURT: Thank you.

MR. CHAYKIN: Thank you.

THE COURT: Thank you for your presence.

Feel free to disconnect.

MS. BRIGHAM: Thank you, Your Honor. Good evening.

MS. DAVIS: Thank you. Good evening, Your Honor.

THE COURT: All right. The Court is in recess until Monday at 9:00.

(Proceedings were concluded at 6:05 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF ORANGE:

I, Heidi Lichtenberg, RPR, Official Court Reporter of the Ninth Judicial Circuit of Florida, do hereby certify, pursuant to Florida Rules of Judicial Administration 2.535, that I was authorized to and did report in stenographic shorthand the foregoing proceedings; and that thereafter my stenographic shorthand notes were transcribed to typewritten form by the process of computer-aided transcription; and that the foregoing pages contain a true and correct transcription of my shorthand notes taken therein.

WITNESS my hand this 6th day of April, 2026, in the City of Orlando, County of Orange, State of Florida.

s/Heidi Lichtenberg, RPR

Heidi Lichtenberg, RPR

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX H

Order on Public Records Objections (April 2, 2026)

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

JAMES ERNEST HITCHCOCK,
Defendant.
_____/

CASE NO.:1976-CF-001942-A-O
SUPREME COURT SC1960-92717

ACTIVE DEATH WARRANT

ORDER DENYING "DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS FLORIDA DEPARTMENT OF CORRECTIONS" ("FDOC") AND THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT ("FDLE")

THIS MATTER has come before the Court by counsel for James Hitchcock filing the demands titled Defendant's Demand for Additional Public Records Florida Department of Law Enforcement/ Florida Department of Corrections, filed April 1, 2026, and pursuant to Florida Rules of Criminal Procedure 3.852(h) and (i) [sic]. Upon review of Defendant's Motion, FDLE and FDOC's Objections, the court file, record, and arguments made during a hearing on April 2, 2026, this Court finds the following:

Defendant's Demand alleges the records of recent executions demonstrate that the State of Florida has failed on multiple occasions to comply with the requirements of Florida Statute section 922, which "subjects" Defendant to

suffering and cruelty in contravention of the Fourteenth and Eighth Amendments of the Federal Constitution and with those related "provisions of the Florida Constitution." Defendant additionally alleges that the Florida Department of Corrections has "repeatedly deviated" from their own procedures, thereby creating the risk of "unreasonable suffering and cruelty" in violation of the Fourteenth and Eighth Amendments to the Federal Constitution. Defendant specifically alleges violations of the First, Fourteenth, and Eighth Amendments, and counsel raised a Fifth Amendment argument at the hearing.

Defendant demands copies of a list of information described in Defendant's Demand and an Affidavit of Daniel E Buffington, PharmD, MBA, attached and incorporated into Defendant's Demand. The information demanded regarding lethal injection protocols includes the forms, logs, procedures, training, and proficiencies of the FDOC personnel responsible for the lethal injection of the condemned. He argues that failing to allow access to this information will violate his rights to due process and to access the courts, pursuant to the First, Eighth, and Fourteenth Amendments of the Federal Constitution and related provisions of the Florida Constitution.

Defendant insists that he is not challenging whether the established protocol is unconstitutional, but whether the State is failing to fulfill its obligation to follow its own procedures and thereby violating Defendant's rights pursuant to the Eighth Amendment. In oral arguments, Defense counsel raised the additional argument that the Defendant's inability to acquire the demanded

information precludes him from raising a colorable claim under the Eighth Amendment.

The Court finds that the Defendant's Demand is overbroad, burdensome, and that the production of these records is unlikely to lead to a colorable claim of post-conviction relief. *See Correll v. State*, 184 So. 3d 478, 492 (Fla. 2015); *see also Dailey v. State*, 283 So. 3d 782, 792-793 (Fla. 2019). The Court finds that the Defendant's allegations based on the information arising from the *Walls v. Dixon* case are speculative and conclusory and would not establish a colorable claim that the Defendant would be at risk of "serious illness and needless suffering."[1] *See Heath v. State*, 426 So. 3d 1253, 1261-1262 (Fla. 2026) (citations omitted); *see also Trotter v. State*, ---So. 3d ---, 51 Fla. L. Weekly S37 (Fla. 2026). [2] *King v. State*, --- So. 3d ---, 51 Fla. L. Weekly s71 (Fla. 2026).

The Court finds meritless that sustaining the governmental objections would violate his right to due process and to access to the courts. *see King v. State*, ---So. 3d ---, 51 Fla. L. Weekly S571 (Fla. 2026); The Court finds the First Amendment violation allegation to be without merit, as the Defendant has fully informed the Court of how he believes his constitutional rights are being violated.

Additionally, the Court finds that the information requested by Defendant is exempt from disclosure, as it may result in the identification of people involved

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[1] *Walls v. Dixon*, No. 4:25-cv-0488. ECF 1 (N.D. Fla. Nov. 26, 2025)

[2] The Court also notes Justice Sotomayor's opinion as to the insufficiency of Trotter's allegations citing to *Heath*. *Trotter v. State of Florida*, 607 U.S.---,146 S. Ct. 755 (2026) (Statement of Justice Sotomayor)

in the preparation of a capital execution and in the disclosure of otherwise confidential information. *See generally* § 945.10 Fla. Stat. (2026).

Finally, the Court finds Defendant's arguments that he has the right to access to these records through section 119 of the Florida Statutes are without merit. These proceedings are controlled by Florida Rules of Criminal Procedure 3.852 (g)(3), related court rules, and caselaw.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. The Court sustains the objection of the Florida Department of Corrections and the Florida Department of Law Enforcement as to Defendant's Demand For Additional Public Records, Florida Department of Corrections.

2. The Court Denies Defendant's Motions for Additional Public Records from FDOC and FDLE.

DONE AND ORDERED on this 2nd day of April, 2026, in Orlando, Orange County, Florida.

KEITH CARSTEN
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to the following attorneys and interested parties on this 2nd day of April, 2026:

Timothy A. Freeland, timothy.freeland@myfloridalegal.com

Jennifer A. Davis, jennifer.davis@myfloridalegal.com

Scott Browne, scott.browne@myfloridalegal.com

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Kristen J. Lonergan, kristen.lonergan@fdc.myflorida.com

William Jay wjay@sao9.org

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Human Resources, Orange County Courthouse, 425 N. Orange Avenue, Suite 510, Orlando, Florida, (407) 836-2303, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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APPENDIX I

Successive Postconviction Motion (April 7, 2026)

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT**
Execution Scheduled: April 30, 2026, at 6:00 P.M.

JAMES E. HITCHCOCK,

Defendant.

----------/

SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.851

COMES NOW, the Defendant, James E. Hitchcock ("Mr. Hitchcock") in the above-captioned action, respectfully moves this Court for an order granting a stay of execution and/or vacating his conviction and sentence of death.

(A) JUDGMENT AND SENTENCE UNDER ATTACK:

Mr. Hitchcock challenges his conviction and death sentence pursuant to Florida Rule of Criminal Procedure 3.851. The Circuit Court of the Ninth Judicial Circuit, Orange County, rendered the judgments of conviction and sentence of death under consideration. See Appendix A. On January 21, 1977, an Orange County grand jury indicted Mr. Hitchcock with First-Degree Murder. Mr. Hitchcock was found guilty and sentenced to death. Mr. Hitchcock was resentenced three times, all resulting in a death sentence. See, Appendix A, Judgment and Sentence.

(B) PREVIOUS CONVICTION CLAIMS AND DISPOSITION

See, Appendix B, The Course of Prior Proceedings and Statement of the Case and Issues Raised, filed by the State on April 2, 2026, Filing # 245147013.

(C) REASON CLAIMS RAISED IN PRESENT MOTION WERE NOT RAISED IN FORMER MOTIONS.

The facts in support of Claim 1 (raised below) could not have been raised in a prior motion. Any challenge as to which lethal injection protocol will apply to Mr. Hitchcock only becomes ripe once a warrant is signed. Additionally, the information related to the Florida Department of Corrections' ("FDOC") and the Florida Department of Law Enforcement's ("FDLE") violation of the lethal injection protocols only became available during the post-warrant litigation proceedings in *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025). The Defense would also call Dr. Buffington to further testify to information included in an affidavit he signed regarding the lethal injection protocols and why the requested records are necessary for further review.

The facts in support of Claim 2 have been previously raised as part of claims alleging ineffective assistance of counsel and newly discovered evidence claims; however, Mr. Hitchcock now uses that evidence, in good faith, to support a standalone claim of actual innocence. The denial of a cumulative review of Mr. Hitchcock's innocence on procedural grounds would be a manifest injustice. A cumulative review of Mr. Hitchcock's case supports a compelling case of innocence, and the execution of an innocent man violates the protection against cruel and unusual punishments under the Eighth Amendment to the U.S. Constitution and corresponding Florida amendments. There are currently two witnesses still alive (Wanda Green and Judy Stevens) who testified that Mr. Hitchcock's brother confessed to the murder of Cynthia Driggers ("Cindy") and they are willing to testify and reaffirm Richard's confession to this crime.

(D) NATURE OF THE RELIEF BEING SOUGHT

(1) Mr. Hitchcock requests that he be granted leave to amend, as necessary.

(2) Mr. Hitchcock requests this Honorable Court enter a stay of his execution.

(3) Mr. Hitchcock requests this Honorable Court vacate his conviction and sentence of death.

(E) CLAIMS FOR WHICH AN EVIDENTIARY HEARING IS SOUGHT

CLAIM 1: THE DENIAL OF ACCESS TO LETHAL INJECTION RECORDS VIOLATES MR. HITCHCOCK'S RIGHTS UNDER FLORIDA LAW, ART I § 24 OF THE FLORIDA CONSTITUTION, AND THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNTIED STATES CONSTITUTION, ULTIMATELY PREVENTING MR. HITCHCOCK FROM PROVING A VIABLE CLAIM THAT HIS EXECUTION WOULD BE A VIOLATION OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The trial court unlawfully entered an order sustaining the objections of FDOC and FDLE to the demands for additional public records filed by Mr. Hitchcock on April 1, 2026 for records related to lethal injection protocols.[1] As such, the trial court prevented Mr. Hitchcock from accessing public records in violation of his Florida Constitutional rights under Article I, Section 24 and in violation of Florida Statutes. Florida Rule of Criminal Procedure, Rule 3.852(i) governs postproduction requests for additional records such as those requested in this case. The rule requires Collateral Counsel to file an affidavit in the circuit court meeting the following requirements:

> (A) attest that collateral counsel has made a timely and diligent search of the records repository; and
>
> (B) identify with specificity those public records not at the records repository; and
>
> (C) establish that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and
>
> (D) shall be served in accord with subdivision (c)(1) of this rule.

Fla. R. Crim. P. 3.852(i)(1).

[1] See, Appendix C, Florida's 2025 "Execution by Lethal Injection Procedures."

Despite meeting this burden, Florida's opaque lethal injection laws are operating to preclude Mr. Hitchcock, a capital postconviction defendant, from inspecting and copying specific public records in contravention of Chapter 119, "Public Record Laws;" Fla. Stat. § 27.7081; and Fla. R. Crim. P. 3.852. FDOC and FDLE failed to assert any legitimate claims that the records sought are excluded, by a statutorily recognized exemption and/or confidentiality provision, which precludes the agencies from fulfilling their duties to make the records available for public copying or inspection. Manufactured burdens have been placed on Mr. Hitchcock to prevent him from accessing records that would prove the conditions of his execution would violate the Eighth Amendment to the United States Constitution.

The ongoing refusal by the agencies to disclose these records shrouds Florida's lethal injection process under a veil of secrecy that undermines public trust in the procedures the State uses to conduct executions. Allowing FDOC and FDLE to hide behind their veil of secrecy sets a dangerous precedent that the government is allowed to deviate from the protocols without ramification, since no capital postconviction inmate is allowed to access the information that would confirm whether the agencies are following the protocol. The records currently available from the *Walls* case reflect maladministration of the process, overcoming any presumption that the agencies are adhering to the protocol.[2] The allegations regarding the *Walls* records are included in the demands for additional records filed on April 1, 2026. Under Florida's current treatment of these record requests, the government could intentionally inject drugs that have not been approved or incorporated into the protocol, into an inmate's veins and thwart both the public's and the Court's scrutiny. Since the agencies treat transparency like a foreign concept, the Courts would never know of a potential maladministration, and the agencies would forever remain free from

[2] See, Appendix D and E, FDOC Logs.

consequence.[3] Denying access to these records tells FDOC and FDLE that the protocols need not be followed at all since their actions can never be challenged in this "Catch-22" lethal injection protocol loop. *See Trotter v. Florida*, 146 S. Ct. 755, 756 (2026) (Justice Sotomayor's Statement regarding the denial of the application for a stay of execution). Florida's public records litigation process for capital postconviction inmates amounts to no process at all.

There is no legitimate governmental interest in treating Mr. Hitchcock's demand for public records any differently than any other member of the public, regardless of his status as a capital postconviction inmate or the timing of his public records demand. There is no rational basis for the disparate treatment between Mr. Hitchcock's public record demands and the level of access to public records afforded to the general public. Rendering such disparate treatment is in direct violation with the Equal Protection guarantees of the Fourteenth Amendment of the U.S. Constitution. Additionally, withholding access to public records denies Mr. Hitchcock due process under the Fifth and Fourteenth Amendments of the U.S. Constitution. Mr. Hitchcock still seeks access to the requested records pursuant to Fla. Const. Art I, § 24(a); Fla. Stat. § 119.01(1); Fla. Stat. § 27.7081; and Fla. R. Crim. P. Rule 3.852.

Mr. Hitchcock filed facially sufficient public records demands on April 1, 2026. Mr. Hitchcock also filed a motion for in-camera inspection, urging the trial court to review the materials before ruling on any objections. *See*, *Everglades Law Center*, 290 So. 3d at 133-34 (*holding*, "the trial court erred in denying the petition for writ of mandamus without conducting an in-camera review of the transcript to determine if redactions of claimed mediation communications are appropriate"). The failure of the trial court to conduct an in-

[3] "Use of any unauthorized drug could result in unprecedented complications." See, Appendix F, Affidavit of Dr. Buffington.

camera inspection amounts to "fundamental error." *Id.* at 133. The trial court should have conducted an in-camera inspection prior to issuing a denial of Mr. Hitchcock's lawful request for public records. Additionally, the trial court's ruling did not mention Mr. Hitchcock's request for the materials via confidential protective order.

I. Florida law provides any member of the public access to public records.

Florida has a significant and storied history of public access to government records. The Florida constitution provides:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Fla. Const. Art. I, §24(a). This Florida legislature codified this fundamental right in Fla. Stat. § 119.01(a), "General state policy on public records," which provides "[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency." Mr. Hitchcock's demands for records from FDOC and FDLE involved the inspection and copying of records to which any other member of the general public would have been entitled. The records Mr. Hitchcock seeks are public records under Florida Statute § 119.011(12) which defines a public record as all documents and records, regardless of form, "made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency" including "any material prepared in connection with official business which is intended to perpetuate, communicate, or formalize knowledge of some type." *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (1980).

A record generated from the performance of duties falls within the definition of public record.[4] The definition of "public records" also includes logs which are relevant to and required by written operating procedures and duties of an agency. *Miami-Dade County v. Professional Law Enforcement Ass'n*, 997 So. 2d 1289, 1290-1 (Fla. 3d DCA 2009) (*aff'ing* the order requiring County Police Department aviation unit to allow the inspection and copying of the pilots' personal flight logs as "public record"). Similarly, logs which "show the functioning of the public agency" have been determined to be public records within the meaning of Chapter 119. *Cruz v. State*, 279 So. 3d 154, 158 (Fla. 4th DCA 2019) (*holding,* "if public policy demands" names of experts visiting a defendant to be redacted from jail visitation logs as confidential, "it is for the legislature to provide an exemption by statute."), *review denied*, 2020 WL 1169444 (Fla. 2020). "If there is any doubt as to whether a matter is a public record subject to disclosure, the doubt is to be resolved in favor of disclosure." *Everglades Law Center v. South Florida Water Management District*, 290 So. 3d 123, 129 (Fla. 4th DCA 2019) (citing, *Morris Publ'g Grp., LLC v. Fla. Dep't of Educ.*, 133 So. 3d 957, 960 (Fla. 1st DCA 2013)). Public records laws are "to be construed liberally in favor of the state's policy of open government." *Id.*

II. Mr. Hitchcock's public records demands, filed on April 1, 2026, were pled with specificity and were not overly broad nor unduly burdensome.

On April 1, 2026, Mr. Hitchcock filed demands for additional public records from FDOC and FDLE, requesting specific public records as to each agency's compliance with the lethal injection protocol. The records subject to the demands were requested with specificity in connection with the official business of carrying out lethal injection executions. There is no question as to what records Mr. Hitchcock is seeking. The demands do not include broad, sweeping

[4] See, *Mem'l Hosp. Volusiam Inc. v. News-Journal Corp.*, 729 So. 2d 373 (Fla. 1999); *Weekly Planet, Inc. v. Hillsborough County Aviation Authority, et al*, 829 So. 2d 970 (Fla. 2d DCA 2002).

language that would leave FDOC or FDLE unclear as to what records Mr. Hitchcock is requesting. The trial court's finding that the records sought are overly broad and unduly burdensome is not supported by the face of the demands filed on April 1, 2026. Meriam-Websters Dictionary defines "overbroad" as "too widely applicable or applied" and defines "broad" as "wide in range or amount."

It is well established that an agency asserting that records are exempt from disclosure based upon a specified exemption bears the burden of establishing entitlement to an exemption. *See Barfield v. School Board of Manatee County,* 135 So. 3d 560, 562 (Fla. 2d DCA 2014); *Woolling v. Lamar,* 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied,* 786 So. 2d 1186 (Fla. 2001); *Barfield v. City of Fort Lauderdale Police Department,* 639 So. 2d 1012, 1015 (Fla. 4th DCA), *review denied,* 649 So. 2d 869 (Fla. 1994); and *Florida Freedom Newspapers, Inc. v. Dempsey,* 478 So. 2d 1128, 1130 (Fla. 1st DCA 1985).[5] FDOC argues that Fla. Stat. § 945.10 exempts disclosure of the requested lethal injection protocol records. However, Fla. Stat. § 945.10(1)(j)1 very limitedly and narrowly makes confidential:

> Information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including persons or entities administering, compounding, dispensing, distributing, maintaining, manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with chapter 922.

The plain meaning of the statute shows that the Florida legislature did not intend to prevent all access to records related to lethal injection, but rather any information leading to the identity of

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[5] 47, Florida Office of the Attorney General, *GOVERNMENT-IN-THE-SUNSHINE MANUAL, A Reference For Compliance with Florida's Public Records and Open Meetings Laws*, (2025 ed.) p. 179-80. Downloadable PDF version is available at: Office of Attorney General, James Uthmeier, Sunshine Manual, myfloridalegal.com, https://www.myfloridalegal.com/sites/default/files/government-in-the-sunshine-manual.pdf (last accessed April 6, 2026). (hereinafter, "Attorney General Manual.")

individuals involved in the lethal injection process. Mr. Hitchcock does not seek any identifying information and agrees that such information could and should be redacted according to the statute; identifying information is not the subject of his demands for additional public records. The agencies' jointly-advanced position, that all requested records would be exempt/confidential, ignores the fact that the statute did not make all of the records related to lethal injection exempt/confidential in total. Similar records have been previously disclosed in the *Walls* case. Nothing requested by Mr. Hitchcock would lead to the identification of anybody involved in the lethal injection process and the redaction of any information related to identity would sufficiently resolve the issue without the need to wholly deny disclosure.

III. Mr. Hitchcock asserted a colorable claim despite neither Florida Statute nor 3.852 requiring him to do so.

The burden imposed on the defendant to establish a connection to a colorable claim is not found in any Florida Statute nor in Rule 3.852 of the Florida Rules of Criminal Procedure. Capital postconviction defendants are precluded from seeking public records under the provisions of chapter 119 and are instead statutorily required to seek public records pursuant to Florida Statutes § 27.708(3), which precludes capital postconviction defendants represented by capital collateral counsel from making any public records requests "except as provided in § 27.7081."

In 1996, Robert Shevin was asked by the then Chief Justice of the FSC to prepare a "Special Master's Report" to assist the FSC, after concerns were raised about capital postconviction attorneys' ability to fulfill their ethical duty of providing effective assistance of counsel. This report has become known at the "Shevin Report."[6] Four proposed reforms were suggested, with the most significant reform becoming known as "the Chapter 119 problem." The

[6] The entirety of the report can be found as Attachment A, to the court's opinion in *Hill v. Butterworth*, 941 F. Supp. 1129 (N.D. Fla. 1996).

"Shevin Report" suggested the "goal of the new rule should be to expedite … access to Chapter 119 information that it can be reviewed … in a time to be incorporated in the original 3.850 motion. *Hill*, 941 F. Supp. at 1157. In response to the recommendations, this Court promulgated Rule 3.852 of the Florida Rules of Criminal Procedure. *In re Amendment to Florida Rules of Criminal Procedure -Capital Postconviction Public Records Production*, 683 So. 2d 475 (Fla. 1996); See also, *In re Amendments to Florida Rules of Criminal Procedure - Capital Postconviction Public Records Production*, 673 So. 2d 483 (Mem) (Fla. 1996).

Then, in 1997, the "…Legislature provided that all requests for records in capital postconviction proceedings must be made in accordance with Rule 3.852, and the request must be approved by the capital collateral regional counsel." Florida Staff Analysis, S.B. 1330, 4/22/1998. In 1998 the Florida legislature amended Florida Statute § 27.708(3) again to be consistent with Florida Rules of Criminal Procedure 3.852 stating "[e]xcept as provided in s. 119.19, the capital collateral regional counsel or contracted private counsel shall not make any public records requests on behalf of his or her client." Later, Fla. Stat. § 119.19 was renumbered as Fla. Stat. § 27.7081 in 2005. Florida Statute § 27.7081 states that it applies to the production of public records for capital postconviction defendants. It also defines "public records" as consistent with the "same meaning as provided in s. 119.011."

The FSC's intent and the legislative intent were clear in the promulgation and amendments: **neither was to limit a capital postconviction defendant's constitutional and statutory rights to production of public records**. *In re Amendment,* 683 So. 2d at 475-476; *See also*, SB 898 (1998), Bill Analyses; SB 1330 (1998), Bill Analyses. Nothing found in the history of rule 3.852 or chapter 27 statutes suggest that either was intended to prevent the disclosure of

relevant public records to capital postconviction defendants. In fact, in 1996 when this Court promulgated Rule 3.852 it wrote:

> We specifically address the comments of those who are concerned that the rule will unconstitutionally limit a capital postconviction defendant's right to production of public records pursuant to article I, section 24, Florida Constitution, and chapter 119, Florida Statutes (1995). We conclude that the rule does not invade those constitutional and statutory rights.

In re Amendment, 683 So. 2d at 475-476, (emphasis added). This intention was stated again in Judge Anstead's concurrence:

> As noted by the majority opinion, this rule in no way diminishes the right of an individual Florida citizen, including a capital defendant, to access to public records pursuant to article I, section 24, Florida Constitution, and chapter 119, Florida Statutes (1995). Trial courts must be mindful of our intention that a capital defendant's right of access to public records be recognized under this rule. If there is any category of cases where society has an interest in seeing that all available information is disclosed, it is obviously in those cases where the ultimate penalty has been imposed.

Id. at 477 (emphasis added).

The same definitions and exemptions as found in chapter 119 of Florida Statutes applies to public record demands filed pursuant to 3.852 of the Florida Rules of Criminal Procedure. Florida Statute § 27.7081 requests for postproduction public records mirrors Florida Rule of Criminal Procedure Rule 3.852, each requires that capital postconviction defendant's counsel:

> 1. Attests that collateral counsel has made a timely and diligent search of the records repository.
> 2. Identifies with specificity those public records not at the records repository.
> 3. Establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.
> 4. Must be served in accordance with subsection (4).

Fla. Stat. § 27.7081(9)(a)1-4. Neither the rule nor the statute requires that Mr. Hitchcock, as a capital postconviction defendant, establish a connection to a colorable claim.[7] No other member of the Florida public is required to put forward a colorable claim - or even provide a reason - for a request for public records from a Florida Agency. Mr. Hitchcock's requests are backed by evidence that would inform him of the potential he will face an unlawfully cruel and unusual execution; however, his requests were denied for not meeting a threshold that no other records requester must meet.

Both FDOC and FDLE argued that Mr. Hitchcock has not put forward a colorable claim, and the trial court agreed. Black's Law Dictionary defines "colorable claim" as: "a claim that is legitimate and that may reasonably be asserted, given the facts presented and the current law." Mr. Hitchcock has put forward a colorable claim, which entitles him to the requested records, despite not being under any legitimate requirement to do so. As such, he has also met the statutory burden of establishing that the public records he seeks are relevant to the subject matter of the postconviction proceeding and are reasonably calculated to lead to the discovery of admissible evidence. The requested lethal injection records are relevant to Mr. Hitchcock's postconviction proceedings regarding his imminent execution via lethal injection. The records are also reasonably calculated to lead to the discovery of evidence related to expired, incorrectly stored, or misapplied drugs in violation of Florida's lethal injection protocol and the Eighth amendment of the U.S. Constitution.

If the records Mr. Hitchcock requested provide further evidence that FDOC and FDLE are not carrying out the lethal injection protocol accepted by the FSC, and that said failure to properly

[7] An application of the negative-implication canon, while plainly reading the statute, bolsters the result: a colorable claim is not required. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (Thomson/West 2012).

administer the protocol would cause unnecessary suffering, then Mr. Hitchcock would have a legitimate claim that Florida's maladministration of its own lethal injection protocols amounts to a cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution. This Court and the State of Florida are requiring Mr. Hitchcock to prove his claim of maladministration of the lethal injection protocol to be able to obtain the records that he alleges he needs to prove his claim of maladministration of the lethal injection protocol. This is precisely the "Catch-22" that Justice Sotomayor recognized the FSC requiring in the Melvin Trotter case, finding that the FSC:

> appears to be placing prisoners in a Catch-22: It has affirmed the denial of requests for records on these issues, at least in part, because the prisoners do not yet have enough information to raise a "colorable" Eighth Amendment claim. *Ibid*. The very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable Eighth Amendment claim.

Trotter v. State of Florida, et. al, 607 U.S. ___ (2026) (statement respecting the denial of the application for stay and petition for certiorari). FDOC and FDLE argue that Mr. Hitchcock is intentionally misreading the lethal injection logs from the Frank Walls case, but neither agency has supplied any alternative reasoning or explanation. Mr. Hitchcock's interpretation of the Frank Walls lethal injection logs is based on what is evident on the face of the logs, dates, & measurements. If Mr. Hitchcock is misinterpreting the information in the documents, then FDOC should be able to explain how Mr. Hitchcock's interpretation is incorrect. Justice Sotomayor's recent statement on the denial of certiorari in *Trotter v. State of Florida, et. al.*, supports Mr. Hitchcock's position that he has identified a colorable claim. Justice Sotomayor wrote:

> Individuals seeking to challenge the method of their execution should not have to guess at whether the State is, or is not, following its execution protocol. Nor does the State appear to have any legitimate confidentiality interest in shielding from inspection basic facts about the implementation of its execution protocol, such as whether the State is using expired drugs. If the protocol is in fact being followed, then transparency instills confidence in the protocol for everyone—prisoners, the

> courts, and the public alike. If it is not, then secrecy is intolerable, and disclosure of the relevant records is indispensable for determining whether the lapses at issue are likely to lead to an Eighth Amendment violation.

607 U.S. ___ (2026). Preventing Mr. Hitchcock from accessing records that reasonably should be disclosed to the general public, violates Mr. Hitchcock's Florida Constitutional right to access public records and his U.S. Constitutional rights to due process as found in the Fifth Amendment, and equal protection rights as found in the Fourteenth Amendment.

IV. Conclusion

Mr. Hitchcock has established that his demands for additional public records are tied to a colorable claim, relevant to the postconviction proceedings, and reasonably calculated to lead to the discovery of admissible evidence. The presumption that the agencies will comply with their own protocols has been rebutted by evidence that they are failing to do so. Mr. Hitchcock has good cause for only requesting these records following the signing of his warrant, because Mr. Hitchcock's claim is only applicable to the lethal injection protocols that the State intends to use to carry out to his execution, and whether the State agencies are using the specified protocols. The records that Mr. Hitchcock seeks are necessary to support his claim that FDOC's and FDLE's failure to follow Florida's lethal injection protocols in unconstitutional. The denial of access to these records is a "Catch-22" that violates Florida statutes, Florida's Constitution, and the U.S. Constitution.

CLAIM 2: THE EXECUTION OF MR. HITCHCOCK WOULD BE THE UNCONSTITUTIONAL EXECUTION OF AN INNOCENT MAN IN VIOLATION OF THE FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION UNDER *HERRERA V. COLLINS*, 506 U.S. 390, 417 (1993), AS WELL AS THE CORRESPONDING PROVISIONS IN THE FLORIDA CONSTITUTION

Mr. Hitchcock was convicted of the murder of his 13-year-old step-niece, Cynthia Driggers ("Cindy"). At the time of the offense, Mr. Hitchcock, a 19-year-old, lived in the same house as the

victim, his brother Richard Hitchcock ("Richard"), the victim's mother, and other siblings. The State's narrative of the murder is that Mr. Hitchcock strangled the victim. Mr. Hitchcock testified at his own trial that it was his brother, Richard, who killed the victim. Hitchcock's own testimony was the only evidence of his innocence that was presented to the jury. Mr. Hitchcock's conviction does not include consideration of the compelling case of innocence that has been uncovered since Mr. Hitchcock was convicted of First-Degree Murder in 1977.

Mr. Hitchcock was again sentenced to death in 1996, which the FSC affirmed. Mr. Hitchcock filed a Petition for Writ of Certiorari on December 3, 2000. Since Mr. Hitchcock's conviction and resentencing trials, multiple witnesses have come forward and testified that Richard admitted to committing the murder of Cindy Driggers. Richard's confessions were previously raised during Mr. Hitchcock's postconviction appeals as newly discovered evidence and ineffective assistance of counsel claims in 2003. Mr. Hitchcock now argues his innocence and impending execution violate the Eighth Amendment. It is cruel and unusual punishment to execute an innocent man. Mr. Hitchcock is guilty of his unlawful sexual activity with the victim, and his conviction and sentence do not match the crime he has committed. A cumulative review of Mr. Hitchcock's case reveals compelling evidence of his innocence. Any repackaging of evidence previously raised in Mr. Hitchcock's case is done in good faith, because the execution of an innocent man would be a violation of the Eighth Amendment of the United States Constitution, and because the imposition of a procedural bar against raising such a claim would be a manifest injustice.

The Eighth Amendment prohibits cruel and unusual punishment. The United States Supreme Court has recognized that "in a capital case a truly persuasive demonstration of 'actual innocence' would render the execution of a defendant unconstitutional." *Herrera v. Collins*, 506

U.S. 390, 417 (1993). In a concurring opinion, Justice O'Connor agreed that "executing the innocent is inconsistent with the Constitution," "contrary to the contemporary standards of decency," "shocking to the conscience," and "offensive to a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Id*. at 419 (O'Connor, and Kennedy, J.J., concurring) (internal quotations and citations omitted). Justice O'Connor concluded that "the execution of a legally and factually innocent person would be a constitutionally intolerable event." *Id*. A manifest injustice occurs with the denial of the pursuit of this claim because "non-compliance with the rule resulted in prejudice or harm to the defendant." *Williams v. State*, 316 So. 2d 267, 274 (Fla. 1975) (quoting *Richardson v. State*, 246 So.2d 771, 774 (Fla.1971)), *See Keeney v. Tamayo-Reyes*, 112 S.Ct. 1715 (1992); *McCleskey v. Zant*, 111 S.Ct. 1454 (1991); and *Murray v. Carrier*, 106 S.Ct. 2639 (1986).

In light of the compelling evidence of Mr. Hitchcock's innocence presented throughout the course of his case, allowing him to be executed based on a conviction by a jury deprived of this compelling evidence of innocence violates Mr. Hitchcock's due process rights under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution. The Florida Constitution specifically states that "[t]he prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution." Art I, §17, Fla. Const. The ramifications of this Eighth Amendment violation are heightened by the fact that Mr. Hitchcock is being denied access to lethal injection records that would allow him to prove that he is at risk of an execution that is

being done in violation of Florida's approved lethal injection protocols, and thus also a violation of the Eighth Amendment.

Compelling Evidence of Mr. Hitchcock's Innocence

I. Testimony of James Hitchcock and False Confession

The day following the murder, Mr. Hitchcock went to the Winter Haven Police Station and asked them if he was wanted for questioning. (1977 R. 770). Detectives questioned Mr. Hitchcock and he denied involvement. (1977 R. 771). A few days after being taken into custody, Mr. Hitchcock admitted to murdering Cindy. (1977 R. 771). Mr. Hitchcock stated that his admission was made after he was kept in isolation for about four days. (1977 R. 772). After he made the statement he was moved to general population with the rest of the inmates. (1977 R. 777-78). Mr. Hitchcock explained that he confessed on behalf of his brother because he was depressed with what had become of his life and wanted to die. (1977 R. 772). He also wanted to protect his brother from harm in prison, where he did not expect Richard to fare well. (1977 R. 777).

Despite his confession to law enforcement, at his initial trial in 1977, Mr. Hitchcock waived his right to remain silent and, under oath, told the jury what happened on the night of the murder. Mr. Hitchcock's testimony served as the only evidence of his innocence that his jury ever heard. Mr. Hitchcock explained that on the night of the murder, he went to a place where young people gathered, called the Pines. (1977 R. 757). From there, Mr. Hitchcock drove around before ultimately returning to the location where he was staying, 801 East Highway 50. (1977 R. 759-60). During the night, he drank beer and smoked some marijuana. (1977 R. 760-61). Later, Mr. Hitchcock returned home, found the house was locked, and nobody answered the front door, so Mr. Hitchcock went to a separate door that provided lead to Cindy Driggers' bedroom, where

Cindy opened the door for Mr. Hitchcock. (1977 R. 760-62). Mr. Hitchcock and Cindy then had sexual intercourse. (1977 R. 762).

Mr. Hitchcock testified that the encounter finished around 3:00 A.M. As Mr. Hitchcock was putting his pants on, Richard entered the room, saw Mr. Hitchcock and Cindy together, and began attacking Cindy. (1977 R. 764). Richard grabbed Cindy by the arm and pulled her through the door and outside the house. (1977 R. 764-65). Mr. Hitchcock followed outside and saw Richard with his hands still around Cindy's throat, who was then dead at Richard's hands. (1977 R. 765). Richard went back into the house, and out of concern for his brother, Mr. Hitchcock took Cindy's body and put it in the bushes a short distance away from the house. (1977 R. 766-67). Mr. Hitchcock then made it look as though someone entered into the house through a screened window, then took a shower, and he fell asleep. (1977 R. 767). The next morning, while speaking with Richard, Mr. Hitchcock agreed to take the blame for Richard killing Cindy. (1977 R. 768).

II. Richard Hitchcock's Motive, Modus Operandi, and Admissions to the Murder

Since Mr. Hitchcock's conviction, it has been revealed that Richard Hitchcock had a history of violence and being sexually possessive over women and female children in the family. Mrs. Martha Hitchcock Galloway ("Mrs. Galloway") and Brenda Reed ("Ms. Reed") testified at Mr. Hitchcock's trial and at his evidentiary hearing in 2003. Mrs. Galloway was Mr. Hitchcock's sister. At the evidentiary hearing in 2003, both Mrs. Galloway and Ms. Reed testified regarding Richard's sexual possessiveness of the women and girls in the family as well as his habit of choking the women and girls, just as he did to Cindy Driggers. Mr. Hitchcock was prevented from eliciting testimony of the sort during his 1977 trial because his trial attorney failed to argue why he wished to present the similar fact-evidence related to Richard. Mr. Hitchcock's trial attorney never

demonstrated to the court why the information was relevant, and it was not until 2003, when the evidentiary hearing revealed the significance of the similar fact testimony.

Richard saw the women and girls in his family as sexual possessions and would grow upset at the perception that they had interest in another male. Richard would choke them when he was angry. Mrs. Galloway testified about a number of sexual attacks Richard committed against her from around the age of eight to seventeen. (PC 90). Mrs. Galloway recalled a time when Richard threw one of their sisters through a window for trying to keep Richard away from her. (PC 90). Resisting Richard's sexual advances led to bruises around her throat and her body. (PC 92). Mrs. Galloway's testimony demonstrates Richard's propensity for choking, simply for telling him, "No." (PC 93). Richard became violent when he suspected Mrs. Galloway may be interested in boys her own age at the time. (PC 93). Mrs. Galloway described the last time that Richard raped her, including almost choking her to death. (PC 103). Ms. Reed also testified that Richard was violent as he would attempt to sexually abuse her. (PC 126).

Wanda Green ("Ms. Green"), Richard's other step-daughter testified at Mr. Hitchcock's evidentiary hearing in 2003 that:

> Richard was very abusive after my dad died. I was eleven years old. And he always tried to put his hands on me. Always but I would fight back so he couldn't do me that way. He only he can only do the ones that way that were, I'm not going to say - - well, younger. He couldn't handle me like that. (PC. 133).
>
> Q: And how did Richard view the younger females in the family?
> A: I had two sisters right (sic raped) by him
>
> Q: Would it be fair to say that he was possessive of them sexually
> A: Yes, he was.

(PC. 133). Ms. Green described how Richard would react when she resisted his advances:

> A: Richard he would slam me against the wall and almost choke me to death. At one point, one point I passed out and he thought he had choked me to death.
> Q: Okay. What brought on that choking?

A: Rage.
Q: And what would set the man off?
A: Anything that he couldn't control. He wanted to control everybody. When my dad died he thought he was boss and my mother let him get with it.
Q: Can you tell us anything, any other specific times when Richard
Choked you.
A: Yes. One time I came in I guess I was sixteen and I didn't know that Martha and Brenda was at home by their self with him. As I walked through the door he was trying to rape Martha and I caught him and I did. Carl [Richard] grabbed me around the neck and was choking me and he slammed me through the front door which was a plate glass door, the top part. And when he did the glass fell and cut. my leg open on the side of my leg which I still got a scar about that long. And he like, he almost killed me then. He liked to choke me then. He ran my head through the window then.
Q: Okay. Did Richard Carl Hitchcock ever react to you being interested in another boy or possibly being interested as young girls often are at that age.
A: Yes.
Q: How old are (sic were) you?
A: Thirteen
Q: Could you tell us what happened with that?
A: At fifteen years old, and this was a date that Carl [Richard] had arranged hisself, he decided I could go. My cousin Patricia and her boyfriend picked me and this other guy up and it was one of Carl. [Richard]'s friends. And he let us go riding around. I was supposed to be home eleven o'clock. We had a flat. We didn't get there until eleven fifteen. When I walk through the door he grabbed me around the neck and almost choke me to death and beat me with a broom stick.
Q: Did he say anything to you?
A: Yes. He called me all sorts of whores and everything else and he just continually done that and my mother stood there and let him do this. And then finally, when he quit I was black and blue. So the next morning he gets up and he tells my mother, he says you have a choice. Either she can stay here and I will leave or she can leave and I'll stay here And my mother sent me away.

Q: How many times would you say Richard, he choked you over the years.
A: Oh, Lord. I would say about twenty times

(PC 133-36). One day, while sitting with Richard Hitchcock at her mother's table, Richard revealed his guilt for the murder in this case. Ms. Green previously testified to the following:

> We were sitting at the kitchen table talking ... I'd told him that it's going to be rough on my mama when they execute Erney [the defendant]. And he said they're not going to execute Erney. I said yeah, they'll execute him for the murder. And he said they're not going to execute him because he didn't do that murder.

> He said - - I said no, they're going to execute him for the murder. And he said that they ain't going to execute him for rape. And in other word he told me that he was kneeling right there, that Erney only raped.
> I told him I was going to have to tell somebody and he informed me he knew that I was going to.
>
> Q: Do you think you were - - last time you came to court for Erney do you think that you were coming to do that when he - -
> A: That's exactly what I was coming to do. All they wanted to know was if Erney chopped cotton or picked or had a rough life.

(PC 140-41).

Rossi Bell Meacham ("Ms. Meachum") was an acquaintance of Richard and knew some of the rest of the family from Arkansas. (PC. 106). Ms. Meacham lived in Manila, Arkansas. Ms. Meacham was an important witness, because Richard also admitted to her that he committed the murder of Cindy Driggers. Although Ms. Meacham knew Richard, she never met Mr. Hitchcock. Ms. Meacham met Richard in the early 1990s, before Richard died and while Mr. Hitchcock was incarcerated for the murder of Cindy Driggers. Ms. Meacham recounted Richard's admission to the murder as the following:

> We was all sitting around the kitchen table, me and him and his mother who was in and out. It was after the yard sale. I stayed around to talk to him a few minutes and he was getting - - getting he was drinking a little. He was getting a little belligerent. He said yeah, you wouldn't know things about me that I can tell you. And I said like what things. And he said I murdered that girl in Florida and blamed it on my brother Emey because he said his reason being was he was crippled and Emey was a young person. He can serve time better. But he blamed it on Erney.

(PC 108). Ms. Meacham had never met Mr. Hitchcock ("Erny"), and therefore had no reason to fabricate this information, which was corroborated by Richard's actions and admission to others - including his admission made in the form of a threat to Ms. Judy Stevens at the age of twelve or thirteen (f/k/a Judy Gambale and Judy Hitchcock):

> My parents were out of town. They went on a job for Richard and Ruby and Jerry were in the room asleep. I was on the couch sleeping in the living room and Richard come in there and was trying to mess with me and I kept asking him to

> leave me alone. He kept saying, he told me that if I didn't shut up the same thing would happen to me that happened to Cindy. I got scared. He was trying to pull my clothes off and I started fighting him back and I got up. I got him off of me and I got my sister and we just I went back to my house and told my parents about it. ... He was messing with my breast and my lower parts of my body.

(PC 147-48). Richard has repeatedly admitted to the murder that Mr. Hitchcock is currently set to be executed for. Richard's sexual domination over the women in the family show Richard's motive upon discovering Cindy with Mr. Hitchcock. Richard's violent reaction to choke women that he is angry with shows Richard's modus operandi since Cindy was strangled to death. And finally, and most importantly, Richard has admitted numerous times through conversation and by threat that he, not Mr. Hitchcock, murdered Cindy.

III. Hair Evidence

Mr. Hitchcock previously proffered the testimony of expert witness Robert Kopec ("Mr. Kopec") to challenge the testimony of State witness Diana Bass ("Ms. Bass"). During Mr. Hitchcock's evidentiary hearing in 2003, it became clear that the State misled the Court as to Ms. Bass' availability for Mr. Hitchcock's 1988 resentencing trial, allowing Ms. Bass' 1977 testimony to be read into evidence rather than subjecting her to questioning. Mr. Steven Platt ("Mr. Platt") testified that he had informed the prosecution prior to Mr. Hitchcock's 1988 resentencing via telephone message that he believed Ms. Bass was in St. Augustine, Florida at the time. (PC. 193). Ms. Bass herself confirmed that she was living in Florida in 1988 at the time of Mr. Hitchcock's penalty phase that led to his second death sentence. (PC. 210). Regardless of the representations made to the Court, it is evident why the State wanted to rely on Ms. Bass' 1977 testimony. Ms. Bass' testimony in 1977 was not tainted by the information that came to light in the *Peek* case, nor what was revealed by Mr. Kopec. *See Peek v. State*, 488 So. 2d 52, 53 (Fla. 1986).

By proffer, Mr. Kopec detailed his observations of Ms. Bass once he became her supervisor. Mr. Kopec explained that Ms. Bass did not exhibit many of the basic skills that any analyst would have in their first year of analysis. He stated that Ms. Bass did not exhibit even a beginner's level understanding of how to handle evidence. He went on to describe how Ms. Bass would improperly handle hair evidence, putting samples at a high risk of cross contamination between samples, including a high risk of contamination between samples from different cases. Ms. Bass would be told to correct the behavior but would continue to do so. (PC 167-70). Mr. Kopec went on to describe the proper method for hair examination. (PC 170-72).

Mr. Kopec affirmed that the very nature of hair leads to the possibility that an analyst falsely includes someone through hair analysis due to samples mixing.

> With improper handling it is likely that that could happen. And what I mean by that is if the known sample of hair from an individual or suspect or victim or whatever is in one pile and next to it are the questioned hairs, the hair can easily be blown from one pile to the other one or one of those little dots I mentioned could detach and hair -- again those dots detach very easily. That hair can be blown from one pile to another one. It is possible. That's why we don't allow that type of procedure to be used.

(PC 172-73). Mr. Kopec confirmed that this was the type of procedure that Ms. Bass was using at the time. Ms. Bass' testimony was also proffered in 2003 when she stated that she only had a degree in Biology when she began working at the Sanford Crime Lab that would later become the FDLE crime Lab. (PC 203, 205). Ms. Bass began work as a "criminalist" but later primarily worked as a microanalyst. (PC 205). Ms. Bass testified that one of the reasons she left her position at the lab was because she felt she needed more training than was offered at the Sanford Crime Lab or FDLE. (PC 207). She requested further training but was discouraged from doing so due to her heavy case load. (PC 207). Ms. Bass testified that she improved as a hair analyst over time and was at her best when she left in 1978. (PC 209). Ms. Bass would have conducted the hair

comparison where she excluded Richard in 1976. She admitted that there was an issue with the handling of evidence in the lab and that hair was left out overnight during her tenure at the lab. (See PC 209-10). Ultimately, Mr. Hitchcock was denied the opportunity previously to show that Richard's hair was on the victim, inculpating Richard of the murder.

Since Mr. Hitchcock's trial in 1977, science has advanced greatly, including the realization that hair comparison evidence is largely flawed. "Hair comparisons cannot constitute a basis for positive personal identification because hairs from two different people may have precisely the same characteristics." *Long v. State*, 689 So. 2d 1055, 1058 (Fla. 1997)[8] Further:

> In 2012, the Federal Bureau of Investigation, the Innocence Project, and the National Association of Criminal Defense Lawyers came to an agreement on "what the science of microscopic hair examinations supports." United States Department of Justice, Federal Bureau of Investigation, Microscopic Hair Comparison Analysis at 1 (Nov. 9, 2012). The agreement allowed "a well-trained examiner to offer an opinion that a known individual can either be included or excluded as a possible source of a questioned hair collected at a crime scene." Id. However, microscopic hair analysis necessarily is limited, because the size of the pool of people who can be included as a possible source of a specific hair is unknown. Thus, an expert's report or testimony "that applies probabilities to a particular inclusion of someone as a source of a hair of unknown origin cannot be scientifically supported." Id.

Commonwealth v. Eagles, 491 Mass. 210, 214–15, 200 N.E.3d 993, 998 (2023). In 2015, the Federal Bureau of Investigation ("FBI") admitted a study of the testimony of examiners with a focus on cases before the year 2000, at least 90 percent of trial transcripts they analyzed contained erroneous statements.[9] There is no scientific support for the use of hair comparison evidence. See National Research Council. 2009. *Strengthening Forensic Science in the United States: A Path*

---

[8] (citing *Scott v. State,* 581 So.2d 887 (Fla.1991); *Cox v. State*, 555 So.2d 352 (Fla.1989)*; Horstman v. State,* 530 So.2d 368 (Fla. 2d DCA), *review denied,* 539 So.2d 476 (Fla.1988); *Jackson v. State,* 511 So.2d 1047 (Fla. 2d DCA 1987)).

[9] *FBI testimony on microscopic hair analysis contained errors in at least 90 percent of cases in ongoing review — FBI* (2015) *FBI.gov*. Available at: https://www.fbi.gov/news/press-releases/fbi-testimony-on-microscopic-hair-analysis-contained-errors-in-at-least-90-percent-of-cases-in-ongoing-review (Accessed: 05 April 2026).

Forward. Washington, DC: The National Academies Press. The testimony linking microscopic hair analysis to a particular defendant has been found to be highly unreliable. *Id*. In a statement, Justice Sotomayor cited the 2009 NAS Report emphasis that courts have routinely failed to meaningfully test the reliability of the most vulnerable forensic sciences, included hair microscopy. *McCrory v. Alabama*, 144 S. Ct. 2483, 2484 (2024). The 2009 NAS Report found no scientific support for the use of hair comparison evidence to match a sample to a subject in the absence of nuclear DNA. *Id*.

IV. DNA Evidence

The Orange County Sheriff's Office, Medical Examiner, and Sanford Crime Lab found several hairs, collected blood samples along with clothing and other physical evidence. This evidence should have been preserved. Mr. Hitchcock previously requested DNA testing and argued that the government's destruction of the collected evidence would be a violation of his constitutional rights. *Hitchcock v. State*, 991 So. 2d 337 (Fla. 2008). The inclusion of Richard's DNA would corroborate Mr. Hitchcock's testimony and the admissions that Richard made to numerous witnesses, and he re-raises any Fla. R. Crim. P. 3.853 motion(s) previously made based on this claim of actual innocence.

V. Conclusion

Mr. Hitchcock is an innocent man, and the execution of an innocent man violates the protection against cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution and corresponding Florida constitutional amendment. Denying Mr. Hitchcock to present evidence of his actual innocence violates his due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and corresponding Florida Constitution.

Respectfully Submitted,

/s/ Joshua P. Chaykin	/s/ Cortney L. Hackett	/s/ Christopher Clemente
Joshua P. Chaykin	Cortney L. Hackett	Christopher Clemente
Florida Bar No. 1019578	Florida Bar No. 1018035	Florida Bar No. 1026200
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Law Office of the Capital Collateral Regional Counsel – Middle Region
12973 N. Telecom Parkway, Temple Terrace, FL 33637
813-558-1600, support@ccmr.state.fl.us

CERTIFICATION

The undersigned attorneys hereby verify that the contents of this motion have been discussed fully with the Defendant, that Rule 4-1.4 of the Rules of Professional Conduct has been complied with, and that this motion is filed in good faith.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court using the Florida Courts e-portal filing system, which will send a notice of electronic filing to the following: The Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **99orange@ninthcircuit.org**; the Honorable Keith Carsten, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **19orange@ninthcircuit.org**; Timothy A Freeland, Special Counsel, Assistant Attorney General, and Jennifer A. Davis, Senior Assistant Attorney General, **timothy.freeland@myfloridalegal.com**, **jennifer.davis@myfloridalegal.com**, **paula.montlary@myfloridalegal.com**, **elizabeth.bueter@myfloridalegal.com**, **lourdes.parodi@myfloridalegal.com**, **capapp@myfloridalegal.com**, **marilyn.muir@myfloridalegal.com**, **scott.browne@myfloridalegal.com**, **stephen.ake@myfloridalegal.com**; Kristen J. Lonergan,

Florida Department of Corrections, Office of the General Counsel, **kristen.lonergan@fdc.myflorida.com** and **CO-GCCapLit@fdc.myflorida.com,** Erin Ambrose & Kate Holmes, Florida Department of Law Enforcement, Office of the General Counsel, **erinambrose@fdle.state.fl.us**, **kateholmes@flde.state.fl.us**; Monique H. Worrell, State Attorney, and Jacqueline Brown, Assistant State Attorney, Orange County State Attorney's Office, 415 North Orange Avenue, Orlando, FL 32802, **mhworrell@sao9.org**, **jbrown@sao9.org**; and the Florida Supreme Court, **warrant@flcourts.org**, **canovak@flcourts.org**.

/s/ Joshua P. Chaykin
Joshua P. Chaykin

Counsel for Mr. James Hitchcock

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT**
Execution Scheduled: April 30, 2026, at 6:00 P.M.

JAMES E. HITCHCOCK,

Defendant.

----------/

APPENDIX TO SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE UNDER FLORIDE RULE OF CRIMINAL PROCEDURE 3.851

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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT**
Execution Scheduled: April 30, 2026, at 6:00 P.M.

JAMES E. HITCHCOCK,

Defendant.

----------/

APPENDIX TOSUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE UNDER FLORIDE RULE OF CRIMINAL PROCEDURE 3.851

APPENDIX A

Judgement and Sentence

State of Florida, County of Orange
I hereby certify that the above and foregoing is a true and correct copy of the instrument filed in this office.
Confidential items have been removed, as necessary per Fla. R. Admin, 2.240
Witness my hand and official seal this 02 day of March 2026
Tiffany M. Russell, Clerk of the Circuit Court
By: _____ Deputy Clerk

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,
vs.

CASE NUMBER: CR-O-76- 1942 / A

DIVISION NO: 18

JAMES ERNEST HITCHCOCK,
Defendant.
_____/

Court Minutes / Order (Sentencing)

Court opened on 10/10/96, with the following officers present:
Honorable Michael F. Cycmanick, Judge Presiding.
Asst. State Atty.: Division 18 Court Reporter: J. Dexter
Court Deputy: Mary Lacienski

This case came on this day for Sentencing . The Defendant was present with counsel. Counsel's Name: Trish Cashman / Kelly Sims.

Count(s): Ct. 01) 78204

Sentence

Jail

The defendant is ordered to serve in the Department of Corrections. Court hereby sentences the Defendant to death. Defendant remanded to the custody of the Orange County Jail to be recommitted to the Department of Corrections for execution of this sentence.

Filed in Open Court this 10th day of October, 1996.

Fran Carlton
Clerk of the Circuit and County Courts

By: M. McCallum,
Deputy Clerk in Attendance

Done and Ordered at Orange County, Florida this 10th day of October, 1996.

Michael F. Cycmanick
Honorable Michael F. Cycmanick, Judge Presiding

____ ACS ✓ Dockets 10/11/96 ____ Defendant ____ Booking ____ Court Security
____ CFSC ____ Court Deputy ____ P&P/Com Cont ____ Surety ____ S.O. on _____
____ Other: _____

IN THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

-vs-

JAMES ERNEST HITCHCOCK

Defendant.

CASE NUMBER CR 76-1942

FILED IN OPEN COURT
THIS 21 DAY OF Jan, 1977
R. [illegible], Clerk
BY Anna Bontempo

JUDGMENT ~~AND SENTENCE~~

You, JAMES ERNEST HITCHCOCK, being now before the Court,

attended by your attorney, CHARLES TABSCOTT, and you having

(1) been tried and found guilty of ~~(2) pleaded guilty to (3) pleaded nolo contendere to~~

FIRST DEGREE MURDER

the Court Adjudges that you are guilty of said offense, and ~~it is the Sentence of the Law and the Judgment of the Court that you,~~ _____, ~~be committed to the custody of the (1) Florida Division of Corrections (2) Orange County Correctional Facility (3) Orange County Jail, to be imprisoned at Hard Labor for a term of~~ _____

_____

_____

and you are further Ordered to pay a ~~fine and~~ cost in the amount of $ 2.00.

DONE and ADJUDGED in open Court at ORLANDO, Orange County, Florida

~~You~~

this the 21 day of JANUARY, 19 77, pursuant to Rules 3.670 and 3.700 RCrP.

Maurice M Paul
Judge

(Fingerprints, if required by Sec. 30.31 Florida Statutes)

4 FINGERS TAKEN SIMULTANEOUSLY LEFT HAND	LEFT THUMB	RIGHT THUMB	4 FINGERS TAKEN SIMULTANEOUSLY RIGHT HAND
			

I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, JAMES ERNEST HITCHCOCK, and that they were placed thereon by said defendant in my presence, in open court, this the 21 day of JANUARY, 19 77, pursuant to Sec. 30.31.

Maurice M Paul
Judge

32-11 (3/73)

State of Florida, County of Orange
I hereby certify that the above and foregoing is a true and correct copy of the instrument filed in this office
Confidential items have been removed, as necessary per Fla. R. Admin. 2.240
Witness my hand and official seal this 12 day of March 2026
Tiffany M. Russell, Clerk of the Circuit Court
By: [signature] Deputy Clerk

State of Florida, County of Orange
I hereby certify that the above and foregoing is a true and correct copy of the instrument filed in this office.
Confidential items have been removed, as necessary per Fla. R. Admin. 2.240
Witness my hand and official seal this 02 day of March 2026.
Tiffany M. Russell, Clerk of the Circuit Court
By: _____ Deputy Clerk

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. CASE NO. CR 76-1942

JAMES ERNEST HITCHCOCK,

Defendant.

FILED IN OPEN COURT
THIS 10 DAY OF Oct, 1996
Fran Carlton, Clerk
BY _____ D.C.

SENTENCING ORDER

INTRODUCTION

A jury found the Defendant, James Ernest Hitchcock, guilty of First Degree Murder on January 21, 1977. The facts concerning the murder are recited in Hitchcock v. State, 413 So.2d 741 (Fla. 1982) (Hitchcock I), cert. denied, 459 U.S. 960, 103 S.Ct. 274, 74 L.Ed. 2d 213 (1982). The original penalty phase resulted in a jury recommendation of death on February 4, 1977. The judge concurred with that recommendation and sentenced the Defendant to death on February 11, 1977. The conviction and sentence were affirmed by the Florida Supreme Court on February 25, 1982. Hitchcock I, 413 So.2d at 748.

After various other post-trial challenges, the United States Supreme Court found that the death sentence had not been properly imposed because the trial judge had barred the consideration of non-statutory mitigating factors. Hitchcock v. Dugger, 481 U.S. 393, 107 S.Ct. 1821, 95 L.Ed. 2d 347 (1987). The case was returned for a new sentencing hearing, and on February 20, 1988, the new jury returned a recommendation of death. The court agreed with the jury

recommendation and sentenced the Defendant to death on March 17, 1988.

While the Florida Supreme Court affirmed the new sentence of death[1], the United States Supreme Court later again remanded the case for reconsideration in light of the intervening decision of Espinosa v. Florida, 505 U.S. 1079, 112 S.Ct. 2926, 120 L.Ed. 2d 854 (1992). Hitchcock v. Florida, 505 U.S. 1215, 112 S.Ct 3020, 120 L.Ed. 2d 892 (1992). The case was returned for a new sentencing hearing, and on August 27, 1993, the new jury recommended a sentence of death. The court agreed with the jury's recommendation and sentenced the Defendant to death on August 30, 1993.

On March 21, 1996, citing various errors in the proceedings below, the Florida Supreme Court reversed and remanded the case with directions to this court to empanel a jury and conduct a new penalty proceeding. Hitchcock v. State, 673 So.2d 859 (Fla. 1996). This court complied with the mandate and commenced a new penalty proceeding on September 9, 1996. The new jury heard testimony and evidence which led them to recommend a sentence of death by a vote of 10 to 2 on September 11, 1996.

FINDINGS OF THE FACT

Based upon the evidence, testimony and arguments presented, the court finds the following statutory aggravating circumstances proven beyond a reasonable doubt:

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1. Hitchcock v. State, 578 So.2d 685 (Fla. 1990), cert. denied, 502 U.S. 912, 112 S.Ct. 311, 116 L.Ed. 2d 254 (1991).

I

THE CRIME FOR WHICH JAMES ERNEST HITCHCOCK IS TO BE SENTENCED WAS COMMITTED WHILE HE WAS UNDER A SENTENCE OF IMPRISONMENT.

It is uncontroverted that the murder in this case was committed while the Defendant was on parole from the State of Arkansas.

II

THE CRIME FOR WHICH JAMES ERNEST HITCHCOCK IS TO BE SENTENCED WAS COMMITTED WHILE HE WAS ENGAGED IN THE COMMISSION OF THE CRIME OF SEXUAL BATTERY.

There is no evidence to support any contention that the Defendant's sexual intercourse with Cynthia Driggers was consensual. The testimony of the medical examiner concerning the fresh tear of her hymen establishes that she was a virgin prior to sexual activity before her death. The testimony of her sister, Deborah, establishes that she was distressed over the Defendant's abuse of her to the point of wanting to tell her mother, but not doing so out of fear. Finally, the statement made by the Defendant following his arrest[2] is anything but consistent with a claim of consent. Indeed, under the circumstances presented, I find the contention to be completely unreasonable. See, Hitchcock I, 413 So.2d at 745.

III

THE CRIME FOR WHICH JAMES ERNEST HITCHCOCK IS TO BE SENTENCED WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING LAWFUL ARREST.

---

2. The statement is reproduced in connection with my findings of statutory aggravating factors III and IV in this Order.

IV

THE CRIME FOR WHICH JAMES ERNEST HITCHCOCK IS TO BE SENTENCED WAS ESPECIALLY HEINOUS, ATROCIOUS, OR CRUEL.

Following the Defendant's arrest, he made the following statement:[3]

> I came in about 2:30. I came in through the window in the dining room, went into my bedroom, then I went back out and I went to Cynthia's room, I went in and uh, me and her had sex and she said she was hurt, she was gone tell her mama. I said you can't. And she said I am. She started to get up and I wouldn't let her and she started to holler then. When she did that, I got up and grabbed her by the neck and made her quit hollerin' and I picked her up and I carried her outside and I had my hand over her mouth at the time and we got outside and we was layin' on the grass and I told her Cindy you can't tell your mama. She said I am, said I got to I'm hurt and you just hurt me again. She started to scream then and I got her by the throat and I was chokin' her and, she, I let up and she was screamin' and hit her again, hit her and I hit her twice, I think and she was still hollerin' so I choked her and I just kept chokin' and chokin' I don't know what happened I just choked her and choked then I started to pick her up and I pushed her over in the bushes and I got up and left an I went back in the house went in an took a shower, washed my shirt an I went in bedroom and I laid down, at's all I can tell you.

DISCUSSION AS TO AGGRAVATOR III

It is absolutely clear from the Defendant's statement, the testimony of Cynthia's sister and the medical examiner, Dr. Ruiz, that the murder was committed in order to "silence" her from reporting his sexual abuse of her and the consequences that would follow. I use the word "silence" because it sums up best why the Defendant was beating and "chokin'" (sic) her to stop her "screamin'" and "hollerin'" (sic). The "chokin' and

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3. Page 2 of the Statement, State's Exhibit #6 attached to this Order.

chokin'" did, indeed, silence her from ever reporting his unlawful attacks to her mother. Additionally, pushing her into the bushes, going back into the house, showering, and washing his shirt conclusively demonstrates that the murder was definitely committed for purposes of avoiding or preventing lawful arrest.

DISCUSSION AS TO AGGRAVATOR IV

I have great difficulty in expressing the horror, suffering and physical and emotional trauma the child victim must have experienced in this case. The Defendant's statement, again, demonstrates best what she endured in the course of his painful sexual assault, removal from her home, beatings and chokings in order to secure her eventual silence. I cannot find words to say what she must have gone through. This child's murder fits every imaginable definition of these terms that have evolved even though it occurred over 20 years ago. It was heinous. It was cruel. It was atrocious.

MITIGATING CIRCUMSTANCES PRESENTED AND CONSIDERED BY THE COURT

I

STATUTORY MITIGATING CIRCUMSTANCE
THE AGE OF THE DEFENDANT AT THE TIME OF THE CRIME

The Defendant's chronological age of twenty at the time of the murder has been taken into consideration in light of extensive evidence presented on the deprivations he experienced. They are outlined below as non-statutory mitigating circumstances.

II

NON-STATUTORY MITIGATING CIRCUMSTANCES

A. DEPRIVATIONS EXPERIENCED BY THE DEFENDANT:

The Court has given careful consideration to the testimony of relatives of the Defendant, Dr. Jethrow Toomer, and others which establishes that the Defendant:

1. came from a background of extreme poverty;

2. experienced the lingering death of his natural father who, because of the family's impoverishment, was unable to afford treatment for cancer;

3. was unable to pursue a formal education;

4. witnessed and experienced emotional and physical abuse his alcoholic stepfather visited upon himself, his mother and others;

5. developed borderline personality disorders characterized by insecurity, instability, rejection, abandonment and lack of the ability to trust others; and

6. left home at an early age, not with a clear plan or objective, but rather to escape or run away from the circumstances he was in.

B. POSITIVE CHARACTER TRAITS OF THE DEFENDANT:

The Court is also satisfied that since the murder in this case, the Defendant has:

1. learned to read and write, secured his G.E.D. on his own and has now assisted or taught others to do likewise;

2. acted as a mediator or peacemaker perhaps saving a corrections officer and another inmate from death or serious injury;

3. "remediated" or improved his character "deficits" that existed from childhood;

4. been thoughtful and caring to his mother and

relatives in his letters and cards to them; and,

5. has undertaken steps towards self improvement.

The Court finds these matters to be to the Defendant's credit, but not of such significance as to weigh heavily against the aggravators. The Court has also considered positive character traits the Defendant exhibited prior to the murder. He cared for his family, worked hard and saved an uncle from drowning. The Court does not find these aspects to be significant mitigating circumstances.

CONCLUSION

I have carefully considered all matters offered in mitigation, both statutory and non-statutory, and cannot find them to outweigh the aggravating circumstances in this case. At the Spencer[4] Hearing conducted two days ago in this case, the Court was also presented with additional information through oral and written statements from family and others on behalf of the victim. This information has not been considered by the Court in reaching its decision.

I concur with the recommendation of the latest jury and find that facts in this case are sufficiently egregious to qualify it as a capital murder for which the ultimate punishment is called for.

It is, therefore, Ordered and Adjudged that the Defendant, James Ernest Hitchcock, is hereby sentenced to death

4. Spencer v. State, 615 So. 2d 688 (Fla. 1993).

for the murder of Cynthia Driggers. He is hereby re-committed to the custody of the Florida Department of Corrections for execution of this sentence as provided for by law.

DONE and ORDERED in Chambers, at Orlando, Orange County, Florida, this 10th day of October, 1996.

Honorable Michael F. Cycmanick
Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. mail/hand delivery to Jeff Ashton, Office of the State Attorney for the Ninth Judicial Circuit, 250 N. Orange Ave., Suite 1414, P.O. Box 1673, Orlando, Florida 32802-1673, and to Patricia Cashman, Office of the Public Defender, 1 North Orange Ave., Ste. 500, Orlando, Florida 32801, on this 10th day of October, 1996.

Judicial Assistant

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT**
Execution Scheduled: April 30, 2026, at 6:00 P.M.

JAMES E. HITCHCOCK,

Defendant.

----------/

APPENDIX TOSUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE UNDER FLORIDE RULE OF CRIMINAL PROCEDURE 3.851

APPENDIX B

The Course of Prior Proceedings, Statement of the Case and Facts and Issues Raised

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

JAMES ERNEST HITCHCOCK,

Defendant.

_____/

Case No. 1976-CF-1942
FSC Case No. SC1960-51108
ACTIVE DEATH WARRANT
Execution scheduled for April 30, 2026 @ 6:00 pm

THE COURSE OF PRIOR PROCEEDINGS, STATEMENT OF THE CASE AND FACTS AND ISSUES RAISED

The facts of this case are recited in the Florida Supreme Court's opinion on the direct appeal of Hitchcock's conviction and sentence, *Hitchcock v. State*, 413 So. 2d 731 (Fla. 1982):

> Unemployed, ill, and with no place to live, Hitchcock moved in with his brother Richard and Richard's family two to three weeks before the murder. On the evening of the murder, appellant watched television with Richard and his family until around 11:00 p.m. He then left the house and went into Winter Garden where he spent several hours drinking beer and smoking marijuana with friends.
>
> According to a statement Hitchcock made after his arrest, he returned around 2:30 a.m. and entered the house through a dining room window. He went into the victim's bedroom and had sexual intercourse with her. Afterwards, she said that she was hurt and was going to tell her mother. When she started to yell because he would not let her leave the bedroom, Hitchcock choked her and

carried her outside. The girl still refused to be quiet so appellant choked and beat her until she was quiet and pushed her body into some bushes. He then returned to the house, showered, and went to bed.

At trial Hitchcock repudiated his prior statement. He testified that the victim let him into the house and consented to having intercourse. Following this activity, his brother Richard entered the bedroom, dragged the girl outside, and began choking her. She was dead by the time appellant got Richard away from her. When Richard told him that he hadn't meant to kill her, Hitchcock told him to go back inside and that he, the appellant, would cover up for his brother. According to Hitchcock, he gave his prior statement only because he was trying to protect Richard.

On direct appeal, Hitchcock raised the following claims:

(1) whether the trial judge improperly precluded the defense from presenting evidence corroborating the defense theory, his cross examination of witnesses, and his explanation of his "false" confession;

(2) the trial judge's communication with the jury during deliberations;

(3) the exemption of mothers with young children from the jury panel, and

(4) the sufficiency of the evidence.

The Florida Supreme Court affirmed Hitchcock's conviction as well as his death sentence. *See id.*

The Court also affirmed the denial of an early motion for postconviction relief. *See Hitchcock v. State*, 432 So. 2d 42 (Fla.

1983)[1]. In later federal habeas corpus proceedings, however, the United States Supreme Court granted certiorari and vacated Hitchcock's death sentence because the jury was instructed not to, and the sentencing judge refused to, consider evidence of nonstatutory mitigating circumstances. *See Hitchcock v. Dugger*, 481 U.S. 393 (1987). Upon remand, Hitchcock was again sentenced to death, which was affirmed on appeal. *See Hitchcock v. State*, 578 So. 2d 685 (Fla. 1990). But the United States Supreme Court again granted certiorari and remanded for reconsideration in light of *Espinosa v. Florida*, 505 U.S. 1079 (1992). *See Hitchcock v. Florida*, 505 U.S. 1215 (1992). The Florida Supreme Court subsequently vacated Hitchcock's death sentence and directed the trial court to conduct a new penalty proceeding. *Hitchcock v. State*, 614 So. 2d 483 (Fla. 1993).

Hitchcock was again sentenced to the death penalty, but the Florida Supreme Court struck it because evidence portraying Hitchcock as a pedophile was erroneously made a feature of the

---

[1] Hitchcock raised two penalty phase claims of ineffective penalty phase counsel and constitutionality of Florida's death penalty, both rejected by the Florida Supreme Court. But even if the claims had merit, they were rendered moot by his subsequent resentencing.

proceeding. *Hitchcock v. State,* 673 So. 2d 859 (Fla. 1996). Finally, Hitchcock was again sentenced to the death penalty for the fourth time. In so doing, the trial court found four aggravators, including (1) the crime was committed by a person under sentence of imprisonment (parole); (2) the crime was committed during commission of the felony of sexual battery; (3) the crime was committed for the purpose of avoiding arrest; and (4) the crime was especially heinous, atrocious, or cruel (HAC). As mitigation, the sentencing court found one statutory mitigating factor, Hitchcock's age (twenty). As to non-statutory mitigation, the court assigned very little weight to six circumstances surrounding the instant crime, some weight to nine circumstances concerning Hitchcock's background, and some weight to eight circumstances concerning Hitchcock's positive character traits.

On appeal Hitchcock argued:

> (1) the trial court erred in permitting the State to put into evidence a three-page narrative report concerning results of a psychological test;
>
> (2) the trial court erred in overruling the defense objection to the State's closing argument as to Hitchcock's mitigation evidence;
>
> (3) the trial court erred in overruling the defense objection to the State's argument as to a defense expert witness;

(4) fundamental error occurred in the State's final argument to the jury;

(5) resentencing is required because the judge in Hitchcock's new trial was removed from the bench during an investigation of bribery charges, and it was error for a substitute judge to rule on Hitchcock's motion for resentencing;

(6) the trial court erred in instructing upon, allowing the State to argue, and finding the aggravating circumstance of avoiding or preventing arrest;

(7) the trial court erred in denying Hitchcock's constitutional challenges to the sentence of imprisonment and felony-murder aggravating circumstances as applied;

(8) the State failed to prove the felony-murder aggravating circumstance based on the underlying felony of rape or sexual battery, and this aggravating circumstance is unconstitutional;

(9) the trial court erred in using the HAC aggravating circumstance and in giving an unconstitutional instruction as to HAC;

(10) the trial court erred in refusing to instruct the jury as to improper doubling of aggravating circumstances;

(11) the trial court erred in considering both the felony-murder and avoid-arrest aggravating circumstances;

(12) the trial court's findings as to mitigation were deficient;

(13) Hitchcock's death sentence is disproportionate;

(14) the trial court erred in permitting testimony showing that his appellate attorney had represented Hitchcock on clemency;

(15) the trial court erred in denying relief based on newly discovered evidence without considering corroborating evidence and circumstances;

(16) the trial court (a substitute judge) erred in ruling on and denying Hitchcock's motion for a new sentencing proceeding;

(17) the trial court erred in excluding from evidence and refusing to consider the State's prior offer of a life sentence; and

(18) conducting Hitchcock's sentencing proceeding many years after his crime was unconstitutional.

The Florida Supreme Court denied relief as to all claims and affirmed his death sentence. *Hitchcock v. State,* 755 So. 2d 638 (Fla. 2000), *cert. denied,* 531 U.S. 1040 (2000).

Hitchcock next unsuccessfully sought postconviction DNA testing pursuant to Fla. R. Crim. Proc. 3.853, denial of which was affirmed on appeal. *Hitchcock v. State*, 866 So. 2d 23 (Fla. 2004).

Hitchcock's second Rule 3.850 postconviction claims were as follows:

(1) resentencing counsel was ineffective for failing to object to the testimony of Debra Lynn Driggers;

(2) guilt-phase counsel and resentencing counsel were ineffective for failing to object to testimony and argument that the victim was a virgin at the time of the offense;

(3) guilt-phase counsel was ineffective for failing to spend adequate time preparing for trial and thus opened the door to negative character evidence about Hitchcock and for

failing to admit evidence implicating Richard Hitchcock in the murder;

(4) resentencing counsel was ineffective for failing to recall Dr. Toomer to explain the Minnesota Multiphasic Personality Inventory (MMPI) narrative report introduced by the State;

(5) resentencing counsel was ineffective for failing to have Hitchcock evaluated for neuropsychological impairment;

(6) resentencing counsel was ineffective for failing to fully develop available statutory and nonstatutory mitigating evidence;

(7) the State violated Hitchcock's constitutional rights by destroying exculpatory physical evidence;

(8) the trial court's instructions diminished the jury's role in sentencing in violation of *Caldwell v. Mississippi,* 472 U.S. 320, 105 S. Ct. 2633, 86 L.Ed.2d 231 (1985), and counsel was ineffective for not objecting to the instructions;

(9) newly discovered evidence demonstrated that Richard Hitchcock committed the murder;

(10) the State failed to disclose the deficiencies of hair analyst Diana Bass and then knowingly presented the analyst's incompetent and false testimony, guilt-phase counsel was ineffective for failing to challenge the admissibility of Bass's testimony, and this newly discovered evidence of Bass's incompetence undermined Hitchcock's conviction;

(11) resentencing counsel was ineffective for failing to object to the court's felony-murder instruction and for failing to request a jury instruction on the elements of sexual battery;

(12) Hitchcock's constitutional rights were violated because he was not present at the bench conference when

> peremptory challenges were exercised, trial counsel was ineffective for failing to ensure that Hitchcock was present during all critical stages of the proceedings, and the trial court erred by not ensuring that the transcript was complete;
>
> (13) Florida's capital sentencing scheme is unconstitutional as applied to Hitchcock.

Hitchcock asserted ineffectiveness of appellate counsel by counsel's failure to argue that he was unconstitutionally deprived of notice that he could be convicted under a theory of felony murder and that he was unconstitutionally deprived of a unanimous verdict identifying whether the jury found him guilty of felony murder or premeditated murder. Hitchcock also advanced a claim that Florida's sentencing scheme is unconstitutional pursuant to *Ring*[2] and *Apprendi*[3] along with asserting that he may be incompetent by the time of his execution. The Florida Supreme Court affirmed the lower court's denial of his postconviction claims as well as his challenge to appellate counsel's effectiveness. *Hitchcock v. State*, 991 So. 2d 337 (Fla. 2008).

Hitchcock's petition for writ of habeas corpus in the United States Middle District raised the following claims:

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[2] *Ring v. Arizona*, 536 U.S. 584 (2002).
[3] *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

Ground I: The prosecution's closing argument in the fourth resentencing proceeding unfairly denigrated evidence of mitigation presented by Hitchcock and contained numerous factual inaccuracies.

Ground II: The trial court improperly applied and evaluated the aggravating and mitigating factors.

Ground III: Hitchcock's death sentence is not proportional, penalty phase evidence was improperly admitted, and some of his mitigation was improperly excluded.

Ground IV: Defense counsel should have objected to improper testimony from the victim's sister.

Ground V: Defense counsel was ineffective for failing to present mental health mitigation evidence.

Ground VI: Appellate counsel was ineffective in failing to raise a *Caldwell* claim on direct appeal.

Ground VII: Counsel ineffectively failed to object to the sexual battery aggravator, failed to request an instruction outlining the elements of sexual battery, and appellate counsel was ineffective in failing to assert this claim on appeal.

The Eleventh Circuit affirmed the Middle District's denial of relief. *Hitchcock v. Crews*, 745 F. 3d 476 (11th Cir. 2014), *cert. denied*, 574 U.S. 939 (2014).

Respectfully submitted,

JAMES UTHMEIER
FLORIDA ATTORNEY GENERAL

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CO-COUNSEL FOR STATE OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April, 2026, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: the Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, Florida 32801, **99orange@ninthcircuit.org**; the Honorable

Keith A. Carsten, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, Florida 32801, **19orange@ninthcircuit.org**, **ctjadh1@ocnjcc.org**; William Jay, Assistant State Attorney, Orange County State Attorney's Office, 415 North Orange Avenue, Orlando, Florida 32802, **wjay@sao9.org, swiggins@sao9.org**; Eric Pinkard, Chief Assistant CCRC-M, Joshua Chaykin, Cortney Hackett, and Christopher Clemente, Assistants CCRC-M, Capital Collateral Regional Counsel-Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637, **pinkard@ccmr.state.fl.us, chaykin@ccmr.state.fl.us, hackett@ccmr.state.fl.us, clemente@ccmr.state.fl.us, support@ccmr.state.fl.us,** and the Florida Supreme Court, **warrant@flcourts.org, canovak@flcourts.org**.

/s/ Timothy A. Freeland
Co-Counsel for State of Florida

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT**
Execution Scheduled: April 30, 2026, at 6:00 P.M.

JAMES E. HITCHCOCK,

Defendant.

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APPENDIX TOSUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE UNDER FLORIDE RULE OF CRIMINAL PROCEDURE 3.851

APPENDIX C

Execution by Lethal Injection with Certification Letter

FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary

501 SOUTH CALHOUN STREET
TALLAHASSEE, FLORIDA 32399-2500
FDC.MYFLORIDA.COM

EXECUTION BY LETHAL INJECTION PROCEDURES

PURPOSE: To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

APPLICATION: This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

DEFINITIONS:

(1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.

(2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.

(3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.

(4) **Minister of religion**, where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor's Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a

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review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

(5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

SPECIFIC PROCEDURES:

(1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.

(2) **Selection of the Executioners:**

(a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.

(b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.

(3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved

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staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

(a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.

(f) The team warden shall select other execution team members to carry out the following tasks:

1. Showering and preparation of the inmate.
2. Ensuring that the equipment necessary for an execution is in proper working order.
3. Escorting the inmate from his/her cell to the execution chamber.
4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.

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5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minster of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

(4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

(a) Issues related to problems with equipment needed to carry out an execution.

(b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.

(c) The inmate is not rendered unconscious after the administration of the etomidate injection.

(d) Combative inmate.

(e) Incapacity of any execution team member or executioner.

(f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.

(g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.

(h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.

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(5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) **FDLE Monitors:**

(a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.

(b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.

(c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) **Approximately One (1) Week Prior to Execution:**

(a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.

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(b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) **On the Day of Execution:**

(a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars ($40) or less, is available at the institution, and is approved by the food service director.

(b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

(c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.

(d) A designated execution team member will ensure that the PA system is fully functional.

(e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.

(f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:

(1) Etomidate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

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(2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who

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prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

(h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

(i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.

(j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.

(k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) **Approximately Thirty (30) Minutes Prior to Execution:**

(a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.

(b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.

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(c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.

(d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.

(e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

(f) Designated members of the execution team will secure the restraining straps.

(g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.

(h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.

(i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.

(j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) **Approximately Fifteen (15) Minutes Prior to Execution:**

(a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.

(b) Authorized media witnesses will be secured in the witness room of the execution chamber.

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(c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.

(d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.

(e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.

(f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

(a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.

(b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.

(c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:

(1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

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(2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).

(5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.

(6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension

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set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.

(d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.

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(e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.

(f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.

(g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.

(h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

(i) The designated team member will close the window covering to the witness gallery.

(j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

(a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.

(b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.

(c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.

(d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.

(e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.

(f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

(a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.

(b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.

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(c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

(15) **Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Ricky D Dixon — 2/18/2025

RICKY D. DIXON
SECRETARY

DATE

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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT**
Execution Scheduled: April 30, 2026, at 6:00 P.M.

JAMES E. HITCHCOCK,

Defendant.

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APPENDIX TOSUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE UNDER FLORIDE RULE OF CRIMINAL PROCEDURE 3.851

APPENDIX D

10/22/2025 Florida Department of Corrections' Response to FOIA Request – Part 1 through June 2025

DRUG NAME: Etomidate 2mg/mL (20mg/10mL) PACKAGE SIZE: 10 x 10mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/24/25	[redacted]		3/2027	[redacted]	+100	100

PET. APP. 260

DRUG NAME Etomidate 2mg/10ml PACKAGE SIZE 10x10ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
9-30-19	[redacted]		06-2021	[redacted]	+ 100 X	100
6-14-19			June 202		+ 100 X	200
8-27-20			06-2021		+ 160 X	
8-27-20			01-2022		+ 40 X	400
9-11-20			06-2021		+ 60 X	460
12-14-20			06-2021		+ 30	490
12-14-20			01-2022		+ 110 ✓	600
6-28-21					- 450	150
8-06-21			07-2022		+ 120 X	270
2-3-22			01-2022		- 150	120
12-08-22			07-2022		- 120	—0—
2-20-23			11-2024		+ 40	40
3-02-23			12-2024		+ 50	90
3-06-23			12/2024		+ 50	140
1-3-25			11-2024		-40	100
1-3-25			12-2024		-50	50
1-3-25			11-2024		-50	~~0~~
4/21/25			01-2027		+100	100

✓

DRUG NAME: Etomidate 2mg/mL (40mg/20mL) **PACKAGE SIZE:** 10 x 20mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/24/25	[redacted]		3/2027	[redacted]	+ 100	100

PET. APP. 262

DRUG NAME Etomidate 40mg/20mL PACKAGE SIZE 10x20mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
4-23-25	Balance From Previous Page			[redacted]		330
4-8-25	[redacted]		5-25		-10	320
5-1-25			5-25		-10	310
5-15-25			5-25		-10	300
5-23-25			1-27		+100	400
5-29-25			5-25		-10	390
6/12/25			6-25		-10	380
6/25/25			6-25		-50	330

DRUG NAME Potassium Acetate 2mEq/mL 20mL PACKAGE SIZE 25x20mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/14/23	Balance					361
6/15/23	[redacted]	[redacted]	6/2023	[redacted]	-12	349
7/19/23			06/2023		-2	347
9/3/23			12/2024		-12	335
10/3/23			10/2025		-47	288
10-3-23			12/2024		-12	276
8-29-24			12/2024		-12	264
1-3-2025			12-2024		-64	200
2-13-25			10-2025		-12	188
3/20/25			10-2025		-12	176
3/18/25			11/30/26		+25	201
3/18/25			9/30/26		+50	251
4/7/25			9/30/26		+25	276
4/7/25			4/30/27		+50	326
4/8/25			10-2025		-12	314
4/16/25			9/30/26		-25	289
5/1/25			10-2025		-12	277
5/15/25			10-2025		-12	265
6/12/25			10-2025		-7	258
6/25/25			10-2025		-17	241
7/16/25			10-2025		-12	229

DRUG NAME: Potassium Acet. 2mEq/mL PACKAGE SIZE: 25 x 20mL vials

NDC# [redacted]

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	1 vial = #1 RECEIVED/USED (+/-)	BALANCE
5/23/25	[redacted]		12/2026	[redacted]	+ 100	100

DRUG NAME ROCURONIUM 100mg/10ml PACKAGE SIZE 10 X 10 ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
3-07-24	[redacted]	[redacted]	JAN 2025	[redacted]	+ 10	10
3/11/24			JUN 2025		+ 80	90
1-3-2025			03/2026		+30	120
3-6-2025			03/2026		+ 100	220
3/20/25			JUN 2025		- 20	200
4-2-25			Mar 2026		+ 200	400
4-8-25			JUN 2025		-20	380
4-16-25			JUN 2025		-10	370
5/1/25			JUN 2025		-20	350
4/23/25			10/2026		+30	380
4/23/25			3/2026		+70	450
5/23/25			10/2026		+100	550
6/9/25			JUN 2025		- 10	540
6/12/25			JUN 2025		- 10	530
6/12/25			3/2026		-10	520
6/25/25			3/2026		-10	510
7/16/25			3/2026		-20	490

DRUG NAME ROCURONIUM 50 mg / 5 ml PACKAGE SIZE 10 x 5 ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
3-07-24	[redacted]		JUN 2025	[redacted]	+ 40	40
1-3-2025			Sep 2025		+90	130
4-2-2025			APR 2026		+80	210
4-2-2025			AUG 2026		+40	250
5-15-2025			JUN 2025		-40	210

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DRUG NAME ROCURONIUM 50mg/5ml PACKAGE SIZE 10 VIAL of 5ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
8-15-23	[redacted]		01. 2026	[redacted]	+ 100	100

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DRUG NAME: Sodium CL 0.9% (BAG) PACKAGE SIZE: 10 x 1000 mL

NDC# [redacted]

(1 bag = #1)

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5/23/25	[redacted]		2/2026	[redacted]	+20	20

PET. APP. 269

DRUG NAME: Sodium CL 0.9% (BAG) **PACKAGE SIZE:** 12 x 1000mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5/7/25	[redacted]		01/2027	[redacted]	+ 12	12

PET. APP. 270

DRUG NAME Sodium Cl 0.9% PACKAGE SIZE 12 x 1000 ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5-20-2021	[redacted]	[redacted]	9-2023	[redacted]	+ 24	24
3-15-2023			4-2025		+ 12	36
5/3/23			9/2023		-4	32
10-2-23			9-2023		- 20	12
03-01-24			01-2026		+ 12	24
8-29-24			4-2025		-2	22
2-13-25			4-2025		-2	20
3-17-25			2-2027		+24	44
3-17-25			2-2027		+24	44
3/20/25			1-2026		-2	42
4/8/25			4-2025		-8	34
4/8/25			1-2026		-4	30
5/1/25			1-2026		-2	28
5/15/25			1-2026		-2	26
5/29/25			7-2027		+12	38 ✓
6/2/25			8-2027		+24	62 ✓
6/12/25			1-2026		-2	60

DRUG NAME Sodium Chloride 0.9% PACKAGE SIZE 25 x 20mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
8/14/24	[redacted]		Oct-01-2025	[redacted]	+50	+50
7-13-25			Oct-01-2025		-6	44
~~3-6-25~~			~~Jul-31-202~~		~~+25~~	~~69~~ Incorrect Invoice # -ML
3-6-25			Jul-31-202		+25	69
3/20/25			10-01-202		-6	63
4/2/25			07-31-202		+50	113
4/8/25			10-01-2025		-6	107
5/1/25			10-01-2025		-6	101
5/15/25			10-01-2025		-6	95
5/23/25			7-31-202		+50	145 ✓
6/12/25			Jul-31-202		-6	139
6/25/25			10-01-2025		-6	133
7/16/25			10-01-2025		-7	126

DRUG NAME HYDROXYZINE HCl 25mg/ml PACKAGE SIZE 25 x 1 ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
02-01-2024	[redacted]		MAR 2025	[redacted]	+ 25	25
8-29-2024			Mar 2025		- 2	23
1-3-2025			08-2026		+25	48
2-13-25			Mar 2025		-3	~~45~~ 45
3/20/25			Mar 2025		-3	42
4-2-25			Aug 2026		+25	67
4/8/25			Aug 2026		-4	63
4/16/25			MAR 2025		-17	46
5/1/25			Aug 2026		-4	42
5/15/25			Aug 2026		-3	39
5/23/25			Aug 2026		+25	64
6/12/25			Aug 2026		-3	61
6/25/25			Aug 2026		-2	59
7/16/25			Aug 2026		-2	57

DRUG NAME Lidocaine Hcl 1% 10ml PACKAGE SIZE 25 x 10ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
1-3-2025	[redacted]	[redacted]	Sep 2026	[redacted]	+25	25
3/20/25			Sep 2026		-2	23
4-08-25			Sep 2026		-2	21
5/1/25			Sep 2026		0	21

[redacted]

[redacted]

INVOICE DATE 05/07/2025
PO
ORDER DATE 03/05/2025
SHIP DATE 05/07/2025 **PIECES INVOICED** 1

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			[redacted]													
			1	1	1		[redacted]	SODIUM CL IS 0.9% 12X1000ML LF ✓	12X10 IS			[redacted]	EXP: 1/27 [redacted]	62.83	62.83	[redacted]

SUMMARY

TOTAL RX	62.83
TOTAL OTC	0.00
NET AMOUNT	62.83

[redacted]

[redacted]

[redacted]

SUB TOTAL	62.83
GRAND TOTAL	**62.83**
TOTAL DUE BY	**06/06/2025**

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[redacted]

INVOICE DATE	05/23/2025
PO	
ORDER DATE	05/22/2025
SHIP DATE	05/23/2025 PIECES INVOICED 29

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	DMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			2	2	2 ✓			SODIUM CL IS 0.9% 10X1000ML	10X10	IS			EXP: 2/26	26.82	53.64	
			4	4	4 ✓			POTASS ACET SD 2MEQ/ML25X20ML FTV	25X20	SD			EXP: 12/26	123.34	493.36	
			10	10	10 ✓			ROCURONIUM MD 10MG/ML 10X10ML	10X10	MD			EXP: 10/26	41.29	412.90	
			10	10	10 ✓			ETOMIDATE SD 2MG/ML 10X20ML	10X20	SD			EXP: 1/27	39.35	393.50	
			1	1	1 ✓			HYDROXYZ HCL SD 25MG/ML 25X1ML	25X1M	SD			EXP: 8/26	441.59	441.59	
			2	2	2 ✓			SODIUM CL SF 0.9% 25X20ML	25X20	SF			EXP: 7/31/26	22.24	44.48	

----------SUMMARY----------

TOTAL RX	1,839.47
TOTAL OTC	0.00
NET AMOUNT	1,839.47

[redacted]

[redacted]

[redacted]

SUB TOTAL	1,839.47
GRAND TOTAL	1,839.47
TOTAL DUE BY	06/22/2025

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[redacted]

[redacted]

INVOICE DATE 05/29/2025
PO
ORDER DATE 03/05/2025
SHIP DATE 05/29/2025 PIECES INVOICED 1

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			1	1	1	[redacted]		SODIUM CL IS 0.9% 12X1000ML EXC	12X10	IS		✓	[redacted] EXP: 7/27	29.99	29.99	[redacted]

----------SUMMARY----------

TOTAL RX	29.99
TOTAL OTC	0.00
NET AMOUNT	29.99

[redacted]

[redacted]

SUB TOTAL	29.99
GRAND TOTAL	29.99
TOTAL DUE BY	06/28/2025

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[redacted]

[redacted]

INVOICE DATE 06/24/2025
PO
ORDER DATE 04/01/2025
SHIP DATE 06/24/2025 **PIECES INVOICED** 20

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			[redacted]					[redacted]								
			10	10	8	X	[redacted]	ETOMIDATE SD 2MG/ML 10X20ML	10X20	SD		[redacted]	EXP: 3/27	41.96	335.68	[redacted]
			[redacted]													
			10	10	8	X		ETOMIDATE SD 2MG/ML 10X10ML	10X10	SD			[redacted]	30.03	240.24	
			[redacted]										> EXP: 3/27			
			10	10	2	X		ETOMIDATE SD 2MG/ML 10X10ML	10X10	SD				30.03	60.06	
			10	10	2	X		ETOMIDATE SD 2MG/ML 10X20ML	10X20	SD			[redacted]	41.96	83.92	
													EXP: 3/27			

SUMMARY

TOTAL RX	719.90
TOTAL OTC	0.00
NET AMOUNT	719.90

[redacted]

[redacted]

SUB TOTAL	719.90
GRAND TOTAL	**719.90**
TOTAL DUE BY	**07/24/2025**

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[redacted]

[redacted]

INVOICE DATE 06/02/2025
PO
ORDER DATE 04/01/2025
SHIP DATE 06/02/2025 PIECES INVOICED 2

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UO M	DESCRIPTION	SIZE	FORM	CLAS:	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			2	2	2	[redacted]		SODIUM CL IS 0.9% 12X1000ML EXC	12X10	IS		[redacted]	EXP 8/27	29.99	59.98	[redacted]

----------SUMMARY----------

TOTAL RX	59.98
TOTAL OTC	0.00
NET AMOUNT	59.98

[redacted]

[redacted]

[redacted]

SUB TOTAL	59.98
GRAND TOTAL	59.98
TOTAL DUE BY	07/02/2025

PET. APP. 279

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT**
Execution Scheduled: April 30, 2026, at 6:00 P.M.

JAMES E. HITCHCOCK,

Defendant.

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APPENDIX TOSUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE UNDER FLORIDE RULE OF CRIMINAL PROCEDURE 3.851

APPENDIX E

10/22/2025 Florida Department of Corrections' Response to FOIA Request – Part 2 through Sep. 2025

DRUG NAME: Etomidate 2mg/mL **Package Size:** 10 x 10 mL [redacted] **Page:** 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
6/24/25	[redacted]			3/31/2027	+ 100	100

PET. APP. 281

DRUG NAME: Etomidate 20mg/10mL **Package Size:** 10 x 10mL [redacted]

Page: 2

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
4/21/25	[redacted]			1/31/2027	+ 100	100

PET. APP. 282

DRUG NAME: Etomidate 2mg/mL (20mg) Package Size: 10 x 10mL

[redacted]

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
9/22/2025	[redacted]			04/30/2027	+48	48
9/22/2025				04/30/2027	+2	50

PET. APP. 283

DRUG NAME: Etomidate 2mg/mL (40mg/20mL) **Package Size:** 10 x 20mL [redacted]

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
6/24/25	[redacted]			3/31/2027	+100	100
7/28/25				3/31/2027	+50	150

PET. APP. 284

DRUG NAME: Etomidate 40mg/20mL **Package Size:** 10 x 20mL (10 vials) **Page:** 2

[redacted]

PREVIOUS BALANCE: 330

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
4/8/25	[redacted]			5/31/2025	-10	320
5/1/25				5/31/2025	-10	310
5/15/25				5/31/25	-10	300
5/23/25				1/31/2027	+100	400
5/29/25				5/31/2025	-10	390
6/12/25				6/30/2025	-10	380
6/25/25				6/30/2025	-50	330
7/28/25				7/31/2025	-10	320
8/1/25				7/31/2025	-20	300
8/19/25				1/31/2025	-10	290
8/29/25				1/31/2025	-10	280
9/17/25				1/31/2025	-10	270
9/30/25				1/31/2025	-10	260

DRUG NAME: Hydroxyzine HCL 25mg/mL **Package Size:** 25 x 1 mL

[redacted]

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
2/1/2024	[redacted]			03/31/2025	+ 25	25
8/29/2024				3/31/2025	- 2	23
1/3/2025				8/31/2026	+ 25	48
2/13/2025				3/31/2025	- 3	45
3/20/2025				3/31/2025	- 3	42
4/2/2025				8/31/2026	+ 25	67
4/8/2025				8/31/2026	- 4	63
4/16/2025				3/31/2025	- 17	46
5/1/2025				8/31/2026	- 4	42
5/15/2025				8/31/2026	- 3	39
5/23/2025				8/31/2026	+ 25	64
6/12/25				8/31/2026	- 3	61
6/25/25				8/31/2026	- 2	59
7/16/25				8/31/2026	- 2	57
7/28/25				8/31/2026	+ 25	82
7/28/25				8/31/2026	- 2	80
8/19/25				8/31/2026	- 2	78
8/29/25				8/31/2026	- 2	76
9/17/25				8/31/2026	- 2	74
9/30/25				8/31/2026	- 2	72

DRUG NAME: Lidocaine HCL 1% (10mL) Package Size: 25 x 10mL

[redacted]

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
1/3/25	[redacted]			09/30/2026	+25	25
3/20/25				9/30/2026	-2	23
4/8/25				9/30/2026	-2	21
7/28/25				9/30/2027	+50	71

PET. APP. 287

DRUG NAME: Potassium Acetate 2mEq/ml Package Size: 25 x 20mL [redacted]

Page: 4

PREVIOUS BALANCE: 193

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
9/17/25	[redacted]			10/31/2025	-12	181
9/30/25				10/31/2025	-12	169

PET. APP. 288

DRUG NAME Potassium Acetate 2mEq/mL 20mL PACKAGE SIZE 25x20mL

[redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/14/23	Balance					361
6/19/23	[redacted]		6/2023	[redacted]	-12	349
7/19/23			06/2023		-2	347
9/3/23			12/2024		-12	335
10/3/23			10/2025		-47	288
10-3-23			12/2024		-12	276
8-29-24			12/2024		-12	264
1-3-2025			12-2024		-64	200
2-13-25			10-2025		-12	188
3/20/25			10-2025		-12	176
3/18/25			11/30/26		+25	201
3/18/25			9/30/26		+50	251
4/7/25			9/30/26		+25	276
4/7/25			4/30/27		+50	326
4/8/25			10-2025		-12	314
4/16/25			9/30/26		-25	289
5/1/25			10-2025		-12	277
5/15/25			10-2025		-12	265
6/12/25			10-2025		-7	258
6/25/25			10-2025		-17	241
7/16/25			10-2025		-12	229
7/28/25			10-2025		-12	217
8/19/25			10-2025		-12	205
8/29/25			10-2025		-12	193

DRUG NAME: Potassium Acet. 2mEq/mL **Package Size:** 25 x 20mL [redacted] **PREVIOUS BALANCE:** 0

Page: 1

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
5/23/25	[redacted]			12/31/2026	+100	100
7/28/25				12/31/2026	+125	225

PET. APP. 290

DRUG NAME: Potassium Act. 2 mEq/mL Package Size: 25 x 50mL [redacted] Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
7/28/25	[redacted]			10/31/2026	+ 50	50

PET. APP. 291

DRUG NAME [redacted] Sodium Chloride 0.9% PACKAGE SIZE 25 x 20mL

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
8/14/24	[redacted]	[redacted]	Oct-01-2025	[redacted]	+50	+50
7-13-25			Oct-01-2025		-6	44
~~3-6-25~~			~~Jul-31-202~~		~~+25~~	~~69~~ Incorrect Invoice # [redacted]
3-6-25			Jul-31-202		+25	69
3/20/25			10-01-202		-6	63
4/2/25			07-31-2026		+50	113
4/8/25			10-01-2025		-6	107
5/1/25			10-01-2025		-6	101
5/15/25			10-01-2025		-6	95
5/23/25			7-31-2026		+50	145
6/12/25			Jul-31-202		-6	139
6/25/25			10-01-2025		-6	133
7/16/25			10-01-2025		-7	126
7/28/25			10-31-2026		+50	176
7/28/25			10-01-2025		-6	170
8/19/25			10-01-202		-1	169
8/19/25			7-31-2026		-5	164
8/28/25			7-31-2026		-6	158
9/17/25			7-31-2026		-6	152
9/30/25			7-31-2026		-6	146

DRUG NAME: Sodium CL 0.9% (BAG) Package Size: 10 x 1000mL Page: 1

[redacted] PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
5/23/25	[redacted]			2/28/2026	+ 20	20

PET. APP. 293

DRUG NAME: Sodium CL 0.9% (BAG) Package Size: 12 x 1000mL [redacted]

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
5/7/2025	[redacted]			01/31/2027	+12	12

PET. APP. 294

DRUG NAME Sodium Cl 0.9% [redacted] PACKAGE SIZE 12 x 1000 ml

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5-20-2021	[redacted]	[redacted]	9-2023	[redacted]	+ 24	24
3-15-2022			4-2025		+ 12	36
5/3/23			9/2023		-4	32
10-2-23			9-2023		- 20	12
03-01-24			01-2026		+ 12	24
8-29-24			4-2025		-2	22
2-13-25			4-2025		-2	20
~~3-17-25~~			~~2-2027~~		~~+24~~	~~44~~
3-17-25			2-2027		+24	44
3/20/25			1-2026		-2	42
4/8/25			4-2025		-8	34
4/8/25			1-2026		-4	30
5/1/25			1-2026		-2	28
5/15/25			1-2026		-2	26
5/29/25			7-2027		+12	38
6/2/25			8-2027		+24	62
6/12/25			1-2026		-2	60

DRUG NAME: Rocuronium 50mg/5mL Package Size: 10 x 5mL Page: 1

[redacted] PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
3/7/2024	[redacted]			06/31/2025	+ 40	40
1/3/2025				9/30/2025	+ 90	130
4/2/25				4/30/2026	+ 80	210
4/2/25				8/30/2026	+ 40	250
5/15/25				6/31/2025	− 40	210
7/28/25				10/31/2026	+360	570
8/19/25				9/30/2025	−40	530
8/29/25				9/30/2025	−40	490
9/17/25				9/30/2025	−10	480

DRUG NAME: Rocuronium 50mg/5mL Package Size: 10 x 5mL

[redacted]

Page: 1

PREVIOUS BALANCE: ~~0~~

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
8/15/2023	[redacted]			01/31/2026	+100	100

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DRUG NAME: Rocuronium 100mg/10mL Package Size: 10 x 10mL (10 per box) Page: 1

[redacted] PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
3/7/24	[redacted]			06/31/2025	+ 10	10
3/11/24				06/31/2025	+ 80	90
1/3/2025				3/31/2026	+ 30	120
3/6/25				3/31/2026	+ 100	220
3/20/25				6/31/2025	- 20	200
4/2/25				3/31/2025	+ 200	400
4/8/25				6/31/2025	- 20	380
4/16/25				6/31/2025	- 10	370
4/23/25				10/31/2026	+ 30	400
4/23/25				3/31/2026	+ 70	470
5/1/25				6/31/2025	- 20	450
5/23/25				10/31/2026	+ 100	550
6/9/25				6/31/2025	-10	540
6/12/25				6/31/2025	-10	530
6/12/25				3/31/2026	-10	520
6/25/25				3/31/2026	-10	510
7/16/25				3/31/2026	-20	490
7/28/25				10/31/2026	+240	730
7/28/25				3/31/2026	- 20	710
7/28/25				10/31/2026	-10	700
9/17/25				3/31/2026	-15	685
9/30/25				3/31/2026	-20	665

[redacted]

[redacted]

INVOICE DATE 07/28/2025 [redacted]
PO
ORDER DATE 07/25/2025 [redacted]
SHIP DATE 07/28/2025 **PIECES INVOICED** 77

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			[redacted]				[redacted]									[redacted]
			5	5	4			POTASS ACET SD 2MEQ/ML25X20ML FTV	25X20	SD			EXP: 12/26	77.38	309.52	
			[redacted]													
			24	24	21			ROCURONIUM MD 10MG/ML 10X10ML	10X10	MD			10/26	21.66	454.86	
			[redacted]													
			24	24	3			ROCURONIUM MD 10MG/ML 10X10ML	10X10	MD			10/26	21.66	64.98	
			36	36	22			ROCURONIUM MD 10MG/ML 10X5ML	10X5M	MD			10/26	20.48	450.56	
			[redacted]													
			36	36	14			ROCURONIUM MD 10MG/ML 10X5ML	10X5M	MD			10/26	20.48	286.72	
			[redacted]													
			5	5	5			ETOMIDATE SD 2MG/ML 10X20ML	10X20	SD			3/27	41.73	208.65	
			1	1	1			HYDROXYZ HCL SD 25MG/ML 25X1ML	25X1M	SD			8/26	459.02	459.02	
			2	2	2			LIDOCAINE HCL MD 1% 25X10ML	25X10	MD			4/27	18.93	37.86	
			5	5	1			POTASS ACET SD 2MEQ/ML25X20ML FTV	25X20	SD			12/26	77.38	77.38	
			2	2	2			POTASS ACET SD 2MEQ/ML25X50ML FTV	25X50	SD			10/26	254.65	509.30	
			2	2	2			SODIUM CL SF 0.9% 25X20ML	25X20	SF			10-31-26	54.38	108.76	

SUMMARY

TOTAL RX	2,967.61
TOTAL OTC	0.00
NET AMOUNT	2,967.61

[redacted]

SUB TOTAL	2,967.61
GRAND TOTAL	**2,967.61**
TOTAL DUE BY	**08/27/2025**

Invoice

[redacted]

Invoice Date: 9/18/2025

[redacted]

Order Date 9/15/2025

[redacted]

Customer P.O.	Terms: Due Date	Account Manager:	Ship VIA	Customer Number:
[redacted]	Net 30: 10/18/2025	[redacted]	GROUND	[redacted]

NDC#	Ordered	Shipped	Remaining	Price Each	Amount
[redacted]	50.00	50.00	0.00	69.00	3,450.00

ETOMIDATE 20MG SDV 10X10ML

[redacted]

Expiration date: 4/30/2027 Lot Qty: 48.00

Expiration date: 4/30/2027 Lot Qty: 2.00

[redacted]

[redacted]

Net Invoice:	3,450.00
Less Discount:	0.00
Freight:	36.49
Sales Tax:	0.00
Invoice Total:	3,486.49

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff, **CASE NO.: 1976-CF-1942**

vs. **DEATH WARRANT**
Execution Scheduled: April 30, 2026, at 6:00 P.M.

JAMES E. HITCHCOCK,

Defendant.

----------/

APPENDIX TOSUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE UNDER FLORIDE RULE OF CRIMINAL PROCEDURE 3.851

APPENDIX F

Affidavit of Dr. Buffington

DANIEL E. BUFFINGTON, PharmD, MBA

Clinical Pharmacology Services, Inc.
6285 E. Fowler Ave
Tampa, FL 33617

AFFIDAVIT

I, Daniel E. Buffington, PharmD, MBA, am the president and CEO of the American Institute of Pharmaceutical Sciences, Inc. since 2007, as well as a clinical associate professor of medicine at the University of South Florida, Division of Clinical Pharmacology since 1991. Please see attached Curriculum Vitae.

I have been retained by Capital Collateral Regional Counsel – Middle Region to consult with their postconviction team in Case No. 481976CF001942A, *State of Florida v. James Hitchcock.* I reviewed Mr. Hitchcock's Demand for Records from the Florida Department of Corrections, (FDOC). I have been asked to consider what information a defendant, and the public for that matter, would want to know to have some measure of confidence that an execution by lethal injection would be carried out humanely. Below are the demands for records to be requested by Mr. Hitchcock followed by my expert opinion as to the significance and importance of this information.

Public records from January 1, 2025 to present, should be requested are as follows:

a. Written records/checklists, logs, and/or memorandums of training activities including simulations, execution process, preparation of carrying out execution process, and effects of each lethal chemical as required in subsection (4) of FDOC's procedure, "Training of the Execution Team and Executioners;"

[**Importance and impact**: To confirm that the Corrections staff are properly qualified, trained, and repeatedly demonstrating skill and proficiency with the FDOC approved protocol and to reduce the risk of errors or deviation from the critical design and infrastructure that ensures and humane and effective outcome.]

b. Written records/checklists, logs, and/or memorandums documenting "completion of each step in the process," as required in subsection (5) of FDOC's procedure, "Use of Checklists;"

[**Importance and impact**: To confirm that the Corrections staff are properly qualified, trained, and repeatedly demonstrating skill and proficiency with the FDOC approved protocol and to reduce the risk of errors or deviation from the critical design and infrastructure that ensures and humane and effective outcome.]

c. "Signed forms attesting" the team warden's verification that all steps in the process have been performed properly prior to the administration of the "pharmaceutical agents (lethal injection chemicals)," and the that the remaining steps in the process were performed properly," as required in subsection (5) of FDOC's procedure, "Use of Checklists;"

[**Importance and impact**: To confirm that the Corrections staff are properly qualified, trained, and repeatedly demonstrating skill and proficiency with the FDOC approved protocol and to reduce the risk of errors or deviation from the critical design and infrastructure that ensures and humane and effective outcome.]

d. Written records/checklists, logs, and/or memorandums documenting and tracking whether the "pharmaceutical agents (lethal injection chemicals)" are within their "date range" for use, have reached, or surpassed their expiration dates" and documenting the maintenance and proper storage of the "pharmaceutical agents (lethal injection chemicals)" as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;"

[**Importance and impact**: To confirm that the Corrections staff has an organized, accurate, and effective tracking model to ensure that the correct substances, as approved within the FDOC, have been properly acquired and that product dating and aging are being tracked for substances that are awaiting future executions. Utilization of substances that are expired may have reduced pharmacologic effect or produce unanticipated or unnecessary complications. Such an error or deviation could result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death.]

e. Written records/checklists, logs, and/or memorandums documenting the need for refrigeration, proper temperature range for storage, and/or monitoring for compliance of temperature and handling of the lethal chemicals.

[**Importance and impact**: To confirm that the Corrections staff has an organized, accurate, and effective tracking model to ensure that the correct substances, as approved within the FDOC, have been properly acquired and that product storage condition have been identified, thresholds for storage conditions, and monitoring for variances or deviations for substances that are awaiting future executions. Utilization of substances that have not been stored properly may produce reduced pharmacologic effect or produce unanticipated or unnecessary complications. Such an error or deviation could result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death.]

f. Internal policies and procedures for handling and maintenance of the "pharmaceutical agents (lethal injection chemicals)" should there be power loss or other circumstances (such as water, temperature, humidity, etc.) which may compromise the pharmaceutical agents (lethal injection chemicals);

[**Importance and impact**: To confirm that the Corrections staff has an organized, accurate, and effective tracking model to ensure the adherence to industry recommended guidelines for the proper storage conditions for the substances, as approved within the FDOC, have that established protocols to ensure proper climate and cold chain conditions (respectively) during power outages or adverse conditions, have been implemented and tracked by all prior vendors and post product acquisition for substances that are awaiting future executions. Such an error or deviation could result in the use of an adulterated of chemically altered substance and produce reduced pharmacologic effects or unexpected complications including the early or acute termination of the execution procedure.]

g. Polices/procedures, written logs, and/or memorandums documenting the disposal of expired and otherwise compromised "pharmaceutical agents (lethal injection chemicals);"

[**Importance and impact:** To confirm that Corrections staff have appropriates tracking methods, record keeping systems, and procedural protocols to ensure that expired or otherwise compromised substances are accurately identified, rapidly separated from the inventory, and precluded from use in a future execution. Failure to properly monitor and remove expired substances could result in the use of substances with reduced pharmacologic effect or produce unnecessary complications for the inmate or the abrupt and early termination of an execution procedure.]

h. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the first FDLE agent charged with monitoring and responsible for observing the preparation of the "pharmaceutical agents (lethal injection chemicals)" and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals" as required in subsection (7)(b) of FDOC's procedure, "FDLE Monitors;"

[**Importance and impact**: To confirm that the designated Corrections staff is trained, oriented, present, attentive, accurately monitoring the preparation of the substances and recording the events within the executioner's room at proper intervals so that an accurate record is preserved of the events and that in the event of errors, deviations, or complications occur that they can be properly reviewed and analyzed in a timely manner to determine a "root cause analysis" following an adverse event.]

i. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the second FDLE agent charged with keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals" as required in subsection (7)(c) of FDOC's procedure, "FDLE Monitors;"

[**Importance and impact**: To confirm that the designated Corrections staff is trained, oriented, present, attentive, accurately

monitoring the preparation of the substances and recording the events within the executioner's room at proper intervals so that an accurate record is preserved of the events and that in the event of errors, deviations, or complications occur that they can be properly reviewed and analyzed in a timely manner to determine a "root cause analysis" following an adverse event.]

j. Memorandums, records, checklists, and/or logs from execution team member and independent observer from FDLE documenting their observations and compliance with the preparation of each "pharmaceutical agent (lethal injection chemical)" used in the lethal injection process as found in subsection (9)(f) of FDOC's procedure, "On the Day of Execution;"

[**Importance and impact**: To confirm that the designated Corrections staff is trained, oriented, present, attentive, accurately monitoring the preparation of the substances and recording the events within the executioner's room at proper intervals so that an accurate record is preserved of the events and that in the event of errors, deviations, or complications occur that they can be properly reviewed and analyzed in a timely manner to determine a "root cause analysis" following an adverse event.]

k. Procedures, directives, documentation, and memorandum of the execution team members utilization of "aseptic technique" and the placement of the "IV extension set that will be used to infuse the pharmaceutical agents (lethal injection chemicals) into the primary injection line." (See subsection (9)(h) of FDOC's procedure, "On the Day of Execution");

[**Importance and impact**: To confirm that the Corrections staff properly understand and have received effective training and demonstrated ongoing proficiency regarding the proper identification, preparation, placement, and securing of IV injection and administration sites, including the ability to setup and maintain IV tubing and related apparatus in to primary and alternative ("redundant sites") in order to reduce substantial risk of ineffective or loss of IV access prior to or during a lethal injection procedure. Loss of IV access can result in acute complication, pain, or reason to abort an execution process.]

l. Procedures, directives, documentation, and memorandum for venous access, both through a central line or if necessary, without or without a venous cut-down. ." (See subsection (10)(h) and (i) of FDOC's procedure, "Approximately Thirty (30) Minutes Prior to Execution");

[**Importance and impact**: To confirm that the Corrections staff have been properly trained, oriented, and develop proficiency in the different venous access locations, supplies, techniques, and management of potential site-specific complications to ensure the successful administration of substances and to avoid or divert from known potential complications or difficulties. Ineffective IV site selection, maintenance, or loss of IV access is a known potential risk factor for unnecessary complications or reason to abort an execution process.]

m. Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and monitor the inmate's depth and sustained level of consciousness ("checks checks") including the training, level of competency, and proficiency.

[**Importance and impact**: To confirm that the Corrections staff have been trained, oriented, and developed proficiency with industry standard and clinically effective methods or medical instruments utilized to determine an individual's depth or level of unconsciousness. This is imperative as it is the method to determine if the individual has successfully reached a depth or level of unconsciousness to reduce their awareness or sensations sufficient to progress to the administration of the following lethal injection drug.]

n. Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and affirm the inmate's death including the training, level of competency, and proficiency.

[**Importance and impact**: To confirm if the Corrections staff has been properly trained, oriented and developed proficiency and provided industry standard medical devices and telemetry equipment to affirm an inmate's death. This is imperative as it is essential to continue with the sequence and administration of

approved substances and in the ascribed manner and pattern until the inmate's death is demonstrated as a formal endpoint. Anything less would risk an incomplete procedure and risk of the medication wearing off prior to the inmate's death.]

o. Documentation, checklists, and memorandum of the team warden's "debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution, as required by as required in subsection (13)(f) of FDOC's procedure, "Immediate Post-Execution Procedures;"

[**Importance and impact**: To confirm that the Corrections staff was properly trained and prepared to perform their roles, document the sequence of steps, and record the procedure in a manner that could identify errors, protocol deviations, or complications that occurred to aid in avoiding future negative outcomes and spare a inmate the risk for future unnecessary pain or discomfort.]

p. Protocols, procedures, directives, and checklists regarding:

   i. Mixing of the "pharmaceutical agents (lethal injection chemicals)" and their respective sterile IV solutions ("diluent fluids");

   ii. Proper flushing the syringe if same syringe is used;

   iii. When and how syringes are organized, staged, and labeled;

   iv. Insertion of needle venous access and how the site is secured.

[**Importance and impact**: To confirm that the Corrections staff have developed effective internal procedures to ensure that the proper protocols, procedures, directives, and checklists have been implemented to ensure that staff roles and skills have been allocated to guarantee the proper mixing of substances and respective IV fluids, accurate manipulation and handling of the medication administration supplies and that the preparation and administration of the substances via primary and alternate venous access routes is optimized. This is critical to avoid the highest risk for complications with lethal injection protocols, which is ineffective or lost IV access during the execution procedure.

It would not be necessary to know the identity of any individual involved with carrying out the lethal injection protocols or any company involved with this process.

Sincerely,

Daniel E. Buffington, PharmD, MBA

I, Daniel E. Buffington, having been duly sworn or affirm, do hereby depose and say that the above statements are true and correct.

Dr Daniel E Buffington

Daniel E. Buffington, PharmD, MBA

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Sworn to or affirmed and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 7th day of April 2026, by Dr. Daniel E. Buffington who is personally known to me or has shown the following identification:

Brittany Graham

NOTARY PUBLIC, STATE OF FLORIDA

Notary Public State of Florida
Brittany Graham
My Commission HH 759458
Expires 3/1/2030

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 7th day of April, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court using the Florida Courts e-portal filing system, which will send a notice of electronic filing to the following: The Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **99orange@ninthcircuit.org**; the Honorable Reginald K. Whitehead, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **nedwards@ninthcircuit.org**; Timothy A Freeland, Special Counsel, Assistant Attorney General, and Jennifer A. Davis, Senior Assistant Attorney General, **timothy.freeland@myfloridalegal.com**, **jennifer.davis@myfloridalegal.com**, **paula.montlary@myfloridalegal.com**, **elizabeth.bueter@myfloridalegal.com**, **Lourdes.parodi@myfloridalegal.com**, **capapp@myfloridalegal.com**, **marilyn.muir@myfloridalegal.com**, **scott.browne@myfloridalegal.com**, **stephen.ake@myfloridalegal.com**; Monique H. Worrell, State Attorney, and Jacqueline Brown, Assistant State Attorney, Orange County State Attorney's Office, 415 North Orange Avenue, Orlando, FL 32802, **mhworrell@sao9.org**, **jbrown@sao9.org**; and the Florida Supreme Court, **warrant@flcourts.org**, **canovak@flcourts.org**.

/s/ Joshua P. Chaykin
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813-558-1600
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Attorneys for Mr. James Hitchcock

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX J

State's Response to Successive Postconviction Motion (April 8, 2026)

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

JAMES ERNEST HITCHCOCK,

Defendant.

_____/

Case No. 1976-CF-1942
FSC Case No. SC1960-51108
ACTIVE DEATH WARRANT
Execution scheduled for April 30, 2026 @ 6:00 pm

STATE'S RESPONSE TO SUCCESSIVE 3.851 MOTION AND REQUEST FOR STAY OF EXECUTION

The State of Florida responds to Hitchcock's successive 3.851 motion and urges this Court to summarily deny relief in this active warrant case. Hitchcock's motion in this Court raises four claims: (1) this Court improperly denied his public records demands; (2) Hitchcock is actually innocent of the charge of murder; (3) unreliable hair evidence was improperly adduced at trial to exclude Richard Hitchcock as the actual perpetrator; and (4) DNA evidence would corroborate Hitchcock's claim of actual innocence. These claims are without merit, are largely untimely and are procedurally barred.

Procedural History

The State rests on the facts and procedural history filed with this Court on April 2, 2026 ("Filing # 245147013"), subject to any supplementations in the argument section below.

General Legal Standards

"Summary denial of a successive postconviction motion is appropriate if the motion, files, and records in the case conclusively show that the movant is entitled to no relief." *Cole v. State*, 392 So. 3d 1054, 1060 (Fla.), *cert. denied*, 145 S. Ct. 109 (2024) (internal quotations omitted). A postconviction court may properly deny claims that are untimely, not retroactive, procedurally barred, not cognizable, or meritless as a matter of law under controlling precedent. *See, e.g.*, *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020) (affirming summary denial of claims raised in successive postconviction motion as untimely); *Morris v. State*, 317 So. 3d 1054, 1071 (Fla. 2021) (stating that a court may summarily deny a postconviction claim that is procedurally barred); *Mann v. State*, 112 So. 3d 1158, 1162 (Fla. 2013) (holding that because defendant's postconviction claims were "purely legal claims that have been previously rejected by this Court, the circuit court properly

summarily denied relief").

With respect to timeliness, "postconviction claims in capital cases must generally be filed within one year after the judgment and sentence become final." *Cole*, 392 So. 3d at 1061 (citing Fla. R. Crim. P. 3.851(e)(2)). A claim filed outside the one-year period is untimely unless one of the following circumstances exists:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2). "It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Mungin*, 320 So. 3d at 624.

RESPONSE TO REQUEST FOR STAY OF EXECUTION

A stay of execution is not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Florida's standard for a stay of execution requires a showing that "there are substantial grounds upon which relief might be granted." *Dillbeck v. State*, 357

So. 3d 94, 103 (Fla. 2023); *see also Barwick v. State*, 361 So. 3d 785, 791 (Fla. 2023).

Hitchcock's case has been thoroughly litigated in both state and federal courts over the last forty years. The State rejects any notion that Hitchcock is innocent or that any of the previously filed and rejected claims come anywhere near the mark of legal innocence. The State of Florida and the surviving victims of Hitchcock's crimes have an enormous interest in the finality and timely enforcement of valid criminal judgments and sentences. *Ledford v. Comm'r, GA Dep't of Corr.* 856 F. 3d 1312, 1320 (11th Cir. 2017) (denying an emergency stay of execution in a capital case because the claims were time-barred, not substantial, and noting the State and the victims' interest in the finality of the sentence).

Hitchcock confessed to the rape and murder after his arrest, stating he returned to the house around 2:30 a.m. and entered through a dining room window. He went into the victim's bedroom and raped her and afterwards, when she started to yell, and would not be quiet, he choked her to death and carried her outside and pushed her body into some bushes. *Hitchcock v. State*, 413 So. 2d 741, 743 (Fla. 1982).

The court should deny the requested stay because Hitchcock's repackaged "cumulative innocence" theory is not cognizable and falls short of any recognized innocence standard. The Supreme Court has made clear that claims of actual innocence operate at most as a narrow gateway requiring new reliable evidence demonstrating that it is more likely than not that no reasonable juror would have convicted him. *Schlup v. Delo*, 513 U.S. 298, 324-327 (1995). Nor does his case approach the extraordinarily high threshold for any freestanding innocence claim which the Supreme Court has described as requiring truly persuasive proof of innocence. *Herrera v. Collins*, 506 U.S. 390, 417 (1993). Because Hitchcock advances no cognizable claim, no new evidence, and no likelihood of success, the equities weigh decisively against a stay.

We now turn to address the claims Hitchcock has advanced in his successive Rule 3.851 motion, none of which merit any relief.

Claim 1- Public Records

Hitchcock contends that this Court's denial of his request for additional public records violates equal protection and is based on what he claims to be a "manufactured" burden, i.e., that his demands must be related to a colorable claim. This Court properly denied

Hitchcock's demands and nothing in his present Motion justifies a different outcome.

Initially, Hitchcock's weak assertion that neither rule nor statute mandates that he establish his demands be related to a "colorable claim" is spurious. This requirement is based on the Florida Supreme Court's interpretation and application of Rule 3.852 and F.S. 27.7081 and has consistently required that such demands identify a colorable claim; so-called "fishing expeditions" are precluded by this requirement. *Muhammad v.* State, 132 So. 3d 176, 200 (Fla. 2013). *See Valle v. State*, 70 So. 3d 530, 548 (Fla. 2011) ("Valle has failed to establish how the production of such records relates to a colorable Eighth Amendment challenge.") Indeed, this Court would have committed reversible error had it interpreted the law as Hitchcock prefers. Demands of additional public records not found in the repository must be tethered to a colorable claim. Random requests that fail to meet this basic standard must be rejected under binding precedent.

While Hitchcock bemoans the state of the law which requires him to assert a colorable claim, he also contends that he met this requirement because his demands were related to his assertion that

Florida will fail to follow its lethal injection protocol because he contends that Florida has, in the past, used expired drugs in previous executions. This claim fails for several reasons.

First of all, Hitchcock's claim is predicated on heavily redacted documents apparently disclosed in unrelated litigation (the "Walls" records). He relied upon those records to speculate that the FDOC may not follow its protocol in his execution. Both FDLE and FDOC submitted extensive responses opposing disclosure of additional records. Florida has a detailed lethal injection protocol that specifies the drugs used, the amounts, and provides specific directions that a team member must check the expiration dates of the drugs before they are used in an execution. Nothing in the heavily redacted general inventory records cited by Hitchcock pierces the presumption that the FDOC follows its protocol.

The Florida Supreme Court has repeatedly and consistently upheld lethal injection records denials under the current protocol. *See Cole v. State*, 392 So. 3d 1054, 1065 (Fla.), *cert. denied*, 145 S. Ct. 109 (2024); *Tanzi v. State*, 407 So. 3d 385, 391 (Fla.), *cert. denied*, 145 S. Ct. 1914 (2025); *Heath v. State*, 423 So. 3d 1253 (Fla. 2026), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026).

Due Process, Equal Protection, and Access to Records

Hitchcock's contention that denial of his demands for lethal injection records violated his Fourteenth Amendment right to due process is meritless. *See generally Abdool v. Bondi*, 141 So. 3d 529, 544 (Fla. 2014) ("To assess whether a violation of due process has occurred, we must first decide whether the complaining party has been deprived of a constitutionally protected liberty or property interest"). The United States Supreme Court has long rejected the notion of a constitutional right to discovery founded on access to the courts or due process. *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (rejecting a constitutional claim that "the State must enable the prisoner to *discover* grievances, and to *litigate effectively* once in court") (emphasis in original); *Gray v. Netherland*, 518 U.S. 152, 168 (1996) (noting the Supreme Court's repeated admonitions that due process has "little to say regarding the amount of discovery which the parties must be afforded" and that there is "no general constitutional right to discovery" even for criminal defendants at trial). *See also Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1260, 1267 (11th Cir. 2014) (relying on *Lewis* to reject a due process right to lethal injection discovery and collecting cases).

Hitchcock's allegations are speculative and insufficient to warrant relief based on the "Walls" records. He argues that he was denied due process by FDLE and FDOC's refusal to provide additional records. However, this Court relied upon settled precedent in sustaining the State's objections. Moreover, any attempt to challenge the constitutionality of Florida's well-established rules governing public records in postconviction fails as a matter of well-established law. *See Randolph v. State*, 422 So. 3d 166, 172 (Fla. 2025), *cert. denied,* 223 L. Ed. 2d 239 (2025) (noting that the court has frequently and consistently rejected constitutional challenges to Florida's governing rules for public records production) (string citations omitted); *Cole v. State*, 392 So. 3d 1054, 1066 (Fla.), *cert. denied,* 145 S. Ct. 109 (2024) (rejecting claim that "denying him access to these (lethal injection) records violates his rights to due process and access to the courts under the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.") (citation omitted).

Similarly, Hitchcock's assertion of a potential equal protection violation does not alleviate or cure his failure to establish a risk of

substantial harm under the Eighth Amendment. A prisoner lodging a method-of-execution claim "faces an exceedingly high bar." *See Barr v. Lee*, 591 U.S. 979, 980 (2020) (per curiam). His allegations come nowhere near the mark.

Hitchcock's equal protection claim, based on his status as a convicted murderer, suggests that he is improperly treated differently from the general public who has broader access to public records than capital defendants. He contends that he, unlike any other seeker of public records, is required to demonstrate that he has made his own search, that his requests are relevant, and that his requests are not overbroad or burdensome. However, Hitchcock, unlike any other member of the public who seeks public records, is given an attorney to obtain them, a special central repository to store them, and is not charged for them. His equal protection challenge fails because Hitchcock and the ordinary citizen seeking public records are not similarly situated. *Duncan v. Moore*, 754 So. 2d 708 (Fla. 2000).

Moreover, Hitchcock is being treated exactly the same as other death sentenced inmates under the etomidate protocol. He is not subject to a new or changed protocol. In *Ferguson v. Warden, Florida*

State Prison, 493 Fed. Appx. 22, 25–26 (11th Cir. 2012) (unpublished) the court rejected a similar equal protection challenge:

> Ferguson fails to assert that any of the alleged deficiencies will result in disparate treatment from other death row inmates. Under Florida's 2012 protocol, all death row inmates facing execution will be subject to the same sequence of drugs, the same procedures, and the same safeguards in the execution process. Ferguson has presented no evidence to substantiate his claims of disparate treatment.

Id. See also King v. State, 51 Fla. L. Weekly S71 (Fla. Mar. 10, 2026) ("More fundamentally, because King has not asserted a colorable claim for relief regarding any constitutionally redressable disparate treatment, we find no error in the circuit court's decision to deny his demand for [lethal injection] records or his motion to vacate his judgment and sentence).

Hitchcock will receive the same drugs, in the same sequence with the same consciousness check as other inmates. As noted, his allegations fall far short of establishing any deviations in the past, much less one that will be "sure" or "very likely" applicable to him in the future. *See generally DeYoung v. Owens*, 646 F.3d 1319, 1328 (11th Cir. 2011) (rejecting inmate's equal protection claim based upon the assertion that Georgia deviated from its protocol because

inmate failed to show a substantial likelihood of success in the underlying action to support a stay of execution).

Hitchcock's reliance on Justice Sotomayor's discussion of a similar public records demand in *Trotter v. Florida*, 607 U.S. ---, Case No. 25-6853 (25A926) (Feb. 24, 2026) does not further his claim here. It has no precedential value. No other Justice of the United States Supreme Court joined Justice Sotomayor's concurrence in the denial of a stay of execution and in the denial of certiorari for Mr. Trotter whose execution was carried out on February 24, 2026. In fact, Justice Sotomayor agreed that Trotter did not "show that Florida's administration of its lethal-injection protocol is 'sure or very likely to cause serious and needless suffering' as the Court's Eighth Amendment precedents require." *Id.*

Hitchcock has no due process right to demand sensitive and confidential lethal injection records in search of a claim. And for the reasons argued during the hearing on public records conducted April 2, 2026, Hitchcock did not present a colorable method-of-execution claim. *See* Fla. R. Crim. P. 3.852(k) (limiting the scope of production of public records under any sub-section of rule 3.852 to those that are "either relevant to the subject matter of the proceedings under

rule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence"). Therefore, this Court properly denied Hitchcock's demand for lethal injection records. *E.g.*, *Tanzi*, 407 So. 3d at 391 (applying the abuse of discretion standard to the denial of a demand for additional records and concluding that the postconviction court did not abuse its discretion or violate due process in denying a demand for such records because the records did not relate to a colorable claim). This claim should be rejected.

Claim 2- Actual Innocence

Hitchcock's innocence claim is plainly meritless, untimely and procedurally barred. It should be summarily denied.

Hitchcock has raised this claim numerous times. He contends that despite his initial confession to rape and murder, it was his brother Richard who killed Cynthia Driggers. Hitchcock said as much during his 1977 trial, and the Florida Supreme Court affirmed. *Hitchcock v. State*, 413 So. 2d 741, 744 (Fla. 1982) (finding evidence that his brother Richard was the killer was "too remote to be relevant").

This claim is untimely. Hitchcock presents no new evidence in support of this claim. Postconviction claims raised more than a year

after the judgment and sentence become final are untimely and must "meet an exception to the time-limit rule–otherwise, the claim" should be summarily denied. *Davis v. State*, 417 So. 3d 242, 247 (Fla. 2025) (citing Fla. R. Crim. P. 3.851(d)(2), (e)(2)). He advanced this as a newly discovered evidence claim in 1996. At the evidentiary hearing, Hitchcock's sister Wanda testified that some years after Hitchcock's conviction, she heard Richard confess to killing Cynthia. The court denied relief because it found her testimony unworthy of belief. *See* Appendix A (1998 postconviction order). The Florida Supreme Court affirmed. *Hitchcock v. State*, 735 So. 2d 638, 645 (Fla. 2000).

Hitchcock raised the claim a second time, once again alleging newly discovered evidence, then presenting testimony from a number of family members who testified that brother Richard was sexually violent and had confessed, in various ways, to killing Cynthia. The court found none of Hitchcock's witnesses to be credible, largely because despite the fact that they were members of Hitchcock's family, not one of them stepped forward to corroborate his innocence claim until nearly twenty years after Hitchcock's 1977 conviction, after Hitchcock had been sentenced to death for the third time. The

extensive delay in coming forward, the court concluded, weighed heavily against their credibility. *See* Appendix B (2006 postconviction order). The Florida Supreme Court affirmed, specifically noting with approval the lower court's assessment that the witnesses presented by Hitchcock lacked credibility. *Hitchcock v. State*, 991 So. 2d 337, 349 (Fla. 2008) (witnesses who testified that brother Richard confessed to the murder "suffered from an inherent lack of credibility" and the claim was properly rejected as newly discovered evidence for that reason). A claim previously raised and rejected is procedurally barred from postconviction review. *Lukehart v. State*, 70 So. 3d 503, 524–25 (Fla. 2011); *Ferrell v. State,* 918 So. 2d 163, 178 (Fla. 2005).

Hitchcock now asserts an Eighth Amendment claim and contends that his execution would be cruel and unusual because he is actually innocent, and once again advances many of the same witnesses in support. Aside from the fact that none of his witnesses have ever been deemed credible by any judge who heard them testify, Florida does not recognize actual innocence as a standalone postconviction claim. *Sweet v. State*, 293 So. 3d 448 (Fla. 2020).

To the extent that Hitchcock asserts that refusal to consider actual innocence in this forum violates the Eighth Amendment, the

Florida Supreme Court has previously held that an actual innocence claim must be raised on direct appeal; summary denial of actual innocence in a postconviction motion does not violate the Eighth Amendment. *Tompkins v. State*, 994 So. 2d 1072 (Fla. 2008).

Hitchcock has not been deprived of his ability to advance this frivolous claim; he has argued it no less than three times without success despite full advantage of evidentiary development. And while the State does not disagree, in theory, with his premise that executing an innocent man is cruel and unusual, we are in no danger of any Eighth Amendment violation as Hitchcock is clearly not an innocent man. This claim has been rejected over and over and should, similarly, be rejected here.[1]

Claim 3- Hair Analysis

Hitchcock's argument here is not exactly the model of clarity. In Hitchcock's 1977 trial, the State presented the testimony of Diana Bass, who conducted microscopic analysis of hair found on the

[1] To the extent Hitchcock attempts to advance a new argument in support of his claim, it remains both time and procedurally barred. *See Gudinas v. State*, 412 So. 3d 701, 714 (Fla. 2025) ("Post-warrant claims that could have been raised in a prior proceeding are procedurally barred.").

victim's body. Hitchcock initially complains that her testimony was unreliable because her methodology was flawed. Ms. Bass testified that pubic hair found on the victim's body was microscopically identical to pubic hair taken from Hitchcock and not identical to pubic hair taken from brother Richard (V. IV p. 630-3). And because subsequent review of the procedures this witness employed established substantial infirmities in her methodology, Hitchcock asserts that he was deprived of the opportunity to establish that proper analysis would also have shown presence of Richard's hair as well.

This claim lacks merit because (first) Hitchcock has never denied that he had sexual contact with the victim and (second) the presence of brother Richard's hair on the victim would not have proven Richard's guilt or Hitchcock's innocence, given that both men lived with the victim in the same house. Testimony that Hitchcock's hair was found on the victim was relevant in that it confirmed the validity of his confession. Moreover, aside from the hair evidence, testimony adduced at Hitchcock's 1977 trial confirmed that samples obtained from Cynthia Driggers' body contained spermatozoa (V. III p. 556).

Inexplicably, Hitchcock proceeds to argue that despite his earlier complaint that he was deprived of the opportunity of proving Richard's involvement, the science of hair comparison is now irreparably flawed because hairs from different individuals may well have identical microscopic characteristics. Assuming this statement to be true, it renders Hitchcock's argument moot as even if new hair comparison analysis were conducted, according to Hitchcock, it would prove nothing.

Hitchcock does not advance this claim as newly discovered evidence, which it is clearly not. *See Jones v. State*, 709 So. 2d 512, 526 (Fla. 1998) (requiring that newly discovered evidence, to merit relief, must probably produce an acquittal if admitted in a new trial). Nor does Hitchcock assert that recent developments have diminished the validity of his own conviction, as his denigration of hair comparison as a science would seem to obviate the very claim he advances. In any event, this claim is procedurally barred because his complaint about Ms. Bass' examination was previously rejected by the Florida Supreme Court on the merits. *Hitchcock v. State*, 866 So. 3d 23 (Fla. 2004). This Court should reject it as both untimely and procedurally barred.

Claim 4- DNA Analysis

Finally, Hitchcock complains that trace evidence should have been tested for DNA because it would have exonerated him and established his brother, Richard, as the killer. Hitchcock has never denied having sex with the victim, thus DNA analysis would only corroborate this fact. And because both men lived in the same house with the victim, presence of Richard's DNA would be irrelevant to Hitchcock's claim of innocence. This claim has been rejected twice by the Florida Supreme Court. *Hitchcock v. State*, 866 So. 3d 23 (Fla. 2004) (DNA analysis of crime scene evidence would not exonerate defendant); *Hitchcock v.* State, 991 So. 3d 337, 348 (Fla. 2008) (same). Accordingly, this claim is procedurally barred from review in this successive postconviction motion.

To the extent that Hitchcock asserts it was improper for the State to destroy crime scene evidence without first subjecting it to DNA analysis, the Florida Supreme Court has found no merit to this claim because to establish a constitutional violation, the defendant must establish that the State acted in bad faith, and Hitchcock's assertion failed to meet this burden. *Hitchcock,* 991 So. 3d at 348. This claim, as with all of the specious claims advanced herein, should

be summarily rejected.

RESPONSE TO REQUEST FOR STAY OF EXECUTION

James Hitchcock, a Florida prisoner under an active death warrant with an execution scheduled for April 30, 2026, asks this court to stay his execution for the heinous murder and rape of his thirteen-year-old step niece committed in 1976 while it considers his post-warrant Florida Rules of Criminal Procedure 3.851 motion filed on April 7, 2026. Hitchcock is claiming that the trial court's order denying his demand for public records related to lethal injection protocols is preventing him from proving that the conditions of his execution are unconstitutional and he is making a claim of actual innocence.

A stay of execution is not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Florida's standard for a stay of execution requires a showing that "there are substantial grounds upon which relief might be granted." *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2023); *see also Barwick v. State*, 361 So. 3d 785, 791 (Fla. 2023). The United States Supreme Court has pointed out that courts should be especially wary of stay requests premised on postconviction motions filed at the eleventh hour. *See Bucklew v.*

Precythe, 587 U.S. 119, 150 (2019) ("Last-minute stays should be the extreme exception, not the norm, and the last-minute nature of an application that could have been brought earlier, or an applicant's attempt at manipulation, may be grounds for denial of a stay.") (cleaned up). A stay is not warranted in this case where the murder was committed in 1976 with Hitchcock's case becoming final on December 4, 2000. *Hitchcock v. State*, 755 So. 2d 638 (Fla. 2000). *cert. denied*, 531 U.S. 1040 (2000).

Hitchcock's case has been thoroughly litigated in both state and federal courts over the last forty years. The State rejects any notion that Hitchcock is innocent or that any of the previously filed and rejected claims come anywhere near the mark of legal innocence. The State of Florida and the surviving victims of Hitchcock's crimes have an enormous interest in the finality and timely enforcement of valid criminal judgments and sentences. *Ledford v. Comm'r, GA Dep't of Corr.* 856 F. 3d 1312, 1320 (11th Cir. 2017) (denying an emergency stay of execution in a capital case because the claims were time-barred, not substantial, and noting the State and the victims' interest in the finality of the sentence).

The court should deny the requested stay because Hitchcock's repackaged "cumulative innocence" theory is not cognizable and falls short of any recognized innocence standard. The Supreme Court has made clear that claims of actual innocence operate at most as a narrow gateway requiring new reliable evidence demonstrating that it is more likely than not that no reasonable juror would have convicted him. *Schlup v. Delo*, 513 U.S. 298, 324-327 (1995). Nor does his case approach the extraordinarily high threshold for any freestanding innocence claim which the Supreme Court has described as requiring truly persuasive proof of innocence. *Herrera v. Collins*, 506 U.S. 390, 417 (1993).

Equally fatal, is Hitchcock's inability to satisfy the demanding standard for a stay of execution. A capital defendant has no constitutional right to a stay of execution and must rely on equity alone to obtain one. *See Hill v. McDonough,* 547 U.S. 573, 584 (2006) ("[A] stay of execution is an equitable remedy. It is not available as a matter of right."); *Bowles v. Desantis,* 934 F.3d 1230, 1248 (11th Cir. 2019) (holding a capital defendant failed to show "the balance of the equities warrants the entry of a stay of execution"); *Long v. Sec'y, Dep't of Corr.,* 924 F.3d 1171, 1176 (11th Cir. 2019) ("[A] stay of

execution is an equitable remedy and all of the rules of equity apply."); *Ex parte Chesser,* 112 So. 87, 89 (1927) ("The whole proceeding is in the nature of a stay of execution, and is based rather upon public policy and a sense of propriety "than upon any right in the convict."). A stay is an equitable remedy requiring a substantial likelihood of success on the merits and that is something absent here. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Barefoot v. Estelle,* 463 U.S. 880, 895 (1983). Courts must also consider the State's strong interest in the finality and timely enforcement of his criminal judgments, particularly where Hitchcock's motion presents last-minute repetitive arguments that could have been raised earlier. *See Gomez v. U.S. Dist. Court for Northern Dist. of California*, 503 U.S. 653, 654 (1992). Because Hitchcock advances no cognizable claim, no new evidence, and no likelihood of success, the equities weigh decisively against a stay.

This court should deny the stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of April 2026, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: the Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, Florida 32801, **99orange@ninthcircuit.org**; the Honorable

Keith A. Carsten, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, Florida 32801, **19orange@ninthcircuit.org**, **ctjadh1@ocnjcc.org**; William Jay, Assistant State Attorney, Orange County State Attorney's Office, 415 North Orange Avenue, Orlando, Florida 32802, **wjay@sao9.org, swiggins@sao9.org**; Eric Pinkard, Chief Assistant CCRC-M, Joshua Chaykin, Cortney Hackett, and Christopher Clemente, Assistants CCRC-M, Capital Collateral Regional Counsel-Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637, **pinkard@ccmr.state.fl.us, chaykin@ccmr.state.fl.us, hackett@ccmr.state.fl.us, clemente@ccmr.state.fl.us, support@ccmr.state.fl.us,** and the Florida Supreme Court, **warrant@flcourts.org, canovak@flcourts.org**.

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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

JAMES ERNEST HITCHCOCK,

Defendant.
_____/

Case No. 1976-CF-1942
FSC Case No. SC1960-51108
ACTIVE DEATH WARRANT
Execution scheduled for April 30, 2026 @ 6:00 pm

APPENDIX A

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO. CR 76-1942

JAMES ERNEST HITCHCOCK,

Defendant.
_____/

FILED IN OFFICE
CRIMINAL DIVISION
1996 MAR 18 AM 8:10
FRANK HAMILTON
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL.

ORDER DENYING RELIEF
ON NEWLY DISCOVERED EVIDENCE CLAIM

This matter came before the Court for consideration of the defendant's request for relief due to newly discovered evidence filed on October 23, 1996, pursuant to rules 3.800(b) and 3.850, Florida Rules of Criminal Procedure. The Court has reviewed the request and the official court file as well as testimony, evidence, and argument presented by the parties, and based upon that review, the Court makes the following findings of fact and conclusions of law:

1. In 1977, a jury convicted the defendant of first-degree murder for the death of his brother's thirteen-year-old stepdaughter under an indictment charging one count of premeditated murder. Upon direct review, the Florida Supreme Court summarized the case's facts as follows:

> Unemployed, ill, and with no place to live, Hitchcock moved in with his brother Richard and Richard's family two to three weeks before the murder. On the evening of the murder, appellant watched television with Richard and his family until around 11:00 p. m. He then left the house and went into Winter Garden where he spent several hours drinking beer and smoking marijuana with friends.
>
> According to a statement Hitchcock made after his arrest, he returned around 2:30 a. m. and entered the house through a dining room window. He went into the victim's bedroom and had sexual intercourse with her. Afterwards, she said that she was hurt and was going to tell her mother. When she started to yell because he would not let her leave the bedroom, Hitchcock choked her and carried her outside. The girl still refused to be quiet so appellant choked and beat her until she was quiet and pushed her body into some

bushes. He then returned to the house, showered, and went to bed.

> At trial Hitchcock repudiated his prior statement. He testified that the victim let him into the house and consented to having intercourse. Following this activity, his brother Richard entered the bedroom, dragged the girl outside, and began choking her. She was dead by the time appellant got Richard away from her. When Richard told him that he hadn't meant to kill her, Hitchcock told him to go back inside and that he, the appellant, would cover up for his brother. According to Hitchcock, he gave his prior statement only because he was trying to protect Richard.

Hitchcock v. State, 413 So. 2d 741, 743 (Fla. 1982).

2. In 1996, the Florida Supreme Court remanded this case to the trial court. The Honorable Michael F. Cycmanick presided over its most recent penalty phase proceedings, and on October 10, 1996, that judge imposed a sentence of death upon the defendant.

3. After that sentence was entered, the defendant filed a Motion to Correct Sentencing Error on October 18, 1996, and a Motion for Evidentiary Hearing on Newly Discovered Evidence which contains the instant request. On October 7, 1997, Judge Cycmanick entered an Amended Sentencing Order in response to the Motion to Correct Sentencing Error.

4. In the instant request for relief, the defendant claimed to have recently discovered that prior to his death in 1994, his brother, Richard Carl Hitchcock, confessed to their sister, Wandalene Hitchcock Green, that he killed the victim in this case. On December 3, 1997, Judge Cycmanick held an evidentiary hearing on the defendant's newly discovered evidence claim, but no ruling was issued before the Florida Supreme Court suspended Judge Cycmanick from the circuit court bench.

5. This case was reassigned to the undersigned judge for the sole purpose of disposing of the defendant's claim of newly discovered evidence. A new evidentiary hearing on that claim was scheduled and held before this Court on March 10, 1998. During the hearing, the defendant

presented the testimony of Wandalene Hitchcock Green and James Johns, an investigator for the Office of the Public Defender in this circuit.

6. Wandalene Hitchcock Green testified that her brother, Richard Carl Hitchcock, confessed to her that he killed the victim in this case. In particular, Wandalene noted that in August of 1995, Richard came to Arkansas, where she and much of their family live, from his home out of state. Their mother advised Wandalene of Richard's arrival, so Wandalene went over to her mother's home to visit with Richard while their mother was going out to the store. Wandalene stated that she and Richard often spoke of their brother's, the defendant's, case, and during Wandalene's conversation with him on this day, Wandalene noted that it would be rough on their mother when the defendant was executed. Wandalene testified that Richard said that they don't electrocute people for rape. Wandalene clarified that they did electrocute people for murder. When she then questioned whether Richard knew what he was saying and whether he killed Cindy, Richard admitted he did. Wandalene testified that she told Richard she would have to tell someone of his confession and that he said he realized that she would. She noted that after Richard's confession, her relationship with him changed because she felt she could no longer trust him. Wandalene stated that she planned to talk to Richard more about the confession but that he died a couple of months later before she could do so.

7. Wandalene testified that the first time she told anyone of Richard's confession was when she spoke to the media in 1996, immediately after the jury returned a recommendation that the defendant be sentenced to death. Wandalene asserted that after the victim in this case was killed, the family split into two camps. Although she testified that she initially believed that Richard committed the murder, once the defendant was charged she believed that the defendant

was guilty of the act. She and Richard had stayed close, while the others in the family believed the defendant innocent and Richard guilty. Wandalene testified that due to the split, she did not tell her family about Richard's confession earlier because she did not think that they would believe her.

8. Wandalene asserted that no one ever contacted her about testifying in this case, but that after Richard's death she had another family member, Martha Galloway, set up a meeting with the defendant's investigator James Johns. However, she stated that when she, Galloway, and Johns met in Arkansas, she and Johns spoke only of the family's history and she did not tell him of Richard's confession. While in Orlando for the defendant's 1996 resentencing, she testified only about the family's history. She asserted that she told the media of the confession after the resentencing proceeding because she felt that no one would listen to her and that she felt she had to tell someone of the confession before she went back to Arkansas.

9. James Johns testified that he had not received information regarding Richard's confession to Wandalene until after the defendant's 1996 resentencing proceeding. In particular, Johns asserted that while he has performed various duties associated with the defendant's case since 1988, he never met with Wandalene until he made a trip to Arkansas in 1996 in order to gather mitigation evidence for the 1996 resentencing hearing. Johns confirmed that he, Wandalene, and Martha Galloway met at that time and that the conversation was merely about the family's background, even though he felt that he allowed Wandalene to speak freely and she mentioned Richard's previous abuse of family members during the discussion. Johns asserted that although he met with Wandalene in Arkansas and then had the responsibility of escorting her and other family members from the airport to their hotel before the resentencing, he did not learn of

Richard's confession to her until after she told the media. Johns asserted that he never discussed Richard's confession with Wandalene face to face and that they only corresponded on the matter in order to prepare her affidavit.

10. In order for evidence to qualify as newly discovered, "the asserted facts 'must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that the defendant or his counsel could not have known them by the use of due diligence.'" Jones v. State, 591 So. 2d 911, 916 (Fla.1991) (quoting Hallman v. State, 371 So. 2d 482, 485 (Fla.1979)). To obtain relief based on a newly discovered evidence claim, the defendant must establish that "the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial." Jones, 591 So. 2d at 915.

11. The state and the defense stipulated at the hearing that the defendant's attorneys would represent, if they were called to testify, that they did not know of Richard's confession to Wandalene until she spoke with the media after the 1996 resentencing. Additionally, Wandalene and Johns testified that Wandalene did not impart this information to Johns before the statement to the media. While the state pointed to Wandalene's previous conflicting deposition testimony which indicated that she first told Johns of Richard's confession while Johns was in Arkansas before the 1996 resentencing, her deposition testimony also indicates that she expressed confusion on this point. See Deposition of Wandalene Green, dated 12/2/97, pgs. 16, 17, 20-21.

12. Regardless, even assuming that Richard's confession to Wandalene qualifies as newly discovered, this Court finds that Wandalene's testimony regarding Richard's confession is not worthy of belief. Therefore, the defendant has not established that the evidence "would probably produce an acquittal on retrial."

13. The defense presented Richard's death certificate into evidence at the December 3, 1997, evidentiary hearing, and the certificate lists Richard's date of death as October 15, 1994. Therefore, Wandalene's assertion that Richard made his confession to her in August 1995 was obviously in error. While in her deposition in the case Wandalene also asserted that the confession took place in August 1995, in her earlier testimony and in her affidavit Wandalene asserted that Richard confessed to her in 1994. See Deposition of Wandalene Green, dated 12/2/97, pg. 4; Transcript of 12/3/97 hearing, pgs. 18-21; Affidavit of Wandalene Green, dated 10/15/97, ¶ 2.

14. Placing the alleged confession in August 1994 means that for more than two years Wandalene withheld Richard's confession from her family and authorities even though she

a. initially suspected Richard's guilt in the crime,

b. informed Richard that she would have to tell other family members of his confession,

c. possessed information that family members, as those supporting the defendant's innocence, would reasonably have embraced,

d. met with the defendant's investigator for the specific purpose of giving the investigator mitigation information for the defendant's resentencing, and

e. even actually testified in the defendant's resentencing proceeding on other topics.

15. Wandalene states that she told the media because she felt that no one would listen to her but it is clear that she made no effort to tell anyone of the alleged confession before that time. Wandalene asserted at the hearing that she did not tell her family about Richard's confession

earlier because she did not think that they would believe her. She had previously also stated that she "didn't want anybody's story to be conflicting with [hers]" and "didn't want anybody to question me on why I was saying this now." Transcript of 12/3/97 Hearing, pgs. 27, 43. Wandalene also asserted that she did not tell Johns of the confession during their Arkansas meeting because she wanted to "feel him out" and see if she could trust him. While she stated that she did not decide him untrustworthy, she simply did not tell Johns the information. Instead, Wandalene stated that she wanted to tell the defendant's counsel, although she made no attempt to do so before or during the defendant's resentencing proceedings.

16. These and other inconsistencies between Wandalene's testimony at this hearing, her affidavit, her deposition, and her testimony at the prior evidentiary hearing, including where and whether she told Johns about Richard's confession and the wording of the confession itself, add up to a lack of veracity on Wandalene's part. Since Wandalene's testimony regarding the confession is not credible and since at the original trial the jurors already rejected the defendant's claim that Richard murdered the victim in this case, this Court finds that there is no probability that her testimony would result in the defendant's acquittal upon retrial.

17. In addition, this Court finds that Wandalene's testimony regarding Richard's confession would not be admissible in a retrial of the case. While the defense argues that the hearsay testimony qualifies as a statement against interest and should be admissible under §90.804(2)(c), Florida Statutes, that section notes that "[a] statement tending to expose the declarant to criminal liability and offered to exculpate the accused is inadmissible, unless corroborating circumstances show the trustworthiness of the statement." For the reasons noted above, this Court finds that the corroborating circumstances of this statement are not trustworthy.

18. As stated in instruction 2.04 of the Florida Standard Jury Instructions in Criminal Cases, in weighing the evidence, "[a] juror may believe or disbelieve all or any part of the evidence or the testimony of any witness." This Court finds that all of the testimony of Wandalene Green Hitchcock regarding the alleged confession of Richard Carl Hitchcock to the murder at issue in this case is unworthy of belief.

Therefore, it is ORDERED that the defendant's request for relief on his claim of newly discovered evidence is DENIED.

DONE AND ORDERED in Chambers at Orlando, Florida, this 16 day of March, 1998.

Richard F. Conrad
Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. mail/hand delivery to **Jeff Ashton**, Office of the State Attorney for the Ninth Judicial Circuit, P.O. Box 1673, Orlando, Florida 32802, and to **Patricia Cashman**, Office of the Public Defender for the Ninth Judicial Circuit, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801, on this 17 day of March, 1998.

Alice L. Smith
Judicial Assistant

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

JAMES ERNEST HITCHCOCK,

Defendant.
_____/

Case No. 1976-CF-1942
FSC Case No. SC1960-51108
ACTIVE DEATH WARRANT
Execution scheduled for April 30, 2026 @ 6:00 pm

APPENDIX B

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. **CR 76-1942**

STATE OF FLORIDA,
Plaintiff,

vs.

JAMES ERNEST HITCHCOCK,
Defendant.
_____/

Docketed By:
T. Wirt

FILED IN OFFICE
ORANGE COUNTY, FLORIDA
2006 MAR 29 PM 2:35
LYDIA GARDNER
CLERK CIRCUIT COURT
ORANGE CO., FL

ORDER DENYING SECOND AMENDED MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE WITH RESPECT TO GUILT PHASE ISSUES AND NEWLY DISCOVERED EVIDENCE CLAIMS

On October 27, 2003, this Court issued an Order Denying Second Amended Motion to Vacate Judgment of Conviction and Sentence. On May 3, 2005, the Supreme Court determined that the Court had erred in ruling that the claims relating to the 1977 guilt phase were procedurally barred. Therefore, it relinquished jurisdiction for an evidentiary hearing and a ruling on the merits of all such claims, giving no explanation for its finding of error and denying the State's Motion for Clarification.

Proceeding with no guidance, the Court conducted a hearing in two parts, on November 15, 2005 and December 7, 2005, permitting Defendant to introduce the testimony he wished. Defendant testified on his own behalf at the first hearing. At the second part of the proceeding, he testified further, and also called Ron Meadows, Faye Jones, and Charles Tabscott. The State submitted five exhibits but did not call any witnesses. The Court reserved ruling and directed the parties to file written closing arguments, which are set forth as follows, together with their filing dates: State's Closing Argument (January 17, 2006); Defendant's Argument In Support of New Trial (January 20, 2006); State's Reply (January 26, 2006); Defendant's Reply (January 27, 2006). Having considered the testimony and

evidence presented at the original evidentiary hearings in 2003 and 2005, together with the written arguments of counsel, the Court now makes the following findings of fact and conclusions of law.

In a pleading titled Notice of Testimony, filed on October 3, 2005, Defendant identifies the guilt phase claims as II, III, VII, IX, X, and XII. Noting that he had previously been granted a hearing at which he presented evidence on these claims, he asks the Court to consider the following testimony in complying with the Florida Supreme Court's order: Charles Tabscott (contained in volume V of the record on appeal); Judy Hitchcock Gamble, Martha Galloway, Rossie Meacham, Brenda Reed, Wanda Hitchcock Greene, Steven Platte, Robert Kopec, and Diana Bass (all contained in volume VI of the record on appeal). He also notes that it will be necessary for the Court to review the 1977 guilt phase testimony in resolving the pending issues.

Defendant complains that the State has divided its argument into parts, and argues the Court should consider all of his claims both separately and together. However, it is impossible to address his individual claims thoroughly and precisely without addressing each one separately. Defendant is assured that the Court has considered the totality of his claims and their interaction with each other.

In several claims, Defendant alleges that he was denied effective assistance of counsel. To warrant relief, he must allege facts sufficient to establish a prima facie case under the two-pronged test established in *Strickland v. Washington*, 466 U.S. 668 (1984). First, he must identify particular acts or omissions by counsel that are shown to be outside the broad range of reasonable assistance under prevailing professional standards. *Id.* at 690. Second, he must also demonstrate prejudice, i.e., that a reasonable probability exists that, but for counsel's error, the result in the case would have been different. *Id.* at 694. A reasonable probability is one sufficient to undermine confidence in the outcome of the case. In order to establish a prima facie case of ineffective assistance of counsel, he must make

allegations that, taken as true, would satisfy both prongs of the *Strickland* test. *See, e.g., Ragan v. State*, 643 So. 2d 1175, 1176 (Fla. 3d DCA 1994); *Williams v. State*, 601 So. 2d 596, 599 (Fla. 1st DCA 1992). The Court must indulge a strong presumption that counsel's conduct falls within the wide range of professional assistance. *Strickland*, 466 U.S. at 689.

Claim II

Defendant alleges counsel failed to object to testimony that the victim was a virgin at the time of the offense, on the ground that this was unfairly prejudicial, lacked probative value, created unfair sympathy, and constituted improper victim impact evidence, non-statutory aggravation, and bad character evidence. During the latter proceeding, Dr. Ruiz testified that in his opinion, the victim was a virgin. Defendant argues this was irrelevant and counsel should have objected, because "even virgins can consent to their first sexual experience."

The medical examiner testified that the victim's hymen had been lacerated shortly before her death, and explained that this normally occurs the first time a female virgin has sexual intercourse. Counsel had no basis to object, because this testimony was admissible during the 1977 guilt phase trial. Defendant was charged with first-degree felony murder, and the State used the felony of sexual battery to support the felony murder theory. The medical examiner's testimony was relevant to prove that the victim had been vaginally penetrated, thus establishing an element of the offense of sexual battery, which was necessary to establish felony murder. *See* trial transcript, pages 507, 518, 965-969.

Second, the testimony was relevant to the issue of consent. Defendant initially confessed to the murder, stating that he had sexual intercourse with the victim, after which she said she was hurt and was going to tell her mother. He admitted choking her and hiding her body in some bushes. *See* 1977 trial transcript, pages 688-699. At trial, however, he testified that he had consensual sexual intercourse with

the victim, which did not hurt her. *See* 1977 trial transcript, pages 761-766. Due to this conflict, the hymen injury described by the medical examiner was admissible, along with the examiner's testimony that the 13-year-old victim had been a virgin prior to the encounter with Defendant, because it made Defendant's claim of consent less credible. It showed that the victim received an injury which caused her pain, indicating she probably did not consent to the intercourse. Thus, it was also relevant to prove an element of the offense of sexual battery, and thus establish the charge of felony murder.

Based on the foregoing, this Court concludes that counsel had no legal basis to object to the testimony regarding the victim's virginity, and the failure to do so was neither deficient nor prejudicial. Therefore, relief is again denied as to Claim II.

Claim III

Defendant alleges counsel failed to spend adequate time preparing for trial, interviewing potential witnesses, and discussing the case with him, thereby opening the door for testimony that Defendant choked another person and had a reputation for violence in the community.

At the 2005 evidentiary hearings, Defendant asserted that he had a very good recollection of the details of the original trial. His testimony is summarized as follows. Counsel visited him only twice before trial. During the first visit, which lasted about 30 minutes, he told counsel that his confession was not true, but he did not want to talk about it any more at that time. Nevertheless, counsel followed up with questions about acquaintances and family members who would have been around him before he went to jail. Defendant presumed counsel was trying to compose a list of "people he felt would have something good to say" on Defendant's behalf, who could serve as character references. About two weeks before trial – three or four months after the first meeting – counsel returned with news that the State would offer a life sentence in return for a plea, and seemed angry when he told counsel he could

not accept the offer because he was not guilty. Counsel finally asked what he had to say, whereupon Defendant related a version of events consistent with the testimony he subsequently gave at the trial. Counsel left, saying he would see Defendant in court, and did not meet with him again until they were in court for jury selection. Defendant did not meet with anyone else on counsel's behalf, nor did he discuss the facts of the case with anyone else. Finally, counsel did not consult with him during trial, going to far as to hold up a hand to quiet him and ignore his comments and written notes.

At the 2003 and 2005 evidentiary hearings, counsel Charles Tabscott admitted that he could recall very little of his 1977 trial strategy.[1] He simply lacked an independent recollection of events that took place over 25 years ago, rendering his testimony insufficient to provide a factual foundation for Defendant's claim. He was certain that he would have discussed the case with Defendant; because it was his practice to solicit input from clients. The defense called nine witnesses, only two of whom could have been developed without Defendant's assistance. He recalled Defendant as a good and affable client, easier to get along with than many others, and believed they had a good working relationship. Despite his memory lapses, the Court finds his testimony credible.

The Court concludes that Defendant's allegations lack sufficient credibility or in the alternative, they are conclusively refuted by the record for the reasons which follow.

• Defendant attended a suppression hearing with counsel on January 17, 1977, the day before trial began. *See* State's written Closing Argument, Exhibit C. Therefore, it is not true that after his last meeting with counsel, they had no contact until the actual day of trial, when jury selection began.

• Mr. Tabscott filed a motion for a psychiatric evaluation. *See* State's Exhibit 3, introduced at the December 2005 evidentiary hearing. This indicates that counsel spent enough time with Defendant to give him reason to conclude that such an evaluation would be appropriate in this case.

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[1] Mr. Tabscott did not have the opportunity to review his trial file. Both the Public Defender's office and the Capital Collateral Regional Counsel's office certified that it was not in their possession.

• Defendant met with Dr. Kirkland and Dr. Herrera. Their reports, both filed on September 15, 1976, indicate that Defendant discussed the events which led to his arrest. *See* State's written Closing Argument, Exhibits A and B. This refutes Defendant's claim that he never discussed the facts of his case with anyone else. Contrary to Defendant's argument, the Court did not interpret this issue to be an attempted "gotcha" on the part of the State.

• During voir dire questioning, Mr. Tabscott asked whether jurors had adult children living at home, which indicated he was looking for jurors who would be understand family dynamics. *See* 1977 trial transcript, pages 144, 154-155, and 180-181. This demonstrates counsel's preparation for Defendant's testimony that his confession was a cover-up for his brother Richard, the real killer. It is true that counsel could have asked if anyone had taken the blame for someone else or if someone else had taken the blame for him/her. However, the State could have exercised peremptory challenges on any juror who appeared to be unduly sympathetic to this defense theory.

• Mr. Tabscott cross-examined Richard Hitchcock in a way which suggested that he was involved in the murder and Defendant took the blame. *See* 1977 trial transcript, pages 309-310. This demonstrates counsel's preparation for Defendant's testimony that his confession was a cover-up for his brother Richard, the real killer. There is nothing counsel could have done to prevent the State from conducting a re-direct examination.

• Mr. Tabscott proffered the testimony of three sisters and one brother of Defendant and Richard Hitchcock, who would have testified that Richard had a violent nature and reputation and that he had made sexual advances toward two of the sisters. *See* 1977 trial transcript, page 795. This demonstrates counsel's preparation for Defendant's testimony that his confession was a cover-up for his brother Richard, the real killer. The fact remains that Richard was not on trial in the instant case, and Defendant (through counsel) candidly acknowledges that the trial court "arguably properly denied" counsel's argument regarding Richard's violent nature and sexual advances toward the sisters.

• Mr. Tabscott reserved his opening statement until the start of the defense case, thereby preventing the State from asking its witnesses questions which might throw doubt on Defendant's expected testimony. *See* 1977 trial transcript, pages 242. This demonstrates an awareness of the substance of what Defendant's trial testimony would be. It did not preclude the State from presenting a rebuttal case, but it was the best that could be done under the circumstances. Given that negative testimony about Richard was largely inadmissible, counsel had few specific details which would have been helpful to the defense case to present during opening statements.

• Mr. Tabscott essentially summarized Defendant's upcoming testimony during his reserved opening statement. *See* pages 1977 trial transcript, pages 720-722. This demonstrates an awareness of the substance of what Defendant's testimony would be. Again, further details would not have been helpful, nor is there a reasonable probability that additional argument would have made a difference in the outcome of the proceedings.

• The trial judge told counsel to consult with Defendant during voir dire. Subsequently, counsel approached the bench with the prosecutor, and ten prospective jurors were excused in writing, using forms titled "Exercise of Peremptory Challenge." *See* 1977 trial transcript, pages 99-100; *see also* State's Exhibit 2, introduced at the December 2005 evidentiary hearing. Another four prospective jurors were excused peremptorily without having the attorneys approach the bench. *See* 1977 trial transcript, pages 160-161. In addition, cause challenges were made on the record, not at the bench.. *See* 1977 trial transcript, pages 105, 161, 188, 198, 204, and 213. This refutes the claim that jury selection was conducted entirely at the bench, outside Defendant's presence.

• Mr. Tabscott frequently asked if he could have a few minutes. At the December 2005 evidentiary hearing, he testified that this meant he was reviewing his notes to make sure he asked all of the questions he wanted to ask, or that he was consulting with a fellow attorney or a client. Significantly, he did not have a fellow attorney in the instant case.

• Two witnesses testified at the 2005 evidentiary hearing that they saw Mr. Tabscott and Defendant conferring with one another during the course of the trial. *See* testimony of Ron Meadows and Fay Jones, transcripts of which are included as part of the postconviction record.

• At the February 1977 sentencing hearing, Mr. Tabscott told the Court that he had come to know Defendant fairly well, found him to be intelligent albeit emotionally immature, and believed he would be capable of rehabilitation. *See* sentencing transcript, page 5.

The second part of Claim III is that counsel opened the door for prejudicial character evidence. The State did introduce evidence that Defendant had hit his girlfriend, Connie Reed, but Ms. Reed denied that he had injured her or that she was frightened, saying "there was no reason to be afraid of him." *See* 1977 trial transcript, pages 824 and 830. The Court finds Defendant was not significantly prejudiced by the introduction of this evidence.

Claim VII

Defendant alleges that to the extent the State destroyed exculpatory evidence -- hairs, blood samples, clothing, and other physical evidence -- this violated his constitutional rights because he cannot conduct DNA testing which would reveal his innocence. The Florida Supreme Court discussed the requirements for such a claim in *Dufour v. State*, 905 So. 2d 42, 68 (Fla. 2005):

> The loss or destruction of evidence that is potentially useful to the defense violates due process only if the defendant can show bad faith on the part of the police or prosecution. *See Guzman v. State,* 868 So. 2d 498, 509 (Fla. 2003); *see also Arizona v. Youngblood,* 488 U.S. 51 (1988) (holding "that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law"). This Court has previously recognized that "[u]nder *Youngblood,* bad faith exists only when police intentionally destroy evidence they believe would exonerate a defendant." *Guzman,* 868 So. 2d at 509. *Youngblood* explained that the "presence or absence of bad faith for purposes of the Due Process Clause must necessarily turn on the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed." 488 U.S. at 57 n.* ; *see also Guzman,* 868 So.2d at 509.

In the instant case, Defendant gave conflicting accounts of the incident, first admitting to police that he killed the victim, then telling his counsel and testifying at trial that his brother Richard was the killer. However, in both versions, he acknowledged having sex with the victim. He does not allege or establish that there is any reason to believe that Richard was the donor of the semen found in the victim's vagina or the public hair found on her body.

Furthermore, given that Defendant and Richard lived in the same household, together with the victim and other family members, it is likely that biological material such hair, minute amounts of blood, clothing, skin particles, or any other similar matter would have been found on or about the victim's person. There is no reasonable probability that the introduction of such evidence would have made a difference in the outcome of the trial.

Perhaps most significantly, the Florida Supreme Court has already concluded that DNA testing would not exonerate Defendant. *See Hitchcock v. State*, 866 So. 2d 23, 27 (Fla. 2004):

> It is undisputed that Defendant confessed to having sexual intercourse with the victim, and Defendant fails to establish a reasonable probability that DNA testing would be able to exonerate him of the subsequent murder. *The presence of physical evidence linked to Richard Hitchcock would not establish that Defendant was not at the scene or that he did not commit the murder.* (emphasis added)

Thus, Defendant cannot establish that he was prejudiced by the destruction of evidence.

Claim IX

Defendant alleges he is entitled to relief based on the existence of newly discovered evidence, i.e., that his brother Richard Hitchcock admitted to Wandalane Green, Brenda Lee Reed, Bennie Reed, Winston Hitchcock, Judy Gamble, and Connie Gayle Morgan that he murdered the victim.

The substance of this claim has already been raised in a previous Motion with respect to Wandalene Green, and rejected by the trial court. On October 23, 1996, Defendant filed a Motion for Evidentiary Hearing on Newly Discovered Evidence. At the ensuing hearing, Green testified that Richard Hitchcock told her he had killed the victim. However, Judge Richard Conrad found her testimony was not credible. *See* Order, attached to the State's written Closing Argument as Exhibit D. The Florida Supreme Court affirmed; *Hitchcock v. State*, 755 So. 2d 638, 645 (Fla. 2000).

Ms. Green was also called at the 2003 evidentiary hearing along with Rossi (a/k/a Robbie) Meacham and Judy Gamble, at which time her testimony was very similar to that which she gave at the March 1998 hearing, i.e., she again asserted that Richard confessed to committing the crime. The Court did not find her testimony any more credible or compelling than Judge Conrad found it in 1998. By Defendant's own admission, Ms. Green did not state that Richard had confessed until she was interviewed by a television reporter in 1996, nearly two full years after Richard's death.

Ms. Meacham testified that she met Richard in the early 1990's at his mother's yard sale. Richard told her he "murdered that girl in Florida" and blamed it on his brother Ernie (Defendant). She believed Richard told her this because he wanted her to be scared of him. He showed her a gun on the dashboard of his car, telling her he had killed before and would not be ashamed to do it again. She said she did not know who to tell or what to do, but she did nothing as obvious as calling the police to

report what she had learned. Ms. Meacham's testimony establishes only that Richard had a motive to lie to her about killing the victim, i.e., he wanted to frighten her. There are no facts which would tend to show that his statements were trustworthy. *See* §90.804(2), Florida Statutes; *see also Sliney v. State*, 699 So. 2d 662, 670 (Fla. 1997) (holding that hearsay evidence that a declarant told a fellow inmate "he'd kill him like he did the other old bastard" was unreliable and not admissible to show the declarant committed the murder rather than the accused), and other cases cited in the State's written Closing Argument.

Ms. Gamble (Richard's niece) testified that she was at his home several years after the victim's death and he tried to molest her sexually, telling her that if she resisted, the same thing would happen to her. However, she did not say that Richard admitted killing the victim. Furthermore, the incidents were not similar. There has never been any indication that Richard molested the victim or threatened her to obtain sexual favors from her, and Ms. Gamble reported that was she able to repel Richard's physical advances and leave the premises, belying the physically violent picture of Richard described by others who would argue that he was the actual killer.

Brenda Reed testified that Richard violated her sexually from age 5 to age 15 and would hold her down or slap her if she resisted. She did not say that Richard confessed to the murder. As to the other three witnesses, no testimony was presented at either the 2003 or 2005 evidentiary hearings with respect to Richard's alleged confession to Bennie Reed, Winston Hitchcock, or Connie Gayle Morgan. Therefore, Defendant has failed to carry his burden of proof with respect to these alleged witnesses.

The Florida Supreme Court directed this Court to determine whether the newly discovered evidence would be admissible at a new trial, applying §90.804(2)(c), Florida Statutes, and *Jones v. State*, 709 So. 2d 512 (Fla. 1998). Pursuant to the statute, in order for a confession to be admissible

as a declaration against penal interest, the declarant must be unavailable as a witness and there must be corroborating circumstances to show the trustworthiness of the statement. *Jones v. State*, 709 So. 2d at 524. Richard Hitchcock died in a car accident in 1994, so he is clearly unavailable, and the first prong of the test has been satisfied.

As for the second prong of the test, Defendant argues that corroborating circumstances arise from the fact that Wandalene Green, Rossi Meacham, and Judy Gamble corroborate each other's testimony as well as the account Defendant has given ever since recanting his original confession. Contrary to finding the new witnesses trustworthy because they corroborate each other, the Court finds that the "newly discovered evidence" suffers from an inherent lack of credibility. Defendant has not established to the satisfaction of this Court a sound or credible explanation for the extensive delay demonstrated by these witnesses in reporting Richard's alleged confession. While they say they were never called by Defendant's attorneys, they were either members of his family or friends of the family and they were surely aware of the death sentences which had been imposed and re-imposed on Defendant. In 1996, when Ms. Green spoke to the reporter, Defendant had been sentenced to death for the third time. The witnesses apparently made no effort to speak up or correct the alleged grievous injustice for many years, and the Court finds their failure to do so weighs heavily against the weight their 2003 testimony would carry in a new trial.

Claim X

Defendant alleges the State violated *Brady v. Maryland* when it used hair comparisons performed by FDLE analyst Diana Bass to obtain the conviction upon which his 1996 death sentence is based. He further alleges counsel failed to object to Ms. Bass's testimony because she was not an expert and could not offer an opinion on hair analysis. Finally, he alleges her supervisor, Steven Platt,

author of a negative evaluation of her work performance, read her testimony into evidence at the 1988 resentencing proceeding.

To establish a *Brady* violation, a defendant must demonstrate: "(1) the State possessed evidence favorable to the accused because it was either exculpatory or impeaching; (2) the State willfully or inadvertently suppressed the evidence; and (3) the defendant was prejudiced." *Allen v. State,* 854 So. 2d 1255, 1259 (Fla. 2003) (citing *Strickler v. Greene,* 527 U.S. 263, 281-82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999)). *Davis v. State*, 915 So. 2d 95, 119-120.

This Court has been directed to address "all claims raised as to the guilt phase trial held in 1977 and all newly discovered evidence claims" raised in Defendant's Second Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend, filed November 30, 2001. However, testimony presented at the 2003 evidentiary hearing indicated that the unfavorable evaluation did not occur until after the conclusion of the 1977 trial, and Defendant's counsel admitted in its written Final Summation and Argument, filed after the 2003 evidentiary hearing: "Mr. Kopec did not discover Ms. Bass's incompetency and truly horrible evidence handling skills until 1978."

If Ms. Bass's supervisor did not discover a basis for challenging her performance until after the trial, there is no reason that the State could have done so and disclosed same to defense counsel. There was no suppression of this evidence and thus, no *Brady* violation with respect to the 1977 guilt phase trial. Similarly, there would have been no basis for counsel to object to her testimony.

At the 2003 evidentiary hearing, Mr. Kopec proffered testimony that complaints regarding Ms. Bass's forensic work were made a matter of public record in the 1983 Bartow trial of Anthony Peek. An opinion issued after Peek's second trial indicated that he was retried because false expert testimony had been presented concerning hair identification evidence. *Peek v. State*, 488 So. 2d 52, 53 (Fla.

1986). Therefore, even if the State failed to alert defense counsel to Ms. Bass' poor performance evaluation prior to the time her testimony was read into evidence at the 1988 proceeding, Defendant was not prejudiced, because the information was publicly available.

More significantly, in addressing a similar challenge to the testimony of Diana Bass in yet another case, the Florida Supreme Court held that the State's responsibility under *Brady* does not extend "to examining in depth the personnel files of proposed expert witnesses and divulging possible adverse comments to the defense." *Preston v. State*, 528 So. 2d 896, 898 (Fla. 1988) (finding no *Brady* violation with regard to Ms. Bass), *cert. denied*, 489 U.S. 1072 (1989). The Court accepts this opinion as a clear indication that it should find no *Brady* violation in the instant case.

Claim XII

Defendant alleges he was not present at bench conferences when the State and defense counsel exercised peremptory challenges during the jury selection process. He further alleges counsel failed to ensure that the court reporter prepared a complete record of these bench conferences.

As set forth above, the court file contains forms titled "Exercise of Peremptory Challenge," indicating that the peremptory challenges were made in writing. And, the record demonstrates that not all of these challenges were presented at the bench. *See* 1977 trial transcript, pages 160-161. It is quite likely that all of the forms were filled out at the table where counsel and Defendant were sitting. In addition, cause challenges were made on the record, not at the bench.. *See* 1977 trial transcript, pages 105, 161, 188, 198, 204, and 213. This refutes Defendant's claim that jury selection was conducted entirely at the bench, outside his presence. Even if some of the peremptory challenges were filed outside his presence, neither his allegations in the instant Motion nor his testimony at the 2005 evidentiary hearing establish a reasonable probability that the outcome of the proceedings would have

been different if jury selection had been carried out in any other manner.

Based on the foregoing, it is **ORDERED AND ADJUDGED**:

1. The Second Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend is hereby **DENIED**.

2. Copies of the following portions of the record are incorporated in this Order by reference: pages 105, 99-100, 144, 154-155, 160-161, 180-181, 188, 198, 204, 213, 242, 309-310, 507, 518, 688-699, 720-722, 761-766, 795, 824, 830, and 965-969 of the 1977 trial transcript; also, page 5 of the 1977 sentencing transcript.

3. Defendant is advised that he may file an appeal in writing within thirty (30) days from the date of rendition of this Order.

4. The Clerk of Court shall promptly serve a copy of this Order upon Defendant including an appropriate certificate of service.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida, this 29th day of March 2006.

REGINALD K. WHITEHEAD
Circuit Court Judge

Certificate of Service

I certify that a copy of the foregoing Order Denying Second Amended Motion to Vacate Judgment of Conviction and Sentence with Respect to Guilt Phase Issues and Newly Discovered Evidence Claims has been provided this 29th day of March 2006, to James Driscoll and Eric Pinkard, Office of Capital Collateral Representative - Middle Region, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619; Chris Lerner, Assistant State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; and Ken Nunnelly, Assistant Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118

Pat Jury
Judicial Assistant

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX K

Transcript of Case Management Conference on April 9, 2026

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

Plaintiff,

vs.

JAMES ERNEST HITCHCOCK,

Defendant.

CASE NO.: 48-1976-CF-001942-A-O

DIVISION NO.: 19

CASE MANAGEMENT CONFERENCE

BEFORE

THE HONORABLE KEITH CARSTEN

Orange County Courthouse
425 North Orange Avenue
Orlando, Florida 32801
Courtroom 19D
April 9, 2026
Stenographically reported

Appearances on following page:

A P P E A R A N C E S:

JENNIFER DAVIS, ESQUIRE
TIMOTHY A. FREELAND, ESQUIRE
Office of the Attorney General
3507 Frontage Road, Suite 200
Tampa, Florida 33607
On behalf of the Office of the Attorney General
(Via WebEx)

JOSHUA CHAYLIN, ESQUIRE
CORTNEY L. HACKETT, ESQUIRE
CHRISTOPHER CLEMENTE, ESQUIRE
Law Office of Capital Collateral
Regional Counsel-Middle Region
12973 North Telecom Parkway
Temple Terrace, Florida 33637
On behalf of the Defendant
(Via WebEx)

ALSO PRESENT:

WILLIAM JAY, ESQUIRE
Assistant State Attorney
415 North Orange Avenue
Orlando, Florida 32801
On behalf the State, Ninth Circuit

KRISTEN JENNIFER LONERGAN, ESQUIRE
DEBRA RESCIGNO, ESQUIRE
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399
On behalf of the Florida Department of Corrections
(Via WebEx)

JOSEPH GARGARRIDO
CCRC Investigator
(Via WebEx)

THE DEFENDANT
(via WebEx)

- - -

I N D E X

April 9, 2026

CASE MANAGEMENT CONFERENCE 4
CERTIFICATE OF REPORTER 32

- - -

P R O C E E D I N G S

(April 1, 2026 at 9:58 a.m.)

THE COURT: Mr. Freeland, if you'll turn on your camera, please.

Good morning everyone. Can you hear the Court?

MR. FREELAND: Yes, Your Honor, I can hear.

MR. CHAYKIN: Good morning, Your Honor. Yes, we can hear you.

THE COURT: Thank you.

All right. In timely compliance with -- well, let's call the case.

State of Florida versus James E. Hitchcock, Case No. 1976-CF-1942.

In compliance with paragraph 5 of the Court's scheduling order dated April 2, 2026, the defendant filed a Successive Motion to Vacate Judgment and Sentence pursuant to Florida Rule of Criminal Procedure 3.851, along with appendices A through F. Court has reviewed the filings in their entirety.

In response and compliance with paragraph 6 of the Court's scheduling order, the State of Florida filed their response to the successive 3.851 motion, along with appendices A and B. I have reviewed that filing as well.

Today's hearing is in compliance with paragraph 7 of the Court's scheduling order, colloquially known as a *Huff* hearing pursuant to *Huff v. State*, a Florida Supreme Court case from 1983. Court will hear argument as to whether the defendant's post-conviction claims warrant an evidentiary hearing.

This hearing is currently set for two hours. I'm going to ask the parties to please identify themselves for the record beginning with Mr. Jay here who is with me in court.

MR. JAY: William Jay from the State Attorney's Office, Ninth Judicial Circuit.

THE COURT: Thank you.

On behalf of Mr. Hitchcock, please.

MR. CHAYKIN: Joshua Chaykin on behalf of Mr. Hitchcock.

MS. HACKETT: Cortney Hackett on behalf of Mr. Hitchcock.

MR. CLEMENTE: Chris Clemente on behalf of Mr. Hitchcock.

THE COURT: On behalf of the State?

MR. FREELAND: Timothy Freeland from the Office of the Attorney General.

MS. DAVIS: Jennifer Davis on behalf of the Attorney General's Office.

THE COURT: Thank you.

And I see Mr. Hitchcock has joined us from the Florida Department of Corrections. We also have two attorneys. One attorney for FDOC and another attorney for FDOC. I'm going to let them in, Ms. Lonergan and Ms. Rescigno.

Good morning, Ms. Lonergan and Ms. Rescigno. If you would please identify yourselves and your agency for the record.

MS. LONERGAN: Good morning. Kristen Lonergan and Debra Rescigno for the Florida Department of Corrections.

THE COURT: We're having some audio difficulty with your connection. It's R-e-s-c-i-g-n-o; is that correct?

MS. RESCIGNO: Yes, Your Honor.

THE COURT: All right. Ms. Lonergan, can you hear me? We can hear you now. Kristen Lonergan, L-o-n-e-r-g-a-n, Florida Department of Corrections.

THE COURT: And Investigator Gargarrido has now joined us. G-a-r-g-a-r-r-i-d-o. Investigator.

MR. CHAYKIN: Yes, Your Honor. He's from my office, Capital Collateral Counsel.

THE COURT: Mr. Gargarrido, please place your name on the record. If you are speaking, your microphone is

on mute.

MR. GARGARRIDO: Yes, sir. My name is Joseph Gargarrido, G-a-r-g-a-r-r-i-d-o --

THE COURT: Thank you, Mr. Gargarrido.

MR. GARGARRIDO: -- CCRC investigator.

THE COURT: In review of the pleadings, the defendant's successive motion for postconviction seeks permission to leave -- seeks permission for leave to amend his argument as warranted. He seeks a stay of execution for the Court to vacate his conviction and sentence of death. As justification for those requests for relief, the defendant pleads two claims. The first being the denial of the defendant's demand for public records regarding the lethal injection procedures from both the Florida Department of Law Enforcement and the Florida Department of Corrections violates his state and federal constitutional rights pursuant to Article 1, Section 24 of the Florida Constitution and Amendments 5 and 14 of the United States Constitution, which then ultimately leads to a violation of his Eighth Amendment rights.

In support of this claim, the defendant argues the records available from another execution in the *Walls* case reflect the maladministration of the lethal injection process. The Court ultimately denied the

demand for FDLE and FDOC production of demanded public records following what the Court ruled was the prevailing statutory rule and case law authority.

The defense argues that the Court was incorrect and that the demands were pled with specificity, not overbroad, and asserted a colorable claim of relief even though they argue that requirement is not legally required and establishes relevance of the requested demand for public records.

The defendant argues that the request for in-camera inspection and their acquiescence to a protective order should have been granted by the Court.

The second claim is that, based upon a cumulative review of the nearly 50-year-old case, that the defendant is factually innocent of the crime of murder, and his execution would violate his Eighth Amendment rights as a manifest injustice.

They argue that the evidence of the defendant's brother being the perpetrator of the murder is substantial.

They further argue that advances in hair analysis evidence used in the trial cast doubt on the value of that evidence and that he was deprived of an opportunity to show that hair found at the crime scene was that of his brother's.

Finally, they argue that trace evidence of DNA was not tested to exonerate him and potentially inculpate his brother.

State of Florida in their response argues that both of the defendant's claims are untimely, without merit, and procedurally barred. That's the first claim.

The State of Florida argues that the *Walls* records regarding the lethal injection protocols do not pierce the presumption that FDOC follows its protocols.

They argue that the defendant's due process claim is speculative and insufficient to warrant relief.

They further argue that the alleged equal process claim is spurious because it fails to establish a risk of substantial harm and that he is not being treated differently than any other similarly situated defendant.

As to the second claim, the State of Florida argues that the innocence after cumulative review argument is a repackaging of meritless, untimely, and procedurally barred claims.

They further argue that the matter has been fully litigated and avers no evidence and support.

Finally, they argue that the hair and DNA is neither newly discovered evidence nor exonerate the

defendant, as he and brother lived in the same house with the defendant -- I'm sorry. They lived in the same house as the alleged victim, and that the defendant has never denied having sexual intercourse with the victim of the homicide.

They argue that the DNA matter has been fully argued and is procedurally barred. Accordingly, the State of Florida argues there is no legal justification for a stay of execution, that both the request for the stay and the successive post-conviction claim should be summarily denied.

Each side will have equal time to make their argument. I'm certainly not going to curtail, and if I miss a relevant portion of your argument, please don't hesitate to bring that to the Court's attention. The defense will have an opportunity to rebut after the State has given its argument.

Will you be giving the argument for the defense?

MR. CHAYKIN: Yes, Your Honor.

THE COURT: Whenever you are ready.

MR. CHAYKIN: Yes, Your Honor. Good morning.

So first, I want to begin, Your Honor, with Florida Rule of Criminal Procedure 3.851(f)(5)(a), which states that the Court must hold an evidentiary hearing on claims listed by the defendant as requiring

of factual determination.

So it's our position that both claims would require factual determination, and I'll explain why for each claim.

So for the first claim, it would be our intent to call Dr. Buffington, whose affidavit has been listed, as a witness for an evidence hearing so that he can further explain why these records would go to show how the drugs could affect a person if they were expired and properly stored or even given in the wrong amounts not according to the protocol. And so that would be the intent of having a witness and a further evidentiary hearing for that claim is to put on Dr. Buffington to testify further regarding that information. And we would ask that if the Court would deny an evidentiary hearing for this claim that we would still be allowed to proffer Dr. Buffington's testimony for the already set evidentiary hearing scheduled tomorrow, April 10th.

And so that would be what our position is regarding Claim 1 as to the further factual determination for the Court to make is to hear that additional testimony before ruling as to the merits of the claim.

Additionally, I do have an argument that I want to

make in response to the State's response that they filed, but just to note, Your Honor, for Claim 2, as to why there would be further factual determination is that, understanding that we're not bringing forth specifically any newly discovered evidence, the statements that were made previously go to show Mr. Hitchcock's actual innocence.

And so understanding that the State is raising the argument that this claim is procedurally barred, we're asking the Court to consider the fact that not allowing this claim to go forward would be a manifest injustice, which overcomes the procedural bar. And we've cited to the case law that's in our motion that supports a manifest injustice being a denial of a claim based purely on the procedural requirements which would result in the prejudice or harm to the defendant.

And it's our position that denying a claim of somebody who is actually innocent based on procedural bars would be a manifest injustice. In fact, I can't think of any other example that would be a bigger manifest injustice than denying somebody who is actually innocent the ability to raise that claim based on procedural bars.

This is exactly the situation where manifest injustice would apply is when there is an innocent man

on death row scheduled to be executed. So this is the exact situation for a manifest injustice.

The State's response doesn't address whether or not this -- the execution of an innocent man would be a manifest injustice, and I think we can all agree that would be a manifest injustice. It's hard to argue otherwise.

And so it's our position that not allowing this claim to go forward would be a manifest injustice because executing an innocent man is a violation of the Eighth Amendment. There cannot be a more cruel and unusual punishment than executing somebody who has not committed the crime that they're being executed for.

And so that is arguably why we're asking for an evidence hearing. We would be putting on witnesses who have already testified, but we would be asking for this Court to assess the credibility of the witnesses, and that would include Wanda Green, as well as Judy Stevens, who previously, I believe, in 2003 she testified as Judy Gamble, but now is Judy Stevens. So those would be the witnesses that we would intend to put on for Your Honor.

The purpose of that testimony would be to reaffirm the fact that Richard Hitchcock made admissions to them, which they testified to in 2003, understanding

that the State's position is that the courts previously found these witnesses to not be credible. That's an unreasonable finding to find that these witnesses were not credible.

These witnesses came forward after they were contacted by counsel for Mr. Hitchcock, and really, the State's position in their response goes to the fact that the witnesses should have came forward sooner, but ultimately, that problem lies on Mr. Hitchcock's past attorneys and the ineffectiveness that was previously raised.

And so what we're asking for is for a cumulative analysis of everything that's been presented in Mr. Hitchcock's case, including the admissions that were made by Richard, Wanda Green and Judy Stevens, and we would be asking to -- if the Court additionally is not granting us a hearing on that claim to be able to proffer that testimony, which would reaffirm the admissions that Richard made.

And so that would be what we intend to put on in the evidentiary hearing, and that's our argument as to why we should be granted an evidentiary hearing, because under the rule we've listed the claims that our position would require a factual determination, which is under (f)(5)(a). And so just based on the rule

purely, and it is our position that we should be granted a hearing to go forth with this evidence, but if not, in the alternative, we should be granted the ability to proffer the testimony tomorrow for the time that's already allotted.

Additionally, Your Honor, that addresses what my position is as to why we should be granted a hearing. I do have additional arguments to make that addresses the State's response, if I may.

THE COURT: All right.

MR. CHAYKIN: I'm sorry, Your Honor, I didn't hear you.

THE COURT: Do you want the State to argue their response first before you rebut, or would you like to do that now?

MR. CHAYKIN: If I could just address some places from their response and then if we can give them the opportunity to respond to everything, would that be all right, Your Honor?

THE COURT: Sure.

MR. CHAYKIN: Thank you.

So in regard to Claim 1 with the public records, the State made -- noted multiple arguments. First they note that the colorable claim language is just based on the Florida Supreme Court's interpretation of 3.852 and

27.708(1). But ultimately, there's no language from either the statute nor the rule that allows for the interpretation of a colorable claim. That is just manifested language that doesn't come from the rule. The rule is about whether or not the claims are reasonably related to the post-conviction proceedings or whether they're reasonably made to the discoverable evidence that could be introduced.

So there's no interpretation that comes from the rule or the statute that leads to the colorable claim language. That is just language that came from a Florida Supreme Court case that the State noted, which is the *Sims* case. And ultimately, *Sims* came from back in the year 2000 and addresses -- addresses the need for a colorable claim. And basically our position is that the need for a colorable claim that's been added --

THE COURT: Just a second, Mr. Chaykin. I think your client is being moved or distracted and perhaps can't hear the proceedings.

Mr. Hitchcock, I see that you've been sitting -- seated in a chair closer to the screen. Are you able to hear the proceedings?

His microphone is muted.

MR. CHAYKIN: Mr. Hitchcock, can you give a thumbs

up if you hear me?

THE COURT: Okay. For purposes of the record, Mr. Hitchcock gave a thumbs up.

Sorry for the interruption.

MR. CHAYKIN: No, no worries, Your Honor. My apologies.

So I was talking about the *Sims* case that State cited to that's from the year 2000 and established this colorable claim language.

So ultimately, Your Honor, that case predates the requirements that were set up in *Glossip*, which is what the State tries to reframe our claim as. Our claim is not ultimately that there is an Eighth Amendment violation under *Glossip* at this point. Our claim is ultimately being prevented from making an Eighth Amendment violation claim under *Glossip* because we can't access the records that are necessary to be able to prove that claim. That claim regarding the Eighth Amendment violation occurring was made previously in *Crawford*. That's not the same claim that we're making. We're making a claim that the denial of access to the records prevents us from making a claim under *Glossip*, which is ultimately a violation of *Glossip*. Because the *Sims* setting of a colorable claim language predates the findings in *Glossip*, which set a rule as to how to

set a maladministration violation of the Eighth Amendment claim. So this requirement of a colorable claim invades on the finding in *Glossip*, which allows defendants to be able to prove an Eighth Amendment violation. And so this additional requirement that's being put on capital post-conviction inmates to show a colorable claim, it violates the equal protection rights and due process rights.

The equal protection rights is violated not because that's what the State noted. And the State noted that the equal protection is not violated because Mr. Hitchcock has an attorney, but that isn't a proper consideration of any equal protection claim.

So in an equal protection claim, the remedy for a group's right being violated is not that they're just produced with an attorney. That doesn't resolve an equal protection violation. A remedy for an equal protection violation would be to put that person in the same position to allow for the equal protection of rights.

And so the State's position that equal protection and violation has not occurred because Mr. Hitchcock does not have an attorney -- has an attorney is misplaced. That doesn't support any case law or any remedy for an equal protection violation. Not to

mention, Your Honor, that the purpose of the attorney in this process is really to expedite the proceedings. It's not to remedy the fact that Mr. Hitchcock has to jump through extra hoops as a capital post-conviction inmate in order to obtain public records.

So the fact that he has these additional requirements proving a colorable claim or even showing why he wants the records is not remedied by the fact he has counsel. In fact, the fact he has counsel shows that he's being treated differently in these public records investigations, the fact that he needs counsel to be able to do so, and there is a separate rule and separate requirements. So that in and of itself is evidence of the fact Mr. Hitchcock is being treated differently than other members of the public, which also goes to the other way that the State is misframing our claim.

So our claim is based on the equal protection rights that capital post-conviction inmates are being treated differently than members of the public. The way the State responded and is reframing the claim is that Mr. Hitchcock's equal protection rights aren't being violated because he's being treated the same way as other post-conviction inmates. But that's not how an equal protection rights claim is assessed.

You don't assess an equal protection rights claim by comparing an individual to the specific group that they're in. You would assess the specific group as a whole compared to the rest of the public. That's how the equal protection claim should be assessed, and that's how our claim is written, is that post-conviction inmates, which would include Mr. Hitchcock and thus affect Mr. Hitchcock, are being treated differently than other members of the public in Florida. And so that's where the equal protection violation occurs, not because -- not because having anything to do with whether he's being treated differently than other post-conviction inmates. That's not how equal protections claim should be assessed nor how it's argued in our claim.

Additionally, Your Honor, the State points to the fact that we're relying on comments from the Supreme Court Justice Sotomayor. Those comments go to show that there's, A, a colorable claim, and, B, there is a catch-22 situation with defendants' rights in Florida in accessing these records. Understanding it's not binding language, it certainly is persuasive language from one of the justices in the highest courts of the land explaining and recognizing this catch-22 system that's regarding the transparency of our system. And

so those comments are very important for this Court's consideration of the merits of the claim. Understanding that the Court has already denied access to the records, we're asking the Court to still consider whether the denial of the access is a violation of the constitutional rights that are pled.

The State has cited to numerous cases as to why the Fourteenth Amendment rights don't apply to Mr. Hitchcock, but I would note to this Court that the cases the State has cited to regarding the Fourteenth Amendment apply to totally different claims that were made rather than what's being made here in terms of the different treatment of the public record demands. And so any of the cases that the State previously cited to with regards to whether Fourteenth Amendment constitutional right applies to access to these records are based on totally different claims and arguments, and this Court should assess the present claim argument being made with relation to the *Walls* record.

And so I would also submit that any of the cases prior to the *Walls* records are not even relevant to the same situation because they're based on completely different request, different reasoning entirely.

Let me see. Another thing that the State notes in terms of the claims that we're making in regard to the

assertion that Hitchcock makes regarding the lethal injection protocol being speculative based on the *Walls* records. However, I would note that, again, not just the FDOC and FDLE, who refuse to provide an actual explanation as to what these records are saying, but now the State Attorney and the Attorney General have jumped on board in explaining that -- they're saying Mr. Hitchcock is misinterpreting these records, but without providing any actual explanation as to what these records mean if we, in fact, are misinterpreting them. Our interpretation is based on a plain review of the records and all the agencies' refusal to provide any alternative explanation as to what the records say.

Moving to Claim 2, Your Honor, the only thing I would want to note is that the case I've cited, *Herrera v. Collins*, it gets into how a petitioner can request clemency as a means, an alternative method if they have an innocence claim. And so I need to get into that, Your Honor, for this Court's consideration because the history of Mr. -- the history does show, according to *Herrera v. Collins* that the claims of innocence that are based on new evidence are traditionally gone through clemency as a remedy. That's what is noted in *Herrera v. Collins*.

However, it's our position that Mr. Hitchcock's

clemency did not consider the evidence that was presented of his actual innocence. Mr. Hitchcock's clemency, my understanding, occurred in the '80s, and Mr. Hitchcock's additional evidence of his actual innocence would have been presented mostly in his 2003 evidentiary hearing. And so he was not actually provided in the forum of clemency in terms of his actual innocence. Any of that evidence would have been discovered, I believe, as early as 1996, which would have been long still after his clemency would have occurred. And so even though *Herrera v. Collins* notes clemency is a traditional method for an actual innocence claim, it would not be the method for Mr. Hitchcock in this situation due to the manifest injustice that occurred and the fact that he's not been provided clemency with consideration of his actual innocence since they occurred long ago.

THE COURT: Mr. Chaykin, let me interject. Was the clemency argument, was that pled in the successive motion?

MR. CHAYKIN: It wasn't pled with specificity, Your Honor. It's noted in the *Herrera v. Collins* claim in terms of *Herrera v. Collins* specifically notates within the -- within the case itself the clemency aspect. So it's not pled with specificity, Your Honor,

in the successive motion. However, it's well-documented within the *Herrera v. Collins* claim as they considered whether a claim of actual innocence can be brought forth as a standalone claim of a violation of the Eighth Amendment.

THE COURT: So beyond the citing of that -- direct my attention to your pleadings where that case is cited.

MR. CHAYKIN: Yes, Your Honor. So it's page 14 is where Claim 2 begins, and it's in the title as well, but it should be in here. It's cited on page 15 at the very bottom.

THE COURT: All right. So your argument that citing to the *Herrera v. Collins* case, 506 U.S. 390(1993), put the State on notice of a claim regarding that newly discovered evidence was not considered at the clemency hearing?

MR. CHAYKIN: Yes, Your Honor. Well, that is what the case considers, is that what would be the proper method to bring forth an innocence claim. And within the case in *Herrera v. Collins* they discussed clemency basically being historically the option as brought forth. However, it's our position that that would not apply to Mr. Hitchcock because of the fact that his clemency occurred long before the evidence of his

actual innocence.

And so our claim today is -- basically, it's a standalone claim of actual innocence and that it violates the Eighth Amendment based on *Herrera v. Collins*. And so when getting into that claim, Your Honor, it is our position that the clemency is not the proper method, the proper method is raising a claim as we have before Your Honor. Since his clemency already occurred and did not take this evidence into consideration, our position is that Your Honor should.

THE COURT: Understood.

MR. CHAYKIN: And let me see, Your Honor. If I may address -- the other argument I would put forth, Your Honor, is that even if his clemency were addressed, no clemency has been granted to any capital post-conviction inmate since the 1980s. So it's our position it would still not be the proper forum, especially considering the fact that Florida has had the most exonerated individuals off of death row since the 1970s. This information comes from the deathpenalty.org as well as pbs.org. But the reason I note that is because regardless -- especially considering the fact that his clemency didn't consider into evidence of actual innocence, it's our position still that the clemency in Florida is not the proper

method or forum because it's not operating in a way that leads to actual exoneration.

Other than that, Your Honor, I just had a couple corrections I needed to make for the record.

THE COURT: Yes, sir.

MR. CHAYKIN: Okay. So on page 19 of the successive motion, Your Honor, there's one correction I need to make that's a scrivener's error. And it's towards the middle of the page with Wanda Green, Ms. Green, it states her relationship to Richard and Mr. Hitchcock. So just for the record, it notes that Wanda Green is Richard's other stepdaughter, however, that's incorrect. And so it should be that Wanda Green is Richard and Mr. Hitchcock's sister. And I just wanted to correct and notate that for the record, which also her testimony does reflect that on the same citation for the post-conviction from the 2003 evidentiary hearing, page 132 reflects that correction.

THE COURT: All right. Thank you, Mr. Chaykin.

Any additional corrections or argument?

MR. CHAYKIN: No, Your Honor, not at this time.

THE COURT: Thank you.

State, do you wish to be heard as to your response to the Defendant's Successive Motion To Vacate Judgment and Sentence under Florida Rule of Criminal Procedure

3.851?

MR. FREELAND: Yes, Your Honor. I don't wish to revisit the argument as to the ability of correctness of this Court -- validity of this Court's ruling. I think that our statement in the pleadings is adequate that this Court should deny his request for additional public records requests.

As to Claim 2, the actual innocence claim, we were certainly placed on notice --

THE COURT: Could I have you get a little closer to your microphone? Madam Court Reporter is having a difficult time.

MR. FREELAND: I'm sorry. Is this better?

THE COURT: Yes.

MR. FREELAND: All right. So my argument is that we're not -- we were not placed on notice that clemency was an issue. So we were certainly surprised by the sudden appearance of a clemency argument after the pleadings are closed.

In terms of the actual innocence argument, however, two witnesses that the defendant proposes to present, Wanda Green and Ms. Gamble, I think is her name, if the Court looks at Exhibit B -- Appendix B, which we provided, the Court specifically addressed both of those witnesses. They both testified during

the 2006 -- sorry -- 2003 evidentiary hearing, and the court found that both of them were found -- found that Ms. Green to be unreliable as a witness. Ms. Gamble had nothing to say about Richard admitting anything about killing the victim.

So, you know, every court that has heard these witnesses testify has found that they lack credibility. There is no reason for this Court to revisit those rulings. The actual innocence claim as a standalone claim is not permitted under Florida law, and this Court should deny that request.

I'm not going to address any more of their arguments. I already addressed them in my pleadings. I would ask the Court to summarily deny. Thank you.

THE COURT: Thank you.

Mr. Chaykin, any rebuttal at this time?

MR. CHAYKIN: Yes, Your Honor. So in terms of whether or not clemency has been noticed to the State, the case that I've cited to, if you search for clemency, it cites the word "clemency" 31 times. That's a core focus of the case. And so any reading of the case would obviously show that clemency is part of this argument. In fact, it's exactly what I anticipated the State would argue as to why we can't raise this claim. Based on *Herrera v. Collins*, I

anticipated they would argue clemency is the alternative option, and that's why I've explained from the case law to this Court why that would not be applicable in this case. And so they certainly have been noticed because they have the case, it cites to clemency 31 times as the core focus of the argument as to whether or not a claim of actual innocence can be brought forth and whether it would have to go through clemency.

Our position is that *Herrera vs. Collins* leaves it open to the fact that a claim of actual innocence can just be brought forth if there is compelling evidence of the innocence which is notated in the case, as well as discussed further in the concurring opinions, which obviously are not binding, but further explain why the execution of an innocent man would be a violation of the Eighth Amendment, which seems like something we should all agree, is that if an innocent man was executed, that would violate the Eighth Amendment.

In terms of evidence that was presented of Mr. Hitchcock's innocence, Judy Gamble did present evidence related to admissions made by Richard and it is cited to in the pleading regarding a sexual attack Richard made on Ms. Gamble, who is now Ms. Stevens, that led to a threat that if you don't comply you'll

end up just like Cindy. So there was a threat that also would be interpreted as an admission for Richard from Ms. Stevens, which is notated for the record.

So that is really for the Court to review the record and make its own finding. It's also part of why we are asking for this Court's determination from additional evidence and testimony is it's our position that the execution of this man is manifest injustice, and so understanding other courts have made credibility findings regarding these witnesses, it's our position that in this serious circumstance this Court should hear the witnesses for itself and make its own determination.

THE COURT: Thank you, Mr. Chaykin.

All right. Brief housekeeping matter.

State, your filings are including Supreme Court case SC1965-1108. I believe the warrant in this case from the governor was filed in SC1969-2717. I know Mr. Hitchcock has had a number of active cases. I believe that that is the appropriate case number.

So based on the argument today, I'm going to consider the record, the defendant's successive 3.851 motion, the State of Florida's response, all the appendices, the argument by counsel today, and I will issue a ruling as to whether an evidentiary hearing on

the defendant's claims is warranted. That should be in your inbox by 3:00 p.m. today.

Anything further from any party?

MR. FREELAND: No.

MR. CHAYKIN: Not from the defense, unless, Ms. Hackett, do you have anything that you believe should be heard?

MS. HACKETT: No, Your Honor.

THE COURT: Okay. Hearing nothing further, that is going to conclude our hearing and will further instruct the parties based on the Court's ruling.

Feel free to disconnect, thank you.

MS. HACKETT: Thank you, Your Honor.

(The proceedings recessed at 10:38 a.m.)

C E R T I F I C A T E

STATE OF FLORIDA:
COUNTY OF ORANGE:

I, Jean Dexter, CRR, RPR, Official Court Reporter of the Ninth Judicial Circuit of Florida, do hereby certify, pursuant to Florida Rules of Judicial Administration 2.535(h)(3), that I was authorized to and did report in stenographic shorthand the foregoing proceedings, and that thereafter my stenographic shorthand notes were transcribed to typewritten form by the process of computer-aided transcription, and that the foregoing pages contain a true and correct transcription of my shorthand notes taken therein.

WITNESS my hand this 9 day of April, 2026, in the City of Orlando, County of Orange, State of Florida.

s:\\Jean Dexter, RPR, CRR

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX L

Order Following Case Management Conference (April 9, 2026)

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

v.

JAMES E. HITCHCOCK

Defendant.
_____/

Case No. 1976-CF-1942

ACTIVE DEATH WARRANT

ORDER FOLLOWING SECOND CASE MANAGEMENT CONFERENCE

THIS CAUSE has come before the Court on the 9th day of April 2026, and pursuant to this Court's Scheduling Order rendered on the 1st day of April 2026. The Court, having reviewed the court file, court record, Defendant's Successive Motion to Vacate Judgment and Sentence Under Florida Rule of Criminal Procedure 3.851 (Defendant's Motion), the State's Response to Successive 3.851 Motion and Request for Stay of Execution (State's Response) and being otherwise duly advised of the premises, hereby finds:

The Second Case Management conference was held to determine which issues raised by Defendant's Motion would be resolved by legal

argument or would require the Court to conduct an evidentiary hearing.[1] Upon consideration of the Defendant's Motion, State's Response, caselaw, and the respective arguments made by counsel, the Court finds that an evidentiary hearing is not required for this Court to resolve the Defendant's claims and request for a stay of execution.

Additionally, Defendant argues, both in his motion and at the case management conference, his "actual innocence." He argues that the Court should hear and reassess the cumulative evidence previously presented to prior juries and courts in support of his claim.

In the alternative, Defendant requests that the Court allow him to proffer this evidence to reaffirm or further clarify the alleged factual basis for his claim. The compelling evidence of Defendant's actual innocence is listed in Defendant's Motion as: Defendant's false confession and later trial testimony, Defendant's brother, Richard Hitchcock's motives, modus operandi, and his indirect admissions to the murder of the victim as recounted by the testimony of witnesses including Wanda Green and Judy Stevens, the Defendant's previous motions and argument regarding DNA

[1] *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

evidence, and the previously 2003 proffered testimony of Robert Kopec as to hair evidence.

An additional proffer would include Dr. Daniel Buffington, whose affidavit has been presented to the Court in Defendant's motion for additional discovery to support his argument that lethal injection protocols as applied to Defendant would violate the Eighth Amendment of the Federal Constitution. (Defendant's Demand For Additional Public Records, Florida Department of Law Enforcement, filed April 1, 2026).

As to both the proffer of evidence of actual innocence and the proffer of Dr. Buffington's testimony, Defendant has not described new information that a proffer would present to the Court as opposed to Dr. Buffington's previously presented affidavit or what the record would provide as to evidence of actual innocence.

As to the proffer of the previous and cumulative evidence of Defendant's actual innocence, the Court finds the court and appellate record reflects, and Defendant's Motion supports, that the evidence to be proffered has been previously reviewed and adjudged for its value. *See Hitchcock v. State*, 226 So. 3d 216 (Fla. 2017); *Hitchcock v. State*, 991 So. 2d 337 (Fla. 2008); *Hitchcock v. State*, 866 So 2d 23 (Fla. 2004); *Hitchcock v. State*, 755 So. 2d 638 (Fla. 2000); *Hitchcock v. State*, 755 So. 2d 638 (Fla. 2000);

Hitchcock v. State, 673 So. 2d 859 (Fla. 1996); *Hitchcock v. State*, 614 So. 2d 483 (Fla. 1993); *Hitchcock v. State*, 578 So. 2d 685 (Fla. 1990); *Hitchcock v. State*, 432 So. 2d 42 (Fla. 1983); *Hitchcock v. State*, 413 So. 2d 741 (Fla. 1982).

This Court finds that Defendant's stated wish to reaffirm or further verify through the proffer of evidence demonstrating "actual innocence" is unnecessary, as that evidence is already part of the record in this case. Additionally, this Court lacks the authority and will not presume to review the previous final rulings of the Florida Supreme Court.

THEREFORE, it is hereby **ORDERED AND ADJUDGED** that:

1. The Court finds that an evidentiary hearing is not required to resolve the claims of Defendant's Motion and the requested stay of execution.
2. The Court DENIES Defendant's request to proffer evidence.
3. The Court will enter a written order addressing Defendant's Motion and the requested stay of execution by or before April 13, 2026.

DONE AND ORDERED on this 9th day of April 2026, in Orlando, Orange County, Florida.



Keith A. Carsten
Circuit Judge

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to the following attorneys and interested parties on this 9th day of April 2026:

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If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Human Resources, Orange County Courthouse, 425 N. Orange Avenue, Suite 510, Orlando, Florida, (407) 836-2303, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX M

Order Denying Successive Postconviction Motion (April 13, 2026)

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

v.

JAMES E. HITCHCOCK
Defendant.
_____/

Case No. 1976-CF-1942
FSC Case No. SC1960-92717
ACTIVE DEATH WARRANT

ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.851 AND DENYING DEFENDANT'S REQUEST FOR STAY OF EXECUTION

THIS MATTER came before the Court on "Defendant's Successive Motion to Vacate Judgment of Conviction and Sentence of Death," filed on April 7, 2026. After reviewing the Motion, the State's Response to Defendant's Successive Motion for Postconviction Relief filed on April 8, 2026, the relevant case law, and having considered the legal argument of counsel made at the April 9, 2026 *Huff* hearing,[1] the Court finds as follows.

Procedural History

On August 9, 1976, Defendant was charged by Indictment with First Degree Murder. On January 21, 1977, a jury found him guilty as charged. On January 26, 1977, he filed a Motion for New Trial, which was denied on January 31, 1977. On February 9, 1977, he filed his "Motion for New Trial as to Sentencing Proceedings," which was denied on February 11, 1977. On February 11, 1977, he was sentenced to death. On February 25, 1982, the Florida Supreme Court affirmed Defendant's conviction and sentence.

[1] *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

Hitchcock v. State, 413 So. 2d 741 (Fla. 1982). The Mandate issued on November 18, 1982. The Mandate was affirmed on November 23, 1982, with the opinion affirmed on May 17, 1983.

On May 10, 1983, Defendant filed a Motion for Postconviction Relief, which was denied on May 11, 1983 and Defendant appealed. The Florida Supreme Court affirmed the ruling. *Hitchcock v. State*, 432 So. 2d 42 (Fla. 1983).

In a federal *habeas corpus* proceeding, the United States Supreme Court granted certiorari and vacated the death sentence, ruling that the advisory jury was improperly instructed to consider only statutory mitigating factors. *Hitchcock v. Dugger*, 481 U.S. 393 (1987).

Remanded to the trial court, a second penalty phase was held on February 20, 1988, and the jury recommended the death penalty. June 24, 1991, the Florida Supreme Court affirmed his sentence. *Hitchcock v. State*, 578 So. 2d 685 (Fla. 1990), cert. denied, 502 U.S. 912 (1991). The Mandate issued on June 17, 1991.

On rehearing, the United States Supreme Court granted certiorari and remanded for reconsideration in light of *Espinosa v. State,* 505 U.S. 1079 (1992). *Hitchcock v. Florida*, 505 U.S. 1215 (1992). In response, the Florida Supreme Court vacated the death sentence and directed the trial court to conduct a new penalty phase. *Hitchcock v. State*, 614 So. 2d 483 (Fla. 1993).

On August 23, 1993, a third penalty phase trial began, and on August 27, 1993, the jury recommended the death penalty, which was imposed on August 30, 1993. On September 2, 1993, Defendant filed a notice of appeal. On March 21, 1996, the Florida Supreme Court reversed and remanded. *Hitchcock v. State*, 673 So. 2d 859 (Fla. 1996).

On September 10, 1996, a fourth penalty phase trial was held, and on September 12, 1996, the jury recommended a sentence of death. The Court sentenced Defendant to death on October 10, 1996.

On October 18, 1996, Defendant filed a Motion to Correct Sentencing Error. On October 7, 1997, the Court entered an amended sentencing Order. On November 5, 1997, Defendant filed a Motion To Correct The Amended Sentencing Order, which was denied on November 10, 1997.

On October 23, 1996, Defendant filed a Motion for Postconviction Relief based on newly discovered evidence. The Court ordered the State to file a response to the postconviction motion on May 20, 1997, which was filed on June 26, 1997. The Court held an evidentiary hearing on December 3, 1997.

On February 4, 1998, Defendant filed a Motion For A New Penalty Phase trial. This motion was denied on February 9, 1998. A new evidentiary hearing was held on March 10, 1998, for Defendant's October 23, 1996, postconviction motion. The Court denied the motion on March 18, 1998. Defendant filed his notice of appeal on the same date. The Florida Supreme Court affirmed this sentence. *Hitchcock v. State*, 755 So. 2d 638 (Fla. 2000) reh'g. denied. (May 3, 2000) cert. denied, 531 U.S. 1040, 121 S.Ct. 633, 148 L.Ed.2d 541 (2000). The Mandate issued on March 23, 2000.

On February 7, 2001, Defendant filed a Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend, which was dismissed on March 15, 2001. Defendant was given leave to file a sufficient motion by December 3, 2001. His Motion for Reconsideration was denied on April 2, 2001.

On June 12, 2001, Defendant filed a First Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend, which was dismissed on September 27, 2001. Defendant was given leave to file a sufficient motion by December 3, 2001.

On November 30, 2001, Defendant filed his Second Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend. The court held an evidentiary hearing from April 7 through April 10, 2003, and on May 8, 2003; the trial court denied that postconviction motion on October 27, 2003. Defendant appealed.

On December 19, 2001, Defendant filed a Motion for Postconviction DNA Testing, which was denied on June 25, 2002. The Florida Supreme Court affirmed. *Hitchcock v. State*, 866 So. 2d 23 (Fla. 2004). The Mandate issued on February 16, 2004.

On May 3, 2005, the Florida Supreme Court ruled that the lower Court erred in its previous ruling that Defendant's guilt phase claims were procedurally barred. It relinquished jurisdiction on the matter for the circuit court to hold evidentiary hearings on the merits. *Hitchcock v. State*, No.

SC03–2203 (Fla. order filed May 3, 2005). As a result, the trial Court conducted a hearing in two parts. Following the hearings, the court later denied Defendant's Second Amended Motion to Vacate Judgment of Conviction and Sentence with Respect to Guilt Phase Issues and Newly Discovered Evidence Claims on March 29, 2006. Defendant appealed, and the Florida Supreme Court affirmed the lower Court's ruling on May 22, 2008. *Hitchcock v. State*, 991 So. 2d 337 (Fla. 2008). The Mandate issued on October 3, 2008.

Defendant petitioned the United States Middle District Court for a writ of *habeas corpus*, which was denied, and the Eleventh Circuit Court of Appeals affirmed the district court's ruling on March 12, 2014. *Hitchcock v. Crews,* 745 F. 3d 476 (11th Cir. 2014) cert. denied, 574 U.S. 939 (2014).

Defendant filed a Successive Postconviction Motion on January 6, 2017. The State filed a Response on January 18, 2017, and the Court denied the motion on February 17, 2017. A notice of appeal was filed on March 14, 2017, and the Florida Supreme Court affirmed the ruling on August 10, 2017. *Hitchcock v. State*, 226 So. 3d 216 (Fla. 2017) reh'g denied *Hitchcock v State*, 2017 WL 4118830, SC17– 445 (Fla. 2017) cert. denied 583 U.S. 1019, 138 S.Ct. 513 (Mem), 199 L.Ed.2d 396, 86 USLW 3281 (December 4, 2017).

On March 30, 2026, the Governor of the State of Florida signed and issued the "death warrant' as to Defendant's case. On the same date, the Florida Supreme Court issued a scheduling order for SC1960-92717/ 1976CF1942000AOX. On April 1, 2026, this Court issued a scheduling Order.

On April 1, 2026, Defendant filed demands for additional discovery from the Florida Department of Law Enforcement and the Department of Corrections. Both state agencies filed objections on April 2, 2026. The Court heard oral arguments and rendered an order denying Defendant's demand on April 2, 2026. Defendant filed his Successive Motion for Postconviction Relief on April 7, 2026. The State filed its Response on April 8, 2026. A second case management conference was held on April 9, 2026, and the Court entered a written order addressing whether an evidentiary hearing was necessary. This Order follows.

FACTS OF THE CASE

A jury convicted Hitchcock of first-degree murder for the death of his brother's thirteen-year-old stepdaughter under an indictment charging one count of premeditated murder. After weighing the aggravating and mitigating factors, the trial court agreed with the jury's recommendation and imposed the death sentence. We affirm both the conviction and sentence.

Unemployed, ill, and with no place to live, Hitchcock moved in with his brother Richard and Richard's family two to three weeks before the murder. On the evening of the murder, appellant watched television with Richard and his family until around 11:00 p.m. He then left the house and went into Winter Garden where he spent several hours drinking beer and smoking marijuana with friends.

According to a statement Hitchcock made after his arrest, he returned around 2:30 a.m. and entered the house through a dining room window. He went into the victim's bedroom and had sexual intercourse with her. Afterwards, she said that she was hurt and was going to tell her mother. When she started to yell because he would not let her leave the bedroom, Hitchcock choked her and carried her outside. The girl still refused to be quiet so appellant choked and beat her until she was quiet and pushed her body into some bushes. He then returned to the house, showered, and went to bed.

At trial Hitchcock repudiated his prior statement. He testified that the victim let him into the house and consented to having intercourse. Following this activity, his brother Richard entered the bedroom, dragged the girl outside, and began choking her. She was dead by the time appellant got Richard away from her. When Richard told him that he hadn't meant to kill her, Hitchcock told him to go back inside and that he, the appellant, would cover up for his brother. According to Hitchcock, he gave his prior statement only because he was trying to protect Richard.

Hitchcock v. State, 413 So 2d 741, 743-744 (Fla. 1982).

ANALYSIS AND RULING

Florida Rule of Criminal Procedure 3.851 "applies to all postconviction motions filed on or after January 1, 2015, by defendants who are under sentence of death." Fla. R. Crim. P 3.851(a). "Any motion to vacate judgment of conviction and sentence of death must be filed by the defendant within 1 year after the judgment and sentence become final." Fla. R. Crim. P. 3.851(d)(1).

Subsection (d)(2) states that no motion will be considered beyond one year from the date the judgment and sentence become final unless the motion alleges (1) newly discovered evidence that could not have been discovered through the exercise of due diligence, (2) a newly established and retroactive constitutional right or (3) postconviction counsel, through negligence, failed to file the motion. *James v. State*, 404 So. 3d 317, 324 (Fla. 2025) (outlining these exceptions in a post-warrant context); *Barwick v. State*, 361 So. 3d 785, 795 (Fla. 2023) (finding that successive postconviction claim of exemption from death penalty due to mental deficiencies was procedurally barred because it was substantially argued at trial or could have been raised previously).

A postconviction motion filed after a death warrant has been signed is an expedited proceeding. Fla. R. Crim. P. 3.851(h)(3). Summary denial is appropriate where the record refutes successive postconviction claims. Fla. R. Crim. P. 3.851(f)(5)(B). Summary denial of purely legal claims is also appropriate where such claims are without merit under controlling precedent. See *Mann v. State*, 112 So. 3d 1158, 1162-63 (Fla. 2013). A trial court should summarily deny "successive claims where those claims are untimely, procedurally barred, legally insufficient, or refuted by the record." *Hutchinson v. State*, 416 So. 3d 273, 279 Fla. 2025) (citation omitted).

CLAIM 1: THE DENIAL OF ACCESS TO LETHAL INJECTION RECORDS VIOLATES HITCHCOCK'S RIGHTS UNDER FLORIDA LAW, ART. I § 24 OF THE FLORIDA CONSTITUTION, AND THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, ULTIMATELY PREVENTING HITCHCOCK FROM PROVING A VIABLE CLAIM THAT HIS EXECUTION WOULD BE A VIOLATION OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION

On April 1, 2026, Defendant filed demands for additional public records from the Florida Department of Law Enforcement and the Florida Department of Corrections. (Attached Appendix B, Defendant's Demands for Additional Public Records Florida Department of Law Enforcement and Florida Department of Corrections, Defendant's Notice of Authority). The motions alleged the demand for documentation related to the lack of

adherence to the lethal injection protocols by those agencies. Both agencies filed their written objections, and the Court heard arguments on April 2, 2026. In a written order, the Court sustained the state agencies' objections and denied Defendant's demand. (Appendix D, Court's Order Denying Defendant's Demand for Additional Public Records Florida Department of Corrections ("FDOC") and the Florida Department of Law Enforcement ("FDLE")). Defendant has filed no motion for reconsideration.

Defendant argues that the Court's order of April 2, 2026, sustaining the objections of the Florida Department of Law Enforcement and the Florida Department of Corrections has unlawfully denied his access to additional public records related to lethal injection protocols, which would provide him with the basis to demonstrate that the conditions of his execution would violate the Eighth Amendment to the United States Constitution.

He alleges that he has a right to these records pursuant to Article I, Section 24 of the Florida Constitution, Chapter 119, and section 27.7081 of the Florida Statutes and the Florida Rules of Criminal Procedure 3.852, which allow him to pursue additional discovery in these postconviction proceedings without establishing a colorable claim. (Appendix A,

Defendant's Motion at 12). Even so, he submits that he has made a colorable claim. *Id.*

He also claims that the requests are not overbroad or unduly burdensome and would not risk the exposure of otherwise confidential information, including the identities of the lethal injection personnel.

He alleges that the Court's order violates the "Equal Protection guarantees of the Fourteenth Amendment of the U.S. Constitution. Additionally, withholding access to public records denies Defendant due process under the Fifth and Fourteenth Amendments of the U.S. Constitution. Defendant continues to seek access to the requested records pursuant to Fla. Const. Art I, § 24(a); Fla. Stat. § 119.01(1); Fla. Stat.§ 27.7081; and Fla. R. Crim. P. Rule 3.852." (Appendix A, Defendant's Motion at 5).

As to timeliness, Defendant argues that the issue was not "ripe" until alleged violations of the State's lethal injection protocols became available through the *Walls* case and a death warrant for Defendant had been signed. (Appendix A, Defendant's Motion at 2, *citing Walls v. Dixon,* No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025)).

The Court finds that the Defendant is presenting the evidence from the *Walls* case as newly discovered evidence without pleading the information as such. As newly discovered evidence, Defendant must demonstrate that the information was not available to Defendant or counsel prior to trial, could not be found through due diligence, and would produce an acquittal or a less severe sentence upon a new trial. *Gudinas v. State*, 412 So. 2d 701, 709 (Fla. 2025), citing *Dailey v. State*, 329 So. 3d 1280, 1285 (Fla. 2021).

The Court finds that the Florida Supreme Court has ruled in prior cases that the information sought by the Defendant will not support a colorable claim. *See Heath v. State*, 426 So. 3d 1253, 1261-1262 (Fla. 2026) (citations omitted); *see also Trotter v. State*, ---So. 3d ---, 51 Fla. L. Weekly S37 (Fla. 2026). *King v. State,* --- So. 3d ---, 51 Fla. L. Weekly s71 (Fla. 2026). As In these cases, the *Walls* information combined with the speculative and conclusory nature of Defendant's claims cannot support a colorable claim as to the violation of Defendant's Constitutional rights as presented in his motion, particularly that Defendant would risk serious illness or needless suffering pursuant to the Eighth Amendment

Additionally, the Court finds that Defendant is rearguing his request previously addressed in the Court's order of April 2, 2026, which denied

Defendant's request for additional discovery on substantially similar grounds. (Appendix A, Defendant's Motion). The Court finds Defendant has not provided any additional argument that would cause doubt as to the correctness of the Court's prior ruling; therefore, Claim 1 is procedurally barred. Notwithstanding this finding, the Court addresses the merits of Defendant's argument.

The Court adopts, incorporates, and addresses this Court's previous findings within the Order of April 2, 2026, sustaining the objection of the subject parties and denying Defendant's demand for discovery. (Appendix D, Court's Order Denying Defendant's Demand for Additional Public Records Florida Department of Corrections ("FDOC") and the Florida Department of Law Enforcement ("FDLE")).

Additionally, as to whether the requests are unduly burdensome or create the danger of breaching the confidentiality of records or personnel, the Court has reviewed both of Defendant's motions for additional discovery in total, including the attached affidavit of Dr. Daniel Buffington found in each motion. As such, the Court finds that Defendant has not presented an argument or evidence to require the Court to change the preceding order.

Additionally, the Court finds that the Florida Supreme Court consistently ruled against allegations similar to, if not identical to, those in three recent cases—specifically, the *Walls* records that Defendant insists show the FDOC is not adhering to their lethal injection protocol have been held to be both speculative and conclusory. *See Heath v. State*, 426 So. 3d 1253, 1261-1262 (Fla. 2026); (citations omitted); *see also Trotter v. State*, ---So. 3d ---, 51 Fla. L. Weekly S37, 2026 WL 320522, at *3 (Fla. 2026); *King v. State*, --- So. 3d ---, 51 Fla. L. Weekly s71 (Fla. 2026).

As in the *Trotter* case, the Defendant relies on the affidavit of Dr. Buffington and does not demonstrate a substantial likelihood that these alleged deviations would cause undue pain and suffering in violation of the Eighth Amendment. Defendant also fails to offer alternative methods of execution, as required by *Glossip v. Gross.*[2] *Trotter v. State*, ---So. 3d ---, 51 Fla. L. Weekly S37, 2026 WL 320522, at *3 (Fla. 2026) (Fla. 2026).[3]

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[2] *Glossip v. Gross*, 576 U.S. 863, 877, 135 S.Ct. 2726, 192 L.Ed.2d 761 (2015).

[3] The Court is aware of Justice Sotomayor's statement in *Trotter v. State of Florida*, 607 U.S.---,146 S. Ct. 755 (2026)(Statement of Justice Sotomayor). The Court notes that Justice Sotomayor did not dissent to the decision in *Trotter*, and while her comment on the issue of obtaining records in capital postconviction proceedings has been considered, it appears to be dicta. This Court is bound by the authority cited above.

As such, the Court finds that Defendant's claims and demands described in the present postconviction motion, and demands for discovery, would not produce a colorable claim that Defendant would risk serious injury or needless suffering. *See Heath v. State*, 426 So. 3d 1253, 1261-1262 (Fla. 2026) (citations omitted); *see also Trotter v. State*, ---So. 3d ---, 51 Fla. L. Weekly S37 (Fla. 2026). *King v. State*, --- So. 3d ---, 51 Fla. L. Weekly s71 (Fla. 2026). And as previously stated, Defendant's claim has not offered an alternative method of execution, and as such, his postconviction motion is insufficiently pled. *See Trotter v. State*, ---So. 3d ---, 51 Fla. L. Weekly S37, 2026 WL 320522, at *3 (Fla. Feb. 3, 2026) (Fla. 2026).

As previously ruled by this Court in the order denying Defendant's demand for additional discovery, Defendant's rights pursuant to the Fifth and Fourteenth amendments of the Federal Constitution are not violated by the Court's previous order of April 2. *See King v. State*, --- So. 3d ---, 51 Fla. L. Weekly s71, 2026 WL 672101 *6 (Fla. 2026). Nor does the rejection of his claim to these lethal injection records violate Defendant's rights pursuant to

the Eighth and Fourteenth Amendments of the Federal Constitution. *Cole v. State*, 392 So. 3d 1054, 1066 (Fla. 2024) cert. den, 145 S. Ct. 109 (2024).[4]

Defendant's claims that Chapter 119 and section 27.7081 of the Florida Statutes control or influence the issues of discovery in postconviction proceedings pursuant to Rule 3.851. He equates himself to a person who has not been convicted of a capital crime, sentenced to death, and proceeding in successive postconviction proceedings. As such, the Court's denial of additional discovery has violated his rights to equal protection of the law pursuant to the Fourteenth Amendment of the Federal Constitution. His argument is without merit.

"In the absence of a fundamental right or a protected class, equal protection demands only that a distinction which results in unequal treatment bear some rational relationship to a legitimate state purpose." *Duncan v. Moore*, 754 So. 2d 708, 712-713 (Fla. 2008) (citations omitted).[5] Here, Defendant is participating in postconviction proceedings, which are governed by Rules 3.851 and 3.852 of the Florida Rules of Criminal Procedure.

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[4] A position taken by the State's Response and adopted by the Court. (Appendix E, State's Response at 9)

[5] A position taken by the State's Response and adopted by the Court as sufficiently analogous to support the Court's position. (Appendix E, State's Response at 10)

For the preceding reasons, directly and in the alternative, the Court cannot grant relief as to Claim 1.

CLAIM 2: THE EXECUTION OF HITCHCOCK WOULD BE THE UNCONSTITUTIONAL EXECUTION OF AN INNOCENT MAN IN VIOLATION OF THE FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION UNDER HERRERA V. COLLINS, 506 U.S. 390, 417 (1993), AS WELL AS THE CORRESPONDING PROVISIONS IN THE FLORIDA CONSTITUTION

Defendant claims actual innocence based on the collective mitigating evidence presented to the Court and juries throughout this case. As such, he argues that his execution would violate the Fifth, Eighth, and Fourteenth Amendments of the Constitution.

The Court finds that standalone claims of actual innocence are not cognizable in postconviction proceedings, *Sweet v. State*, 293 So 3d 448, 453-454 (Fla. 2020) (citations omitted). Also, the denial of postconviction claims of actual innocence does not violate the Eighth Amendment. *Id.*

Furthermore, Defendant has previously raised a substantially similar, if not the same claim that the circuit court and the Florida Supreme Court have denied. *Hitchcock v. State*, 413 So. 2d 741, 744 (Fla. 1982); *Hitchcock v. State*, 735 So. 2d 638, 645 (Fla. 2000); *Hitchcock v. State*, 991 So. 2d 337, 349 (Fla. 2008). This is equally true with both the Defendant's claims as to

hair and DNA analysis. *Hitchcock v. State*, 866 So. 3d 23 (Fla. 2004); *Hitchcock v. State*, 991 So 3d 337, 348 (Fla. 2008).

As argued by the State in their Response, the Court finds that the Defendant's claim is procedurally barred. *Lukehart v. State*, 70 So. 3d 503, 524–525 (Fla. 2011); *Ferrell v. State*, 918 So. 2d 163, 178 (Fla. 2005); (Appendix E, State's Response at 15-19).

For the preceding reasons the Court cannot grant relief as to Claim 2.

REQUEST FOR STAY OF EXECUTION

Defendant's Motion requests a stay of execution. (Appendix A, Defendant's Motion at 2).

"[A] stay of execution on a successive motion for postconviction relief is warranted only where there are substantial grounds upon which relief might be granted." *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla.), cert. denied sub nom. *Dillbeck v. Fla.*, 143 S. Ct. 856, 215 L. Ed. 2d 93 (2023) (*quoting Davis v. State*, 142 So. 3d 867, 873-74 (Fla. 2014) (*citing Buenoano v. State*, 708 So. 2d 941, 951 (Fla. 1998)). Defendant has failed to outline specific facts that would necessitate a stay. Additionally, because the Court has summarily denied each of Defendant's claims, the Court finds that there is

no basis for a stay of these proceedings. As such, Defendant's request is denied.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. "Defendant's Successive Motion to Vacate Judgment of Conviction and Sentence of Death," filed on April 7, 2026, is **DENIED**.

2. Defendant's request for a Stay of Execution is **DENIED**.

3. Copies of the following documents referred to are herein attached and incorporated into this Order: (Appendix A) Defendant's Motion; (Appendix B) Defendant's Demands for Additional Public Records Florida Department of Law Enforcement and Florida Department Of Corrections and Florida Department of Law Enforcement's Response and Agencies Objections to Defendant's Demand for Production of Public Records Related to Lethal Injection Protocol Department of Corrections' Objections to Defendant's Demands for Additional Public Records; (Appendix C) Defendant's Notice of Authority; (Appendix D) Court's Order Denying Defendant's Demand for Additional Public Records Florida Department of Corrections ("FDOC") and the Florida Department of Law Enforcement ("FDLE") and Order Denying "Defendant's Motion for In-Camera Inspection; (Appendix E), State's Response;(Appendix F) Scheduling Order; (Appendix G) Order Following Second Case Management Conference; (Appendix H) Transcript of "Case Management Conference Before The Honorable Keith Carsten."

DONE AND ORDERED on this 13th day of April 2026 in Orlando, Orange County, Florida.

Honorable Keith Carsten
Circuit Judge

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to the following attorneys and interested parties on this 13th day of April, 2026:

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If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Human Resources, Orange County Courthouse, 425 N. Orange Avenue, Suite 510, Orlando, Florida, (407) 836-2303, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX N

Initial Brief of the Appellant, SC2026-0574, (April 15, 2026)

Filing # 246031659 E-Filed 04/15/2026 11:44:58 AM

IN THE SUPREME COURT OF FLORIDA
CASE NO: SC2026-0574

JAMES HITCHCOCK,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE _ JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA
Lower Tribunal No. 481976CF001942000AOX

INITIAL BRIEF OF THE APPELLANT

CAPITAL CASE - DEATH WARRANT SIGNED

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Counsel for the Appellant

REQUEST FOR ORAL ARGUMENT

Undersigned counsel for the Appellant, James E. Hitchcock ("Mr. Hitchcock"), respectfully requests the opportunity to present oral argument pursuant to Fla. R. App. P. 9.320. This is a capital case, which presents novel issues of constitutional significance and the resolution of the issues presented will determine whether Mr. Hitchcock will live or die. A complete understanding of the complex factual, legal, and procedural history and the arguments presented are critical to the proper disposition of this appeal.

JURISDICTIONAL STATEMENT

This is a timely appeal from the trial court's final orders denying postconviction demands and motions filed on April 1, 2026, as well as the trial court's final orders denying Mr. Hitchcock's two claims contained within his successive postconviction motion filed on April 7, 2026.

PRELIMINARY STATEMENT ABOUT THE RECORD

The postconviction record on appeal for the current death warrant litigation consists of one volume and is referenced to as "PCR" followed by the page number. Any testimony from Mr. Hitchcock's 1977 trial is referenced as "1977" followed by the page

number. Any testimony from Mr. Hitchcock's 2003 evidentiary hearing is referenced as "2003" followed by the page number.

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JUDGMENT, SENTENCE, AND MOTIONS UNDER APPEAL

Mr. Hitchcock was initially tried for First-Degree Murder in January of 1977. He was convicted and sentenced to death on February 11, 1977. Mr. Hitchcock's death sentence was reversed and remanded for a new penalty phase. The second penalty phase was held in February 1988. Mr. Hitchcock was sentenced to death on February 20, 1988. Mr. Hitchcock's death sentence was reversed and remanded for a new penalty phase a second time. The third penalty phase was held in August 1993. Mr. Hitchcock was sentenced to death for a third time on August 30, 1993. Mr. Hitchcock's death sentence was reversed and remanded for a new penalty phase for a third time. Mr. Hitchcock's fourth penalty phase was held in September 1996. He was sentenced to death on September 10, 1996, which now remains his most current and active death sentence.

Mr. Hitchcock has challenged his guilt over the course of his postconviction appeals and his current death sentence has been challenged pursuant to Fla. R. Crim. P. 3.851 in numerous separate filings including in 1996, 2001, and 2017.

On March 30, 2026, Governor Ron DeSantis signed a death warrant for Mr. Hitchcock and set his execution date for April 30,

2026, at 6:00 P.M. On April 1, 2026, Mr. Hitchcock, through undersigned counsel, filed "Defendant's Demand for Additional Public Records Florida Department of Corrections ("FDOC")" and "Defendant's Demand for Additional Public Records Florida Department of Law Enforcement ("FDLE")." PCR/180-219, 145-79. Mr. Hitchcock also proposed the disclosure of the records via a confidential protective order in both Demands. PCR/151, 190. On April 1, 2026, Mr. Hitchcock filed a motion for in-camera inspection of the requested records. PCR/287-90. On April 2, 2026, the circuit court entered its Order following the public records hearing denying Mr. Hitchcock's demands for additional public records from FDOC and FDLE. PCR/341-46.

Mr. Hitchcock filed a successive postconviction motion arguing that the circuit court had violated Mr. Hitchcock's statutory and constitutional rights when it denied Mr. Hitchcock's public record demands. PCR/378-404. In addition, Mr. Hitchcock's successive postconviction motion sought relief based on his actual innocence. On April 9, 2026, the circuit court held a case management conference and heard arguments supporting the need for an evidentiary hearing. Mr. Hitchcock also requested to proffer

testimony supporting his claims should the circuit court deny Mr. Hitchcock an evidentiary hearing. On the same day following the hearing, the circuit court issued an order denying Mr. Hitchcock an evidentiary hearing and the ability to proffer testimony from witnesses to support his claims. PCR/587-91. On April 13, 2026, the circuit court summarily denied Mr. Hitchcock's successive postconviction motion. PCR/592-610. This appeal of the circuit court's post-warrant litigation orders follows.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

See The Course of Prior Proceedings, Statement of the Case and Facts and Issued Raised, filed by the Attorney General's Office on April 2, 2026, Filing # 245147013.

Additional history not included in the State's filing:

On April 1, 2026, Mr. Hitchcock filed demands to FDOC and FDLE as noted above. In the alternative, Mr. Hitchcock requested disclosure via confidential protective order. PCR/151, 190. The same day, Mr. Hitchcock also filed a motion for in-camera inspection of the records he requested. PCR/287-90.

On April 2, 2026, counsel for FDOC and FDLE filed their responses and objections to Mr. Hitchcock's demands. See,

“Department of Corrections' Objections to Defendant's Demand for Additional Public Records” and “Florida Department of Law Enforcement's Response and Objection to Defendant's Demand for Production of Public Records Related to Lethal Injection Protocol.” PCR/180-219, 145-79. On April 2, 2026, less than six hours after the agencies responded/objected, the circuit court held a hearing on Mr. Hitchcock’s demands. Later that evening, the circuit court entered its written order denying all the demands made. See Order Denying "Defendant's Demand for Additional Public Records Florida Department of Corrections" ("FDOC") and the Florida Department of Law Enforcement ("FDLE"). PCR/341-46. The circuit court also declined to conduct in-camera inspection. See Order Denying "Defendant's Motion for In-Camera Inspection." PCR/338-40.

On April 7, 2026, Mr. Hitchcock timely filed a successive postconviction motion including two claims for consideration. PCR/378-404. Additionally, Mr. Hitchcock filed an appendix to his successive motion. PCR/405-97. The AG filed a response to Mr. Hitchcock’s successive postconviction motion on April 8, 2026. PCR/498-522. The following day, April 9, 2026, the circuit court held a case management conference where Mr. Hitchcock requested an

evidentiary hearing for further factual development of his claims. The circuit court denied Mr. Hitchcock's request for an evidentiary hearing the same afternoon. PCR/587-91. On April 13, 2026, the circuit court entered an Order denying. See Order Denying Defendant's Successive Motion to Vacate Judgment and Sentence Under Florida Rule of Criminal Procedure 3.851 and Denying Defendant's Request for Stay of Execution. PCR/592-610.

Mr. Hitchcock files this timely appeal seeking an order from this Court granting Mr. Hitchcock a stay of his execution and order granting the release of the requested public records held by FDOC and FDLE. Additionally, Mr. Hitchcock seeks vacation of his judgment and sentence and remand for a new trial including guilt and penalty phase.

STANDARD OF REVIEW

This is an appeal from postconviction motions filed under Fla. R. Crim. P. 3.851 and demands for additional public records filed under Fla. R. Crim. P. 3.852. The Court employs a mixed standard of review, deferring to the factual findings of the circuit court that are supported by competent, substantial evidence, but de novo review of

legal conclusions. *See, Sochor v. State*, 883 So. 2d 766, 771-72 (Fla. 2004).

SUMMARY OF ARGUMENTS

As to Claim One, the circuit court erred when it sustained FDOC and FDLE's objections to Mr. Hitchcock's demands for public records filed on April 1, 2026. Rule 3.852 and Florida Statute 27.7081 hinder capital postconviction defendants' access to public records because both require defendants to overcome hurdles that are not imposed upon general members of the public. Additionally, the court improperly imposed a higher burden upon Mr. Hitchcock than required in Fla. R. Crim. P. 3.852 or Fla. Stat. § 27.7081. The court further erred in sustaining the agencies' objections, the circuit court misapplied multiple statutory exemptions including Fla. Stat. § 945.10 allowing the exemption of the requested records rather than just identifying information as the statute specifies.

The court improperly imposed a higher burden upon Mr. Hitchcock

The records are necessary to allow Mr. Hitchcock to timely file a successive postconviction motion based on FDOC and FDLE not following the lethal injection protocols. Mr. Hitchcock is in possession of records from the Frank Walls case that he has included in his

filings that support his position that he is entitled to the requested records and negates the presumption that the agencies have been following their protocols. PCR/165 and 205. See *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025).

By preventing Mr. Hitchcock from access to the requested records that would reasonably be disclosed to the public, this Court violates Mr. Hitchcock's Florida Constitutional rights to access public records under Florida Const. Art. I § 24. In addition, Mr. Hitchcock's due process rights as found in the Fifth Amendment are also violated since he is being deprived of access to records he is entitled to. Mr. Hitchcock's Fourteenth Amendment equal protection rights are being violated because Mr. Hitchcock, as a capital postconviction inmate, is being treated differently by the law than any other member of the public in terms of access to records without any rational basis or legitimate reason.

The due process and equal protections violations are heightened by the fact that the prevention of access to records is preventing Mr. Hitchcock, *an innocent man*, from being able to prove that his execution would be unlawful because From being able to show that maladministration of the lethal injection protocol would lead to a

violation of the Eighth Amendment guarantee that Mr. Hitchcock is protected against cruel and unusual punishment.

As to Claim Two, the circuit court erred when it declined to review Mr. Hitchcock's innocence claim based on the merits and as a cumulative review of his case. The execution of an innocent man violates the Eighth Amendment's protection against cruel and unusual punishment. Declining to hear a legitimate claim of Mr. Hitchcock's innocence prior to his execution to determine whether an innocent man is being executed due to procedural bars, is a manifest injustice.

Mr. Hitchcock asks this Court to stay his execution until the requested records have been received and this Court has a reasonable amount of time to consider the claims within Mr. Hitchcock's successive postconviction motion including his actual innocence.

ARGUMENT

CLAIM ONE: APPEAL FROM DENIAL OF MOTION FOR IN-CAMERA INSPECTION, PUBLIC RECORDS DEMANDS, REQUEST FOR PROTECTIVE ORDER, AND CLAIM ONE OF MR. HITCHCOCK'S SUCCESSIVE POSTCONVICTION MOTION FILED ON APRIL 7, 2026.

The circuit court erred in sustaining the objections of FDOC and FDLE to the public records demands filed on April 1, 2026. In addition, the trial court denied Mr. Hitchcock's request for a protective order and in-camera inspection without explanation. As such, Mr. Hitchcock has been precluded from access to public records in violation of his rights under Florida Constitution Article I, Section 24, Florida Statute § 27.7081, Fla. R. Crim. P. 3.852, and the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

Mr. Hitchcock raised these arguments in his request to the circuit court for disclosure of records and noted the constitutional violations of the circuit court's denial in Claim One of his successive postconviction motion. Since the claim is based on records uncovered in the *Walls* case, the circuit court treated the claim as a newly discovered evidence claim. PCR/601. Under consideration as a newly discovered evidence claim, Mr. Hitchcock would still meet the

requirements, because the *Walls* records were not available to counsel prior to them becoming available in late 2025 and this information would have led to a life sentence. Arguably, if a jury was presented evidence and testimony that undermines the integrity of capital punishment, this would shock the consciousness of the public and lead to a life sentence. Regardless, Mr. Hitchcock's claim was not pled as a newly discovered evidence claim; rather, it alleged a violation of Mr. Hitchcock's rights which renders his execution unconstitutional.

Although the circuit court denied Mr. Hitchcock's request to proffer testimony, Mr. Hitchcock attached Dr. Daniel Buffington's affidavit in an appendix to his successive postconviction motion. Dr. Buffington's affidavit supports the assertion that maladministration of the lethal injection protocol and "error or deviation could result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death." This supports the need for further development of the record. However, as discussed, the denial of Mr. Hitchcock's public records demands precludes Mr. Hitchcock from such luxury.

The circuit court also found Claim One of Mr. Hitchcock's successive postconviction motion to be untimely because Mr. Hitchcock raised the claim during his demands for additional public records. PCR/145-79, 180-219.. However, this is an inaccurate assessment of the pleadings. The arguments contained within Claim One contain much of the argument in support of the disclosure of the requested records, but the violation of the rights laid out in Claim One did not occur until the circuit court denied the demands for additional public records. Mr. Hitchcock thus could not have raised Claim One until he was denied access. In other words, Mr. Hitchcock could not have argued that his constitutional rights were violated until *his rights were violated.* The court's denial of Claim One as untimely defies common sense and logic.

Fla. R. Crim. P. 3.852(i) governs demands for additional public records for capital postconviction inmates. The rule requires counsel for a capital postconviction inmate to file an affidavit that establishes that the "additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence." Fla. R. Crim. P. 3.852(i)(1). The Petitioner, Mr. Hitchcock, a capital postconviction

inmate, submits that he has satisfied his burden under Florida law. The denial of his requests for records precludes him from inspecting and copying specific public records in contravention of Chapter 119, "Public Record Law;" Fla. Stat. § 27.7081; and Fla. R. Crim. P. 3.852.

FDOC and FDLE have failed to assert any legitimate claims that the records sought by Mr. Hitchcock are excluded from public copying and inspection based on any statutorily recognized exemptions and/or confidentiality provisions that precludes either agency from fulfilling their duties to provide public records upon request. Instead, the agencies along with the AG/state argued that Mr. Hitchcock failed to meet manufactured burdens that do not

methodology employed in Florida also ignores the fact that Mr. Hitchcock and other capital postconviction inmates would be the individuals with the most reason to seek these records; Mr. Hitchcock even doing so with the caveat of a confidential protective order being a suitable alternative.

The records sought by Mr. Hitchcock are "public records" as defined by Fla. Stat. § 119.11(12). Public records are all documents and records, regardless of form, "made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Public records include "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type." *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (1980). Furthermore, records generated from the performance of duties fall within the scope of the meaning of "public record." See, *Mem'l Hosp. Volusiam Inc. v. News-Journal Corp.*, 729 So. 2d 373 (Fla. 1999); *Weekly Planet, Inc. v. Hillsborough County Aviation Authority, et al*, 829 So. 2d 970 (Fla. 2d DCA 2002).

The definition of "public records" also includes logs which are relevant to and required by written operating procedures and duties

of an agency. *Miami-Dade County v. Professional Law Enforcement Ass'n*, 997 So. 2d 1289, 1290-1 (Fla. 3d DCA 2009) (*aff'ing* the order requiring County Police Department aviation unit to allow the inspection and copying of the pilots' personal flight logs as "public record"). Similarly, logs which "show the functioning of the public agency" have been determined to be public records within the meaning of Chapter 119. *Cruz v. State*, 279 So. 3d 154, 158 (Fla. 4th DCA 2019) (holding "if public policy demands" names of experts visiting a defendant to be redacted from jail visitation logs as confidential, "it is for the legislature to provide an exemption by statute."), *review denied*, 2020 WL 1169444 (Fla. 2020).

"If there is any doubt as to whether a matter is a public record subject to disclosure, the doubt is to be resolved in favor of disclosure." *Everglades Law Center v. South Florida Water Management District*, 290 So. 3d 123, 129 (Fla. 4th DCA 2019) (citing, *Morris Publ'g Grp., LLC v. Fla. Dep't of Educ.*, 133 So. 3d 957, 960 (Fla. 1st DCA 2013)). Public records laws are "to be construed liberally in favor of the state's policy of open government." *Everglades Law* Center, 290 So. 3d at 129 (citing, *Morris Publ'g Grp.*, 133 So. 3d at 960).

Neither FDOC, FDLE, nor the AG/state have denied that the records sought by Mr. Hitchcock are public records but rather claim that Mr. Hitchcock cannot meet his burden for disclosure along with misapplied statutory exemptions. Neither the "colorable claim" requirement nor Fla. Stat. § 945.10 preclude the agencies from fulfilling their duties to disclose records under Florida public records laws. Florida law provides any member of the public access to public records. Mr. Hitchcock is a member of the public, but his access to public records is being denied based entirely on his status as a capital postconviction inmate.

b. Denial of access to the records based on Florida's requirements for capital postconviction inmates violates the Fifth, Eighth—by preventing a *Baze-Glossip* claim—and Fourteenth Amendments to the U.S. Constitution.

To prevail under an "as-applied" or "method of execution" challenge under *Baze-Glossip*, "a condemned prisoner must: (1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Long v. State*, 271 So. 3d 938, 944 (Fla. 2019). Mr. Hitchcock

has not raised either an "as-applied" or "method of execution" challenge to the use of lethal injection for the State's planned execution, but rather that he is being prevented from obtaining the necessary records to prove any legitimate challenge.

The agencies' refusal to provide and the circuit court's prevention of access to the necessary materials violated Mr. Hitchcock's Fifth Amendment due process rights by preventing him from accessing records to which he is entitled and needs to prove a claim under *Baze-Glossip* through denial of access to needed records. Recently, this Court has found that capital postconviction inmates have failed to assert "colorable claims" based on maladministration of the lethal injection protocol. However, in Ronald Heath, Melvin Trotter, and Michael King, this Court has found that all three cases failed to prove a claim for relief pursuant to *Baze-Glossip* while also finding that the postconviction inmates were not entitled to the public records necessary to support or *even investigate* such a claim. The denial of the public records continues to act as a blockade against *any* capital postconviction inmate from seeking meaningful access to the courts. As such, preventing a capital inmate from accessing

materials necessary to prove a *Baze-Glossip* claim violates the Eighth Amendment, and conflicts with *Baze-Glossip*.

The lower court's denial of access to records also violated Mr. Hitchcock's Fourteenth Amendment right to equal protection of the law because the requirements found in Fla. Stat. § 27.7081, Fla. R. Crim. P. 3.852, and the requirement that Mr. Hitchcock put forward a colorable claim show that Florida law treats capital postconviction inmates differently than other members of the public with regard to access to public records because any other member of the public can obtain public records without reason.

This differential treatment violates Mr. Hitchcock's (and all other capital postconviction inmates') right to equal protection under the law. The state of Florida may have a legitimate interest in expediting the public records process for capital postconviction inmates, but there is no legitimate interest in limiting their access. Mr. Hitchcock's execution should be stayed so that he can obtain the records and pursue any necessary litigation.

II. THE TRIAL COURT UNLAWFULLY SUSTAINED THE OBJECTIONS TO DISCLOSURE OF PUBLIC RECORDS AND DENIED MR. HITCHCOCK ACCESS TO PUBLIC RECORDS BASED ON LEGALLY INSUFFICIENT OBJECTIONS MADE BY THE AGENCIES.

The trial court erred when it entered its order sustaining FDOC and FDLE's objections. That denial led to Claim One of Mr. Hitchcock's successive postconviction motions based on Mr. Hitchcock's rights being violated. FDOC, FDLE, and the AG/State have failed to satisfy their burden of asserting an applicable exemption to public record disclosure and failed to assert any proper basis that their objections should have been sustained.

Additionally, the AG/State has not submitted any direct response to Mr. Hitchcock's allegations of violations of his constitutional rights. The agencies and AG/State have only attempted to misconstrue Mr. Hitchcock's constitutional arguments. Mr. Hitchcock's constitutional claims are as noted during the hearing for public records that occurred on April 2, 2026, and as pled in Mr. Hitchcock's successive postconviction motion, Case Management Conference that occurred on April 9, 2026, and this appeal.

The circuit court's denial of Mr. Hitchcock's requests lacked an in-camera inspection and failed to provide a reason why the materials could not be provided subject to a confidential protective order. The circuit court declined to conduct in-camera inspection because the court found the issue moot after denying Mr. Hitchcock's request for additional public records. However, the in-camera inspection should have occurred prior to and guided the court's ruling on Mr. Hitchcock's demands for additional public records. Not only would in-camera inspection further Mr. Hitchcock's position that he has put forth a colorable claim, along with the statutory requirements, but it also would have allowed the circuit court to determine what should properly be redacted from the records.

The court abused its discretion when it denied Mr. Hitchcock's public records demands when it sustained legally insufficient objections from FDOC and FDLE. The court's reliance on FDOC and FDLE's objection was without support or factual basis. Had the court conducted an in-camera inspection the court would have developed a reasonable basis to either grant or deny the demands; however, the court abused its discretion by merely accepting the state's and the

agencies' unsupported arguments. This was not a reasonable use of discretion.

a. Mr. Hitchcock's demands for additional public records filed on April 1, 2026, were pled with specificity and were not overly broad or unduly burdensome.

Mr. Hitchcock's April 1, 2026, demands for additional public records from FDOC and FDLE requested specific public records from the agencies related to their compliance with the required lethal injection protocol. The demands specifically and narrowly requested only the records connected to FDOC and FDLE's official business of carrying out lethal injection executions. Mr. Hitchcock specified each record sought in direct connection with FDOC and FDOC's designated Lethal Injection Protocol. There can be no legitimate question about which records Mr. Hitchcock demanded. The demands filed in this case did not include broad or sweeping language, i.e. "any and all" language that would leave the agencies unclear which records Mr. Hitchcock sought.

The trial court finding Mr. Hitchcock's demands "overbroad, burdensome" is without merit. PCR/343. Each requested record was specific and should not be considered unduly burdensome, considering the records are kept in the ordinary course of business,

and copies could easily be made and disbursed. Unlike requests this Court has found burdensome, Mr. Hitchcock requested a limited set of records all relating to a singular, specific government function---storing lethal injection medication—from two agencies in direct service of his colorable Eight Amendment claim.[1] The request is not burdensome since the two requested agencies already keep these records as evidenced by *Walls*. Additionally, so long as the agencies are following the requisite protocols, transparency should be of no concern to them (minus any potentially identifying information, the redaction of which Mr. Hitchcock does not find objectionable).

The argument that Mr. Hitchcock's demands were unduly burdensome, is questionable at best. FDOC did not flinch when asked to provide Mr. Hitchcock's medical records from the past five years without a public records demand. Additionally, in 2025, FDOC carried out 19 executions. This year alone, the State has carried out

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[1] See *Sims v. State*, 753 So. 2d 66, 72 (Fla. 2000) (involving 23 agencies and instituting the 'colorable claim' requirement); *Correll v. State*, 184 So. 3d 478, 492 (Fla. 2015) (involving records of 21 executed inmates); *Tompkins v. State*, 872 So. 2d 230, 243 (Fla. 2003), (involving a request to 7 agencies) *Glock v. Moore*, 776 So. 2d 243, 254 (Fla. 2001) (involving 20 agencies); *Mills v. State*, 786 So. 2d 547 (Fla. 2001) (involving 15 agencies); *Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002) (involving 14 agencies).

4 executions at the time of this writing. The records sought are recent and easily accessible, given the fact that the documents are likely digitized and capable of being shared electronically.]All of the records sought are those that are already required by the protocol. If FDOC is not able to easily obtain records required by the protocol, then the implication is that the agency is incapable of following the basic requirements of the protocol.

b. FDOC and FDLE failed to meet their burden that each agency is entitled to specific exemptions.

The circuit court erred by finding that "the information requested by Defendant is exempt from disclosure, as it may result in the identification of people involved in the preparation of a capital execution and in the disclosure of otherwise confidential information." PCR/343-344. The circuit court could not have possibly known whether the information requested would contain information leading to the identification of people involved in the execution process to be exempt under Fla. Stat. § 945.10, because the circuit court declined to conduct an in-camera inspection of the requested records. Only a review of the actual records would have allowed the circuit court to make this determination. Additionally,

due in part to the circuit court's decline to conduct an in-camera inspection of the records, the circuit court's ruling fails to address what redactions could have been made to allow disclosure of the remaining records. The circuit court's order essentially posits that the requested records consists purely of identifying information, despite never having seen the records through in-camera inspection.

It is well established that an agency asserting exemptions to disclosure bear the burden of proving they are entitled to an exemption.[2] FDOC argues that the records should be exempt from disclosure based on Fla. Stat. § 945.10. However, Fla. Stat. § 945.10(1)(j)(1) specifically limits the exemptions for lethal injection protocols to the following:

> Information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in

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[2] *See Barfield v. School Board of Manatee County,* 135 So. 3d 560, 562 (Fla. 2d DCA 2014); *Woolling v. Lamar,* 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied,* 786 So. 2d 1186 (Fla. 2001); *Barfield v. City of Fort Lauderdale Police Department,* 639 So. 2d 1012, 1015 (Fla. 4th DCA), *review denied,* 649 So. 2d 869 (Fla. 1994); and *Florida Freedom Newspapers, Inc. v. Dempsey,* 478 So. 2d 1128, 1130 (Fla. 1st DCA 1985); See also, 47, Florida Office of the Attorney General, *GOVERNMENT-IN-THE-SUNSHINE MANUAL, A Reference For Compliance with Florida's Public Records and Open Meetings Laws*, (2025 ed.), p. 179-180.

> an execution, including persons or entities administering, compounding, dispensing, distributing, maintaining, manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with chapter 922.

The Florida Legislature clearly intended to allow access to lethal injection records, because Fla. Stat. § 945.10 provides narrow limitations, only exempting disclosure of records related to identity. However, Mr. Hitchcock did not make any requests for records that would contain identifying information; nor did he object to redactions necessary to prevent the exposure of identifying information. Since the circuit court did not conduct in-camera inspection, the trial court improperly sustained any objection under Fla. Stat. § 945.10 without determining what redactions may or may not be necessary to satisfy the exemption requirements under Fla. Stat. § 945.10 as written.

The agencies' and circuit court's reliance on Fla. Stat. § 945.10 is misplaced because they are claiming that the lethal injection records sought by Mr. Hitchcock are fully confidential. This notion is not supported by any authority and in fact, is fully negated by the Florida legislature's decision to limit the exemption under Fla. Stat. § 945.10 to identifying information. All the agencies' positions

objecting to the disclosure and the circuit court's findings also fail to address what led to Mr. Hitchcock's claims: similar records were previously released in the Frank Walls case. The agencies and the State claim that Mr. Hitchcock and other capital postconviction inmates intentionally misread the Walls records. However, Mr. Hitchcock's position is based on a plain reading of the records and none of the agencies nor the State is willing or able to put forward a reasonable alternative explanation to what is within the records other than denying Mr. Hitchcock's claims.

Nothing that Mr. Hitchcock has requested based on the records released in the *Walls* case and Dr. Daniel E. Buffington's affidavit invoke any information that would reveal or lead to revelation of the identities of people and entities involved in the lethal injection. Even if the records contained said information, disclosure via protective order or redacting the identifying would resolve the issue of exemption/confidentiality, rather than allowing these agencies to maintain their secret practices.

III. NEITHER FLA. STAT. § 27.7081 NOR FLA. R. CRIM. P. 3.852 REQUIRE THAT CAPITAL POSTCONVICTION INMATE'S ASSERT A COLORABLE CLAIM IN DEMANDS FOR ADDITIONAL PUBLIC RECORDS. ANY OTHER MEMBER OF THE PUBLIC DOES NOT HAVE TO GIVE ANY REASON FOR THEIR DEMAND FOR PUBLIC RECORDS AT ALL.

FDOC, FDLE, and ultimately the AG/state took the position that Mr. Hitchcock failed to establish a colorable claim to be able to trigger disclosure of public records. However, the requirement of establishing a colorable claim is not found in the text of Fla. Stat. § 27.7081 or in Fla. R. Crim. P. 3.852.

In *Sims v. State*, this Court announced the colorable claim requirement to prevent "fishing expeditions" for unrelated records. *Sims v. State*, 753 So. 2d 66, 69 (Fla. 2000). Justice Anstead concurred but warned "[w]e need to be very careful that we not end up with an outcome where a death-sentenced defendant, whose life may literally be affected, is barred from enforcing his constitutional right as a citizen to access to public records that any other citizen could routinely access." *Sims v. State*, 753 So. 2d 66, 72 (Fla. 2000) (Anstead, J., concurring). A quarter of a century later, Justice Anstead's warned of outcome is now before the Court.

a. Rule 3.852 and Fla. Stat. § 27.803(3) and 27.7081 were not established to limit capital postconviction inmates' access to public records.

Capital postconviction inmates are precluded from seeking public records under Chapter 119 and instead required to use Fla. Stat. § 27.708(3). Fla. Stat. § 27.708(3) requires capital postconviction inmates to make public records requests as provided in Fla. Stat. § 27.7081.

Originally, capital postconviction inmates utilized Chapter 119 to demand public records. In 1996, Robert Shevin was asked by the then Chief Justice of this Court to prepare a "Special Master's Report" to assist this Court, after concerns were raised about capital postconviction attorneys' ability to fulfill their ethical duty of providing effective assistance of counsel. This report has become known at the "Shevin Report."[3] Four proposed reforms were suggested, with the most significant reform becoming known as "the Chapter 119 problem."

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[3] Appendix A, "Attachment A, Shevin Report," dated Feb. 26, 1996, 10 Fla. L. Weekly D166-169. (attachment to opinion found in *Hill v. Butterworth*, 941 F. Supp. 1129 (N.D. Fla. 1996) (substance of the opinion is not of value. Petitioner cites for reference to the "The Shevin Report" attached to the district court's opinion).

The "Shevin Report" identified that Rule 3.850, now known in our context as Rule 3.851, lacked a formal discovery mechanism and thus public records sought by capital postconviction defendants were acquired through Chapter 119 public records requests. Resolving disputes between agencies and capital postconviction defendants required separate civil lawsuits outside of the 3.851 proceedings which resulted in "significant delays and time-consuming civil litigation." The "Shevin Report" recommended this Court "promptly solve this problem by enacting a Rule of Discovery in 3.850 proceedings, *with expedited time schedules* for both requesting and providing of public records..."[4] The "Shevin Report" suggested the "goal of the new rule should be to expedite ... access to Chapter 119 information that it can be reviewed ... in a time to be incorporated in the original 3.850 motion."[5]

In response to the recommendations, this Court promulgated Rule 3.852 of the Florida Rules of Criminal Procedure. *In re Amendment to Florida Rules of Criminal Procedure - Capital Postconviction Public Records Production*, 683 So. 2d 475 (Fla. 1996);

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[4] *Id.*
[5] *Id.*

See also, *In re Amendments to Florida Rules of Criminal Procedure - Capital Postconviction Public Records Production*, 673 So. 2d 483 (Mem) (Fla. 1996).

Then, in 1997, the "...Legislature provided that all requests for records in capital postconviction proceedings must be made in accordance with Rule 3.852, and the request must be approved by the capital collateral regional counsel." Florida Staff Analysis, S.B. 1330, 4/22/1998. In 1998, the Florida legislature amended Florida Statute § 27.708(3) again to be consistent with Florida Rules of Criminal Procedure 3.852 stating, "[e]xcept as provided in s. 119.19, the capital collateral regional counsel or contracted private counsel shall not make any public records requests on behalf of his or her client." Later, Fla. Stat. § 119.19 was renumbered as Fla. Stat. § 27.7081 in 2005. Florida Statute § 27.7081 states that it applies to the production of public records for capital postconviction defendants. It also defines "public records" as consistent with the "same meaning as provided in s. 119.011."

This Court's intent and the legislative intent were clear in the promulgation and amendment: neither was to limit a capital postconviction defendant's constitutional and statutory rights to

production of public records. *In re Amendment to Florida Rules of Criminal Procedure -Capital Postconviction Public Records Production*, 683 So. 2d 475, 475-476 (Fla. 1996); SB 898, Reg. Session (Fla. 1998), Bill Analyses; SB 1330, Reg. Session (Fla. 1998), Bill Analyses. Nothing found in the history of rule 3.852 or Chapter 27 of the Florida Statutes suggests that either was intended to prevent the disclosure of relevant public records to capital postconviction defendants. In fact, in 1996, when this Court promulgated Rule 3.852 it wrote:

> We specifically address the comments of those who are concerned that the rule will unconstitutionally limit a capital postconviction defendant's right to production of public records pursuant to article I, section 24, Florida Constitution, and chapter 119, Florida Statutes (1995). We conclude that the rule does not invade those constitutional and statutory rights.

In re Amendment to Florida Rules of Criminal Procedure -Capital Postconviction Public Records Production, 683 So. 2d 475, 475-476 (Fla. 1996) (emphasis added). This intention was stated again in Judge Anstead's concurrence:

> As noted by the majority opinion, this rule in no way diminishes the right of an individual Florida citizen, including a capital defendant, to access to public records pursuant to article I, section 24, Florida Constitution, and chapter 119, Florida Statutes (1995). Trial courts must be mindful of our intention that a capital defendant's right of access to public records be recognized under this rule. If

> there is any category of cases where society has an interest in seeing that all available information is disclosed, it is obviously in those cases where the ultimate penalty has been imposed.

Id. at 477 (emphasis added).

The same definitions and exemptions as found in chapter 119 of Florida Statutes applies to public record demands filed pursuant to 3.852 of the Florida Rules of Criminal Procedure.

b. Fla. Stat. 27.7081 requires capital postconviction inmates to show that any additional public records sought are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence. Mr. Hitchcock has satisfied this requirement as well as the requirement that he presents a colorable claim. Any other member of the public does not have to provide any reason for their request for records.

The circuit court unlawfully determined that Mr. Hitchcock has not established a colorable claim in finding that Mr. Hitchcock's allegations of the agencies involved are "speculative and conclusory." PCR/343. The public records sought by Mr. Hitchcock on April 1, 2026, reasonably relate to a colorable claim. If the records requested by Mr. Hitchcock show that FDOC is not carrying out the lethal injection protocol as accepted by this Court, and the facts presented show that the failure to properly administer the lethal injection

protocol would cause unnecessary suffering, then Mr. Hitchcock would have a legitimate claim that the maladministration of the lethal injection protocol violates his Eighth Amendment protection against cruel and unusual punishment. Mr. Hitchcock has shown that his requests are based on a colorable claim that comes from the information contained in the lethal injection protocol records cited in *Walls v. Dixon*.

The allegations raised in Mr. Hitchcock's demands for additional public records explain how a plain reading of the Walls records supports his position, including the existence of a colorable claim. The State, the agencies, nor the circuit court have explained how Mr. Hitchcock's reading of the records is speculatory, conclusory, or involves an intentional misreading. Furthermore, neither FDOC nor FDLE nor the state has provided a "correct" explanation of the *Walls* records. Therefore, FDOC is no longer entitled to a presumption that it is adhering to approved protocols or carrying out executions in a manner that protects against the imposition of a cruel and unusual punishment.

The circuit court's denial of Mr. Hitchcock's access to records related to the State's ability to follow a protocol that allegedly protects against an execution that rises to the level of cruel and unusual……

> …appears to be placing prisoners in a Catch-22: It has affirmed the denial of requests for records on these issues, at least in part, because the prisoners do not yet have enough information to raise a "colorable" Eighth Amendment claim. *Ibid.* The very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable Eighth Amendment claim.

Trotter v. State of Florida, et. al, 607 U.S. ___ (2026) (statement from Justice Sotomayor respecting the denial of the application for stay and petition for certiorari). The statement by Justice Sotomayor supports Mr. Hitchcock's position that he has identified a colorable claim. Justice Sotomayor further noted:

> Individuals seeking to challenge the method of their execution should not have to guess at whether the State is, or is not, following its execution protocol. Nor does the State appear to have any legitimate confidentiality interest in shielding from inspection basic facts about the implementation of its execution protocol, such as whether the State is using expired drugs. If the protocol is in fact being followed, then transparency instills confidence in the protocol for everyone—prisoners, the courts, and the public alike. If it is not, then secrecy is intolerable, and disclosure of the relevant records is indispensable for determining whether the lapses at issue are likely to lead to an Eighth Amendment violation.

Trotter v. State of Florida, et. al, 607 U.S. ___ (2026). Mr. Hitchcock has met the burdens set by the legislature and this Court. The circuit court inexplicably found that "the *Walls* information combined with the speculative and conclusory nature of Defendant's claims cannot support a colorable claim as to the violation of Defendant's Constitutional rights." PCR/601. Black's Law Dictionary defines "colorable claim" as: "a claim that is legitimate and that may reasonably be asserted, given the facts presented and the current law." Mr. Hitchcock raised a legitimate claim, that "may reasonably be asserted," given the facts presented in relation to the *Walls* records and the current law on lethal injection and the death penalty. He does not have to prove his claim to show a colorable claim exists. This is exactly the Catch-22 noted by Justice Sotomayor.

If this Court finds that Mr. Hitchcock has not put forward a colorable claim, it sets the precedent that no capital postconviction inmate could access these types of records, and denies all capital postconviction defendants, including Mr. Hitchcock, the ability to raise a *Baze-Glossip* challenge. Mr. Hitchcock also submits that the statutes, rules, and case law operating to impose additional burdens on him - as a capital postconviction inmate - violate his due process

rights under the Fifth Amendment and equal protection rights under the Fourteenth Amendment.

CLAIM TWO: APPEAL FROM DENIAL OF CLAIM 2 (ACTUAL INNOCENCE) OF MR. HITCHCOCK'S SUCCESSIVE POSTCONVICTION MOTION FILED ON APRIL 7, 2026.

In 1910, in *Weems v. United States*, the Supreme Court found that a constitution "must be capable of wider application than the mischief which gave it birth." *Weems v. United States*, 217 US 349, 373 (1910). The U.S. Supreme Court ("SCOTUS") further developed this principle over the following decades. In *Trop v. Dulles*, citing *Weems*'s, the Court recognized, "...the words of the [Eighth] Amendment are not precise and their scope is not static." *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958). The Court further found, "[t]he [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Id.*

Our contemporary standards and values provide objective evidence that executing an innocent man would not comport with fundamental human dignity the Eighth Amendment of the United States Constitution demands. Analysis of the evolving standards of

decency provides the framework for the analysis of the Eighth Amendment's prohibition against cruel and unusual punishment. *Roper v. Simmons*, 543 U.S. 551, 560-561 (2005) (citing, *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958)). The evolving standards dictate when a punishment has become cruel and unusual. *Id.* The analysis is not confined to the method in which a death sentence is ultimately carried out but rather the contemporary values. *Ford v. Wainwright*, 477 U.S. 399, 406 (1986). Contemporary values determine "whether a particular punishment comports with the fundamental human dignity that the [Eighth] Amendment protects." *Id.*

Review of the evolving standards ensures that "the State's power to punish is exercised *within the limits of civilized standards.*" *Hurst v. State*, 202 So. 3d 40, 61 (Fla. 2016) (quoting, *Woodson v. North Carolina*, 428 U.S. 280, 288 (1976) (quoting *Trop*, 356 U.S. at 100, 78 S. Ct. 590)) (emphasis added). The State's power to inflict punishment is not without restriction. SCOTUS has stated:

> While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards. [...] [T]he words of the [Eighth] Amendment are not precise, and that their scope is not static. The Amendment must draw its meaning from the

> evolving standards of decency that mark the progress of a maturing society.

Trop, 356 U.S. at 10 (footnote omitted). Analysis of the Eighth Amendment's prohibition against cruel and unusual punishment begins with "evolving standards of decency" analysis consistent with the SCOTUS's interpretation of the Eighth Amendment of the United States Constitution. The evolving standards of decency analysis is informed by both legislative enactments and state practices when determining whether the infliction of the capital punishment offends the evolving standards of decency and thus violates the Eighth Amendment.

In *Ford v. Wainwright*, the SCOTUS determined an important issue, in which they had not previously addressed: "whether the Constitution places a substantive restriction on the State's power to take the life of an insane prisoner." 477 U.S. at 405. The SCOTUS found that the Eighth Amendment prohibition against cruel and unusual punishment included *at minimum* the protections proscribed by common law at the time of the amendment's adoption. *Id.* at 405-406. The SCOTUS also acknowledged that their interpretations of the Eighth Amendment are "[n]ot bound by the

sparing humanitarian concessions of our forebears, the Amendment also recognizes the 'evolving standards of decency that mark the progress of a maturing society.'" *Id.* at 406. (citing, *Trop,* 356 U.S. at 101).

The SCOTUS has recognized that the death penalty serves two purposes: retribution and deterrence. *Lackey v. Texas*, 514 U.S. 1045, 1421 (1995). However, the imposition of punishment is not without limitation. It has been established that:

> [A] punishment is 'excessive' and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime. A punishment might fail the test on either ground.

Coker v. Georgia, 433 U.S. 584, 592 (1977); See also, *Roper*, 543 U.S. at 559.

In *Ford*, SCOTUS was asked to resolve "whether the Constitution places a substantive restriction on the State's power to take the life of an insane prisoner." 477 U.S. at 405. The Court looked to common law principles barring the execution of the insane and noted "the practice consistently has been branded 'savage and inhuman.'" *Id.* at 406. (internal citation omitted). The Court noted

there are two possible explanations for the common-law principle prohibiting the execution of the insane, "[o]ne explanation is that the execution of an insane person simply offends humanity, … another [is] that it provides no example to others and thus contributes nothing to whatever deterrence value is intended to be served by capital punishment." *Id.* at 407.

When a person's execution no longer has a retributive value, the SCOTUS has said the execution amounts to nothing more than exacting mindless vengeance, offending the dignity of society. *See*, *Ford*, 477 U.S. at 410 ("this Court is compelled to conclude that the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane. Whether its aim be to protect the condemned from fear … or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment."). We diminish our human dignity and what it means to be a civilized society if we resort to executing innocent people. "By protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons." *Roper*, 543 U.S. at 560.

The execution of Mr. Hitchcock, *an innocent man*, serves no retributive or deterrent purpose.

I. THE EXECUTION OF AN INNOCENT MAN VIOLATES THE FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION.

The trial court erred in its denial of Mr. Hitchcock's actual innocence claim because the execution of Mr. Hitchcock, *an innocent man*, would be a violation of the Eighth Amendment of the U.S. Constitution. Mr. Hitchcock submits that his execution would violate his protection against cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution, because he is actually innocent of the crime he is set to be executed for on April 30, 2026. Mr. Hitchcock argues to this Court that a cumulative review of his case demonstrates a compelling case of actual innocence that should not be ignored based on procedural bars or unreasonable credibility findings. Mr. Hitchcock submits that were he tried today; no reasonable jury would convict him for this First-Degree Murder.

The execution of an innocent person is certainly cruel and unusual, and the denial of consideration of Mr. Hitchcock's innocence based on procedural grounds is a manifest injustice. There

is no greater manifest injustice than executing an innocent man or denying a man who claims his innocence the ability to be heard based on the purported untimeliness of his claim. In addition, the execution of an innocent man, like Mr. Hitchcock, violates the Fifth and Fourteenth Amendments. "[T]he central purpose of any system of criminal justice is to convict the guilty and free the innocent. *Id.* at 398 (quoting *United States v. Nobles,* 422 U.S. 225, 230, 95 S. Ct. 2160, 2166, 45 L.Ed.2d 141 (1975)). The federal courts have recognized claims of actual innocence.

In *Herrera v. Collins*, SCOTUS considered an actual innocence claim made by Hererra, who submitted affidavits tending to show that his then-dead brother, rather than himself, committed the murder. 506 U.S. 390, 393 (1993). SCOTUS found Herrera's affidavits to have probative value but found numerous inconsistencies and were suspect since there was no cross-examination of their testimony available. *Id.* at 417-18. However, there were also two eyewitness identifications, circumstantial evidence, and a handwritten letter apologizing for the murders with an offer to surrender.

Just as in *Herrera*, Mr. Hitchcock's constitutional claim based on his showing of actual innocence "must be evaluated in the light of the previous proceedings in this case." *Id.* In contrast to the affidavits that SCOTUS considered for a similar Eighth Amendment claim, Mr. Hitchcock's witnesses testified under oath in 2003, and even though they are not "newly discovered" in terms of this claim. Despite not presenting newly discovered evidence in his present postconviction claim, the additional evidence of Mr. Hitchcock's case has been newly discovered since his guilt was determined. Mr. Hitchcock's case cumulatively presents a showing of innocence that triggers a violation of his Fifth, Eighth, and Fourteenth Amendment rights that cannot be remedied in any form once he has been executed.

SCOTUS differentiated their holding in *Herrera* from their review in *Schlup v. Delo*, by noting that "[i]n *Herrera*, the petitioner's claim was evaluated on the assumption that the trial resulted in his conviction had been error free." *Schlup v. Delo*, 513 U.S. 298, 315 (1995). As such, SCOTUS set different burdens for an inmate's evidence of innocence, with a lower burden being set for Schlup

because his claims were attached to *Strickland*[6] and *Brady*[7] claims. *Id.* In *Herrera*, "the evidence of innocence would have had to be strong enough to make the execution 'constitutionally intolerable' even if the conviction was the product of a fair trial." *Id.* at 298. In Schlup's case, "the evidence must establish sufficient doubt about his guilt to justify the conclusion this his execution would be a miscarriage of justice unless his conviction was the product of a fair trial." *Id.* at 316. Mr. Hitchcock's evidence of innocence, while not newly presented in this claim, was newly discovered evidence that was uncovered approximately 20 years after the crime and Mr. Hitchcock's guilt was determined. Mr. Hitchcock's case is comparable to both *Herrera* and *Schlup* and his case of innocence meets both standards.

Were Mr. Hitchcock tried today for this case, scientific advancement would render portions of the State's case (hair comparison) irrelevant/unsuitable for expert testimony and he would be able to request DNA testing, should the evidence not have been destroyed, that would corroborate his innocence without having to meet the requirements set by Fla. R. Crim. P. 3.852. The only

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[6] *Strickland v. Washington*, 466 U.S. 668 (1984).
[7] *Brady v. Maryland*, 373 U.S. 83 (1963).

evidence that the State would have been able to point to in terms of Mr. Hitchcock's guilt would be his own recanted confession that occurred after days of being held in isolation. In addition, Mr. Hitchcock would be able to present the testimony of witnesses who can and have testified that Mr. Hitchcock's brother, Richard, confessed to murdering Cindy.[8] Mr. Hitchcock previously raised a Fla. R. Crim. P. 3.853 motion and re-raised his request for testing in his successive postconviction motion. However, this circuit court did not address this request in its order and Mr. Hitchcock requests this Court direct the circuit court to grant DNA testing under Fla. R. Crim. P. 3.853. The DNA results including Richard as a contributor would corroborate Mr. Hitchcock's testimony and the admissions made by Richard to numerous witnesses.

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[8] Mr. Hitchcock's compelling case of innocence is detailed in his successive postconviction motion. PCR/391-402. It is Mr. Hitchcock's position that the past credibility findings of his witnesses including Martha Galloway, Brenda Reed, Wanda Green, Rossi Meacham, and Judy Stevens (Gambale/Hitchcock), that support his actual innocence claim are unreasonable findings that are unsupported by their testimony and the circumstances of what they observed and reported.

II. DECLINING TO CONSIDER THE MERITS OF MR. HITCHCOCK'S ACTUAL INNOCENCE CLAIM IS A MANIFEST INJUSTICE THAT VIOLATES HIS DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION.

Respondent will likely argue that Mr. Hitchcock's innocence claim is procedurally barred. However, a manifest injustice occurs with the denial of the pursuit of this claim because "non-compliance with the rule resulted in prejudice or harm to the defendant." *Williams v. State*, 316 So. 2d 267, 274 (Fla. 1975) (quoting *Richardson v. State*, 246 So.2d 771, 774 (Fla.1971)), *See Keeney v. Tamayo-Reyes*, 112 S. Ct. 1715 (1992); *McCleskey v. Zant*, 111 S. Ct. 1454 (1991); and *Murray v. Carrier*, 106 S. Ct. 2639 (1986). Procedural bars should not stand in the way of whether a review of a man's innocence is considered prior to his execution, the ultimate prejudice or harm to a defendant. Such a procedural bar is a manifest injustice, undermining the integrity of the judicial system.

> [T]he fundamental miscarriage of justice exception seeks to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case.
> Claims of actual innocence pose less of a threat to scarce judicial resources and to principles of finality and comity

> than do claims that focus solely on the erroneous imposition of the death penalty.

Schlup, 513 U.S. at 324. Mr. Hitchcock is entitled to a cumulative review of his innocence and declining review of his innocence based on procedure rather than the merits and should be considered "constitutionally intolerable." SCOTUS has stated:

> "[a]t common law, res judicata did not attach to a court's denial of habeas relief." *McCleskey,* 499 U.S., at 479, 111 S.Ct., at 1462. Instead, " 'a renewed application could be made to every other judge or court in the realm, and each court or judge was bound to consider the question of the prisoner's right to a discharge independently, and not to be influenced by the previous decisions refusing discharge.' " *Ibid.,* quoting W. Church, Writ of Habeas Corpus § 386, p. 570 (2d ed. 1893).

Id. at 317. Regarding any argument that Mr. Hitchcock's innocence has been provided with a forum via clemency, Mr. Hitchcock's clemency proceedings occurred approximately two decades prior to his additional evidence of innocence becoming available and brought before a court. As such, Mr. Hitchcock's clemency proceedings did not serve as a forum for consideration of his innocence. Connotational principles direct that this Court grant a stay of execution for consideration and review.

CONCLUSION AND RELIEF SOUGHT

Mr. Hitchcock has established that his demands for additional public records are related to a colorable claim, are related to Mr. Hitchcock's current postconviction proceedings, and are reasonably calculated to lead to the discovery of admissible evidence. Any presumption that FDOC does and will comply with its own protocols has been overcome as a result of a plain reading of the records that were produced in the *Walls* case. The demands made were neither overly broad nor unduly burdensome, especially when considering that any failure to prove a claim requiring relief will lead to his execution on April 30, 2026.

The requested records are necessary for Mr. Hitchcock to support a timely claim that FDOC's failure to follow Florida's lethal injection protocols violates the Eighth Amendment to the U.S. Constitution and corresponding provisions of the Florida Constitution. The denial of access under Florida's current treatment of these requests violates Mr. Hitchcock's 5th and 14th amendment due process and equal protection rights as well as SCOTUS's findings in *Baze-Glossip*. The circuit court should do an in-camera inspection and release records that are not exempt and/or confidential

according to Florida statutes, redacting any portions necessary to exclude information that would even suggest the identity of the executions and the suppliers of the lethal injection drugs.

Finally, the execution of Mr. Hitchcock violates his Eighth Amendment protection against cruel and unusual punishment because he is actually innocent of the First-Degree Murder that he was convicted of. Any procedural bar to Mr. Hitchcock's claim of actual innocence is overcome by the fact that the execution of an innocent man is the ultimate, irreversible manifest injustice.

WHEREFORE, Mr. Hitchcock asks this Court for an Order directing the lower court to grant his demands for additional public records. If the matter cannot be resolved prior to April 30, 2026, Mr. Hitchcock asks this Court to stay his execution until the requested records have been received, Mr. Hitchcock has a reasonable amount of time to review and file a successive postconviction motion based on the records, and the circuit court and/or this Court have a reasonable amount of time to rule on the postconviction motion, should one be filed. Mr. Hitchcock separately asks this Court to remand to the lower court for consideration of his innocence claim based on a cumulative review of the evidence and whether his case

of innocence would violate the Fifth, Eighth, and Fourteenth amendments to the U.S. Constitution should he be executed. Alternatively, Mr. Hitchcock requests this Court to vacate his judgment and sentence based on his compelling case of actual innocence.

CERTIFICATE OF COMPLIANCE

Counsel certifies that this Initial Brief is produced in Bookman Old Style 14-point font in compliance with the requirements of Florida Rules of Appellate Procedure 9.100. The word count is 10, 122.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court using the Florida Courts e-portal filing system, which will send a notice of electronic filing to the following: The Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **99orange@ninthcircuit.org**; the Honorable Keith Carsten, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **19orange@ninthcircuit.org**; Timothy A

Freeland, Special Counsel, Assistant Attorney General, and Jennifer A. Davis, Senior Assistant Attorney General, **timothy.freeland@myfloridalegal.com**, **jennifer.davis@myfloridalegal.com**, **paula.montlary@myfloridalegal.com**, **elizabeth.bueter@myfloridalegal.com**, **lourdes.parodi@myfloridalegal.com**, **capapp@myfloridalegal.com**, **marilyn.muir@myfloridalegal.com**, **scott.browne@myfloridalegal.com**, **stephen.ake@myfloridalegal.com**; Monique H. Worrell, State Attorney, and Jacqueline Brown, Assistant State Attorney, Orange County State Attorney's Office, 415 North Orange Avenue, Orlando, FL 32802, **mhworrell@sao9.org**, **jbrown@sao9.org**; Kristen J. Lonergan, Chief Legal Counsel, Office of the General Counsel, Florida Department of Corrections, **kristen.lonergan@fdc.myflorida.com**, and the Florida Supreme Court, **warrant@flcourts.org**, **canovak@flcourts.org**.

/s/ Joshua P. Chaykin
Joshua P. Chaykin
Counsel for Appellant

Filing # 246031659 E-Filed 04/15/2026 11:44:58 AM

IN THE SUPREME COURT OF FLORIDA
CASE NO: SC2026-0574

JAMES HITCHCOCK,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE _ JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA
Lower Tribunal No. 481976CF001942000AOX

APPENDIX TO INITIAL BRIEF OF THE APPELLANT

CAPITAL CASE - DEATH WARRANT SIGNED

Appendix A

"Shevin Report", dated Feb. 26, 1996, 10 Fla. L. Weekly D166-169. (attachment to opinion found in Hill v. Butterworth, 941 F. Supp. 1129 (N.D. Fla. 1996)

is not being assigned to these individuals in accordance with the new substitution procedures. *See generally* Fla. Stat. § 27.703 (providing for appointment of "one or members of The Florida Bar" to represent collateral defendants when CCR is conflicted out, with such counsel to be paid from funds appropriated to the Justice Administrative Commission).

[35]To hold otherwise, as the Defendants apparently suggest, could have the effect of shrinking the six-month statute of limitations under Chapter 154 to such a short amount of time that it would deprive capital defendants of procedural due process.

[36]In reaching this preliminary conclusion, the Court is unconcerned with the reasons for the backlog. Regardless of whether it is caused by inadequate funding or a misallocation of resources by CCR, the effect is the same.

[37]In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as precedent the decisions of the Fifth Circuit rendered prior to October 1, 1981.

[38]In 1995, fifty-six murderers were put to death in the United States—the largest number in nearly four decades. However, in Florida, where convicted murderers spend an average of 9.7 years on death row, there were only three executions. Diane Hirth, *State Looks to Shrink Death Row Appeal Time—Executions Expected to Increase in 1996,* FT. LAUDERDALE SUN-SENTINEL, Dec. 30, 1995, at A1. In fact, in the twenty-two years since Florida reinstated the death penalty, more than seven hundred convicted murderers have been sentenced to death, but fewer than forty have actually been executed. Bentley Orrick, *Murderers Detour from Death Row: Legal Appeals Help Keep Most Condemned Killers in Florida from Being Executed in the Electric Chair,* TAMPA TRIB., Nov. 6, 1995, Florida/Metro Sec., at 1.

[39]The Court concurs with the Supreme Court of Florida's discussion of this point:

> The importance of finality in any justice system, including the criminal justice system, cannot be understated. It has long been recognized that, for several reasons, litigation must, at some point, come to an end. In terms of the availability of judicial resources, cases must eventually become final to allow effective appellate review of other cases . . . . [A]n absence of finality casts a cloud of tentativeness over the criminal justice system, benefiting neither the person convicted nor society as a whole.

Witt v. State, 387 So. 2d 922, 925 (Fla.), *cert. denied*, 449 U.S. 1067, 101 S. Ct. 796, 66 L. Ed. 2d 612 (1980).

[40]*See City of Atlanta v. Metropolitan Atlanta Rapid Transit*, 636 F.2d 1084 (5th Cir. 1981).

ATTACHMENT A
SHEVIN REPORT

VIA FEDERAL EXPRESS

February 26, 1996

The Honorable Stephen H. Grimes
Chief Justice
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1925

RE: Study Of The Capital Collateral Representative

Dear Mr. Chief Justice:

I am pleased to submit the following report based on my study of the Office of the Collateral Capital Representative ("CCR") and the current status of postconviction counsel for Florida's death row inmates.

BRIEF PROCEDURAL HISTORY

In June of 1995, Michael J. Minerva, the head of CCR, filed a motion for relief from the new one-year deadline for filing 3.850 postconviction motions in capital cases. See Fla. R. Crim. P. 3.851. At the same time, Mr. Minerva stopped designating individual staff counsel to represent death row inmates whose one-year deadline had started running. At present, there are 40 inmates for whom CCR is the statutorily authorized representative, but for whom CCR has refused to designate individual counsel.

Mr. Minerva's actions were precipitated by the Supreme Court's affirmance in 1994 of 46 new death penalty cases, twice the historical average. Mr. Minerva's motion claimed that CCR could not incorporate all of these cases into its current caseload of 138 clients, and that to accept all of these cases with a one-year filing deadline would require his staff attorneys to violate their ethical duty of providing effective assistance of counsel.

Mr. Minerva supplemented his motion for relief in August of 1995 after the Volunteer Lawyers' Post-Conviction Defender Organization, formerly known as the Volunteer Lawyers' Resource

D. The Office of the Governor
   1. W. Dexter Douglass, Counsel to the Governor
   2. Phyllis Hampton, Assistant Counsel
E. Representative Elvin L. Martinez, Chair of the House Criminal Justice Committee.
F. Chandler R. Muller, President of the Board of VLRC.
G. Judge Rodolfo Sorondo, Jr., Criminal Division, 11th Judicial Circuit in and for Dade County, Florida.
H. Judge Thomas M. Carney, Criminal Division, 11th Judicial Circuit in and for Dade County, Florida,
I. Bennett H. Brummer, Public Defender, 11th Judicial Circuit in and for Dade County, Florida.
J. James Rinaman, Former President of The Florida Bar.
K. Michael Millman, Executive Director of the California Appellate Project.

I also reviewed numerous written materials, including the 1987 Caseload/Workload Formula developed for CCR by The Spangenberg Group (the "Spangenberg Report"), the report of the federal Subcommittee on Death Penalty Representation chaired by Judge Emmett Ripley Cox of the Eleventh Circuit Court of Appeals (the "Cox Report"), the American Bar Association Standards for representation in death penalty cases (the "ABA Standards"), the Report of the Supreme Court Committee on Postconviction Relief in Capital Cases chaired by Justice Ben F. Overton (the "Overton Committee Report"), the Florida Supreme Court's case tracking summary of active death penalty cases, CCR's current caseload docket, CCR's 1996-97 legislative budget requests, and the Governor's 1996-97 budget recommendations.

TWO QUESTIONS PRESENTED

I have been asked to address two principal questions:

First, is CCR capable of accepting the 40 new cases in which they have so far refused to designate counsel?

Second, how should the State of Florida provide support to private counsel in the 41 cases that were previously assisted by VLRC?

Federal habeas corpus is a statutory remedy provided for by 28 U.S.C. § 2254(a) that permits a state inmate to ask the federal district court to review any violation of federal law that may have tainted the inmate's conviction or sentence. Subject to limited exceptions, the federal court may only consider claims previously asserted in the direct appeal or the 3.850 review; thus, federal habeas petitions are the last stage of death penalty proceedings. Review of the federal district court's habeas decision is to the Eleventh Circuit Court of Appeals, and then to the United States Supreme Court.

Under the current practice in Florida, the Governor will not sign a death warrant until a death-sentenced defendant has exhausted his or her 3.850 remedy and federal habeas corpus review. Once the Governor signs a death warrant, however, an inmate typically files a *second* 3.850 motion, a *second* federal habeas petition, and various motions to stay the execution pending resolution of this second round of proceedings.

B. WHAT IS CCR?

CCR was created by the Florida Legislature in 1985 for the following purpose:

> [T]o provide for the representation of any person convicted and sentenced to death in this state who is unable to secure counsel due to indigency, so that collateral legal proceedings to challenge such conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may he regarded with the finality to which they are entitled in the interests of justice.

§ 27.7001., Fla. Stat.

CCR is obligated to represent *all* indigent death-sentenced defendants in collateral proceedings in both state and federal courts, including the United States Court of Appeals for the 11th Circuit and the United States Supreme Court. § 27.702(1), Fla. Stat. The only defendants that CCR cannot represent are defendants in cases where CCR may have a conflict of interest, such as where two defendants have been convicted as co-defendants, or where CCR staff counsel participated in the direct appeal. § 27.703, Fla. Stat.

The head of CCR is appointed by the Governor, subject to Senate confirmation, for a 4-year term. § 27.701, Fla. Stat.

VLRC currently provides representation, with the assistance of volunteer lawyers, to 41 death row inmates, 19 of which are "conflict cases" that cannot be represented by CCR. The reason that VLRC represents 22 defendants who, by statute, should be represented by CCR, is that CCR became overloaded with cases during Governor Martinez's administration (due to the record number of death warrants). In addition, the Overton Committee Report recommended that VLRC provide temporary relief to CCR pending CCR's receipt of adequate funding.

There is presently no logical reason to maintain the distinction between CCR and VLRC with respect to these 22 non-conflict cases. The problem, of course, is that the 40 cases that created the current impasse could become a 62-case problem, which would represent an approximate 45% increase in CCR's client base if

all the allowable cases were assigned to CCR.

D. THE 1991 OVERTON COMMITTEE REPORT

In early 1991, the Florida Supreme Court convened the Committee on Postconviction Relief in Capital Cases to address CCR's inability to process its current caseload and because of substantial delays in the resolution of capital collateral proceedings.

The Committee made a number of significant findings in its 1991 report. First, that CCR was underfunded and understaffed despite its 1990-91 budget of $1.9 million. Second, that one of the major problems with the collateral process was that the triggering mechanism to start the postconviction relief process moving was the signing of a death warrant, resulting in a disorderly and unmanageable system of representation. Third, that all the parties involved in the death penalty process—CCR, the Attorney General, the Governor, and the Courts—needed to coordinate their efforts to monitor death penalty cases and to assure that there are no unjustified delays.

Consistent with these findings, the Committee made three recommendations. The first recommendation, which resulted in the enactment of Rule 3.851, was that CCR should designate specific named counsel no later than 30 days after certiorari was denied in a capital inmate's direct appeal. Second, the Committee recommended that the initial round of collateral proceedings should be completed within a period of 2 years and eight months. To accomplish this time table, the Committee recommended that Rule 3.850 be shortened to 1 year in capital cases, and that trial court should resolve 3.850 motions on an expedited basis. Third, the Committee recommended that, to avoid delays at the

Commentary to the rule, which is based on the Overton Committee Report, the reduction in the time period was conditioned on CCR being "fully funded."

By July 1993, CCR's caseload increased 20%, to 100 clients, and by July 1994 to 118 clients. As of June 1995, CCR's assigned case load had grown to 141 clients, representing a 59% increase in clients since 1991, with no increase in budget to directly correspond to the increase in clients.

The current impasse arose after the Court affirmed 46 death penalty cases in 1994.[5] As a result of these affirmances, CCR would have been required to file 3.850 motions in most of the 46 cases in 1996. This would represent approximately twice the number of 3.850 motions that CCR regularly files in any given year. Pursuant to a previous order of extension, CCR was supposed to begin designating lawyers for 40 of these cases in May of 1995. The current impasse was created when CCR began refusing to designate lawyers in any of the 40 cases.[6]

B. CURRENT POSTCONVICTION CAPITAL COUNSEL STATISTICS

Florida currently has 367 death row inmates. 139 of the inmates are now involved in the direct appeal of their cases. All of these defendants are represented either by private counsel or local public defender organizations.

There are 228 postconviction cases in various stages of collateral proceedings. These defendants are represented as follows:

[5]The extremely high number of affirmances in 1994 was caused by the departure of two Supreme Court Justices, Rosemary Barkett and Parker Lee McDonald. Justice Barkett was appointed to the United States Court of Appeals for the Eleventh Circuit, and Parker Lee McDonald retired. The Court issued final decisions in all cases in which Justices Barkett and McDonald were sitting in order to avoid giving a back log of cases to the two new Justices, Harry Lee Anstead and Charles Wells.

[6]The deadlines to designate counsel have already passed for 25 of the 40 cases; the deadlines in the other 15 cases are approaching.

CCR's 138 cases are assigned as follows:

Anderson, Gail	16
Anderson, Mary	4
Backhus, Terri	20
Brewer, Heidi	2
Gardner, Lissa	4
Kissinger, Stephen	29
McClain, Martin	21
Scher, Todd	14
Shavazz, Harum	8
Shippy, Daren	12
Strand, Bret	8
TOTAL	138

The 138 cases are in the following procedural postures: 3.850 motions have been filed in all but 7 cases; 90 cases are pending at the circuit court level, having had no evidentiary hearing; 19 are on appeal to the Florida Supreme Court; 18 cases are pending habeas corpus review in the federal court; 5 cases have completed the first round of collateral appeals.

Based on its historical record of filing sixteen or seventeen 3.850 motions annually, but also recognizing that CCR filed 28 3.850 motions in 1995, CCR should be able to absorb a good portion of the 40 impasse cases into its caseload.

CCR contends that it has "just about" reached its limit, and that, even if extensions of time are granted, it cannot accept many more cases. The basis for CCR's contention is its claim that the volume of 138 cases has a cumulative weight that cannot be measured with complete objectivity. Although there is some basis for this claim—especially because 90 cases have not yet been decided by the trial courts, some of which have been pending for up to 4 years—the claim must be countered by the fact that CCR has filed 3.850 motions in virtually all of its cases. Because the bulk of CCR's investigation should be performed before 3.850 motions are filed, it would appear that CCR can accept new cases.

The problem would be more easily resolved if there was an accepted methodology to determine the maximum annual caseload for capital lawyers. The existing studies, including the Cox Report and the Spangenberg Report, indicate that each lawyer should be assigned no more than 4-6 cases per year. There is cause, however, to doubt the accuracy of this figure. First, both studies are based on anecdotal, not empirical data, without the benefit of contemporaneous time records. Second, the studies do

My proposal assumes that, in every case, CCR should be given the full 11 months anticipated by Rule 3.851 to investigate and file the 3.850 motion. In addition, as mentioned above, my proposal assumes that the reforms outlined below will be implemented, thereby easing some of the burden on CCR. Finally, this schedule recognizes that CCR has already gained an approximate 10-month respite by virtue of the present impasse.

As to the second set of 20 cases, I believe that they should be incorporated as part of the 6 new lawyers that CCR will hopefully be authorized to hire by the Legislature, consistent with the Governor's recommended budget. Each of these lawyers should be qualified to handle 4 new cases, and also should be able to assist as second-chairs on existing cases.[11] I would recommend that CCR be required to designate counsel in these cases over a several month period beginning in September or October 1996.

D. RECOMMENDED REFORMS TO THE 3.850 PROCESS

In making my recommendation, I respectfully, but strongly suggest that reforms be implemented in the following four areas.

1. Approval of The Governor's 1996-97 Recommended Budget For CCR

The most important financial reform for resolving the present impasse is for the Legislature to adopt the Governor's recommended budget for CCR as part of the 1996-97 Budget. Although CCR has requested that the Legislature double its budget and staff size, I believe that the Governor's budget recommendation is more realistic and will be initially sufficient to accomplish most of the recommendations set forth in this Report.

The Governor has recommended an annualized increase in CCR's budget of approximately $730,000, with 14 new positions as follows:

[11]I am assuming that, with the creation of branch offices, and the provision of additional funding, CCR will be able to hire experienced mid-level attorneys to fill these six positions and will *not* continue to hire only entry level lawyers.

civil litigation.[13] CCR estimates that it has over 100 pending Chapter 119 civil suits.[14]

The Supreme Court should promptly solve this problem by enacting a Rule of Discovery in 3.850 proceedings, *with expedited time schedules* for both the requesting and providing of public records, for the filing of objections, and for the resolution of disputes by the trial judge who eventually will rule on the 3.850 motion. The goal of the new rule should be to expedite CCR's access to Chapter 119 information so that it can be reviewed by CCR in time to be incorporated in the original 3.850 motion. The new rule should eliminate a significant portion of the delay in ruling on 3.850 motions that has occurred because of tangential civil litigation and the inability of CCR to file a *complete* 3.850 motion within the 1 year time period.

3. The Need For Branch Offices

CCR is a statewide public defender organization. It is required to represent all indigent death-sentenced defendants regardless of the county in which they were convicted. Thus, although all of CCR's clients are housed on death row at Union Correctional Institution in Raiford, CCR is required to file 3.850 motions in the trial courts of the counties where the defendants were originally convicted. Because CCR's only office is in Tallahassee, CCR investigators and lawyers have

been required to travel throughout the State of Florida to handle hearings and to investigate cases.

CCR currently spends over $100,000 per year in travel expenses for its attorneys and investigators. In addition, CCR loses countless hours of attorney and investigator time in transit, and in setting up temporary field offices when arguing evidentiary hearings in other parts of Florida.

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[13]As it stands, CCR has been required to file incomplete 3.850 motions to meet the one-year deadline, reserving the right to supplement the motion upon the receipt and review of belated Chapter 119 materials. This procedure obviously defeats the purpose of Rule 3.851.

[14]Part of the problem in obtaining Chapter 119 material has been the result of lack of cooperation in providing prompt and full disclosure by some state and local agencies. Although the Attorney General has indicated that such files should be disclosed as a matter of public policy, he does not have the authority to mandate disclosure.

order to preserve them for future review. This can be done, however, without the presentation of extensive legal argument resulting in 170-page motions that create unnecessary delays at the trial level. Issues that have been adversely decided can simply be listed at the end of the 3.850 motion, with the express notation that they are being raised only to preserve the issue for appellate review.[15]

E. OTHER SIGNIFICANT ISSUES

In addition to the issues discussed above, I believe it is necessary to note a number of other significant issues that recurred throughout my study and that have influenced my report.

1. "Death In Different"

When I argued *Proffitt v. Florida*, 428 U.S. 242 (1976), for the state, I agreed with the United States Supreme Court Justices that the death penalty was, in fact, "different" from other criminal sanctions because of the immutable consequence of the punishment. That is why, in upholding the constitutionality of Florida's death penalty, the Court recognized the necessity for heightened procedural and substantive protections for capital defendants. These necessary protections have resulted in extra time and expense associated with death penalty representations.

2. Expertise And Continuity of Counsel

Florida and federal death penalty jurisprudence is complex and rapidly evolving. This fact was recognized by all of the sources I consulted. The complexity of death penalty

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[15]Rule 4-3.3(a)(3) of the Florida Rules of Professional Conduct, provides that a lawyer shall *not* knowingly "fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." CCR raises issues for their clients, with knowledge of legal authority directly adverse to their clients' positions, and without disclosing this either to the trial judge in the 3.850 motion or to the Florida Supreme Court in the appellate briefs. This procedure evades the spirit of the rule and should *not* be tolerated. It also has the effect of lengthening the entire 3.850 procedure, both at the trial and appellate levels, and is probably one of the reasons that 90 cases remain pending at the trial court level.

qualified private lawyers were available), the cost would be approximately $9 million per year to fund just the existing 138 cases and the 40 impasse cases. In addition, as Mr. Rinaman suggested, significant resources would be expended in the recruiting process itself.

The institutionalization of capital collateral representation serves three purposes: specialization, centralization, and continuity. It helps in training future death penalty qualified attorneys, in maintaining an "institutional memory" of the historical development of the law, in developing a central registry of postconviction capital cases, and in assuring whenever possible that the same lawyer is assigned to a case throughout the postconviction process. CCR thus appears to me to be a more efficient means of representing capital defendants than a private Bar model.

Although I briefly explored the long-term scenario of using CCR as a clearinghouse to support the privatization of capital collateral representation, for the reasons cited above, combined with the recommendation of the Cox Report that federal VLRC-type programs be reconfigured to provide CCR type direct representation, I have concluded that neither privatization nor a VLRC-type program are workable long-term solutions.

4. Clemency

CCR specifically brought to my attention two death penalty cases (Carlis Lindsey and Samuel Pettit) that raise the issue of the expanded use of the clemency process. CCR contends that Mr. Lindsey, who is 72 years old, likely will die of natural causes before the expiration of his collateral appeals. CCR contends that Mr. Pettit, who is suffering from a degenerative brain disease, also will likely die of natural causes before the expiration of his collateral appeals. CCR cites these two cases as examples of situations where the selective use of clemency might *slightly* ease the volume of death penalty cases while still serving the interests of justice.

Generally, the early initiation of clemency review may create the possibility that *some cases* can be removed from the system by imposing life imprisonment without the possibility of parole where there is an indication that the defendant is mentally ill, has received a life recommendation from the jury, or otherwise may deserve clemency. There is certainly merit in discussing this approach with the Governor, although I do *not* believe it will result in any significant reduction of CCR's cases.

determine whether a death-sentenced defendant has received a fair trial and a constitutionally proportionate sentence.

Although I cannot provide a detailed formula for CCR to follow in deciding how to allocate its resources, I do believe that the United States Supreme Court's jurisprudence provides sufficient guidance by requiring that errors raised on collateral review must be substantial enough to have changed the outcome of the trial. *e.g., United States v. Bagley*, 473 U.S. 667, 682 (1985) ("The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."); *Strickland v. Washington*, 466 U.S. 668, 687 (1984) ("[T]he defendant must show that the deficient performance prejudiced the defense."). CCR's attorneys do not have the luxury to pursue every lead *ad infinitum*. They must choose to pursue only those leads that have a reasonable probability of showing material prejudice to the defendant and to the outcome of the trial.

In light of this requirement that CCR must ration its funds within the bounds of finite resources, but also realizing that CCR has performed, in good faith, a vital service in assuring that the death penalty is effectuated consistent with the dictates of basic fairness and constitutional due process, I make the following 6 recommendations.

RECOMMENDATION #1

CCR should be required by Court order to designate counsel in all 40 undesignated cases on an incremental 3.850 schedule that allows the full 11 months for CCR to file 3.850 motions in each individual case. Assuming the Court agrees with this primary recommendation, CCR's pending motion for rehearing and clarification would presumably be denied.

It is recommended that CCR should designate counsel from its existing staff of lawyers to incorporate the oldest 20 of the 40 impasse cases. CCR should designate attorneys in these 20 cases over a several month period, to be set by the Court, with at least 4 cases designated each month. The remaining 20 cases should be incorporated as part of the 6 new lawyers that CCR will be authorized to hire pursuant to the Governor's recommended budget. Each of these lawyers should be qualified to initially handle at least 4 new cases. I recommend that CCR be required to designate counsel in these cases over a several month period beginning in September or October 1996.

This incremental schedule recognizes that CCR has already gained an approximate 10-month respite from accepting new cases

and state and local law enforcement agencies. The new rule should contain expedited time schedules for requests, responses, objections, and for the resolution of disputes by the trial judges that eventually will rule on the 3.850 motions. The goal of the new rule should be to expedite CCR's access to Chapter 119 information so that it can be reviewed by CCR in time to be incorporated in the original 3.850 motion. This should eliminate a significant portion of the delay in ruling on 3.850 motions that has occurred because of tangential civil litigation and the apparent inability of CCR to file a *complete* 3.850 motion within the 1 year time period.

RECOMMENDATION #4

CCR should list, *without argument*, those issues that are clearly not dispositive but that CCR believes must be preserved as a matter of procedural formality. This perhaps could be facilitated by the Court's adoption of another new Rule.

The Supreme Court should place CCR staff attorneys on notice that it will no longer tolerate anything but complete candor before state trial courts and the Florida Supreme Court and total compliance with the Florida Rules of Professional Responsibility. In particular, the failure to advise all courts of known adverse precedents on particular issues should result in disciplinary investigation

and action by the Florida Bar.

RECOMMENDATION #5

Because part of the delay in prosecuting 3.850 motions occurs at the trial court level, the Florida Supreme Court should adopt a rule of judicial administration requiring expedited processing of 3.850 motions and hearings. The rule should also provide that the same judge who tried the case—if still available—should decide 3.850 motions in capital cases, even if the judge no longer sits in the circuit court's criminal division. In addition, the Court should follow through with the Overton Committee Report's recommendation of requesting circuit court clerks to assign one person the responsibility of administering 3.850 cases. Finally, the Judicial College should prepare a concise handbook for trial judges in capital collateral proceedings to assist them in sorting through the major jurisprudential issues.

RECOMMENDATION #6

The Legislature should require CCR staff attorneys and investigators to keep contemporaneous time records that can be converted into computer-generated time reports. This will

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Environmental law—Resource Conservation and Recovery Act—Hazardous waste—Owner of shopping center granted preliminary injunction requiring lessee/drycleaning company to cease discharging perchloroethylene and other hazardous wastes—Defendant ordered to assess groundwater contamination caused by its past disposal of dry cleaning chemicals at its facility and to propose remediation plan—Magistrate judge properly analyzed and applied RCRA to owner's action for injunctive relief compelling abatement of contamination created by improper handling, storage, transportation, or disposal of hazardous wastes

FAIRWAY SHOPPES JOINT VENTURE, a Texas Joint Venture, Plaintiff, v. DRYCLEAN U.S.A. OF FLORIDA, INC., a Florida corporation, Defendant. U.S. District Court, Southern District of Florida. Case No. 95-8521-CIV-HURLEY. July 31, 1996. Daniel T.K. Hurley, Judge. (Frank J. Lynch, Jr., U.S. Magistrate Judge.) Counsel: Douglas M. Halsey and Kirk L. Burns, Douglas M. Halsey, P.A., Miami, FL, for Plaintiff. John Barkett, Coll, Davidson, Carter, Smith, Salter & Barkett, P.A., Miami, FL; and Teresa Woody, Spencer, Fane, Britt & Brown, Kansas City, MO, for Defendant.

ORDER ADOPTING MARCH 7, 1996 REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE, GRANTING PRELIMINARY INJUNCTION, REFERRING REPORTING AND MONITORING TO U.S. MAGISTRATE JUDGE, AND RESOLVING VARIOUS MOTIONS

This matter comes before the court upon the Report and Recommendation of United States Magistrate Judge Frank J. Lynch Jr., entered March 7, 1996. The defendant filed timely objections, requiring this court to make a *de novo* review of the record pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure.

Having made a *de novo* review of the record, the court adopts the magistrate judge's findings. Defendant makes numerous attacks on the magistrate judge's analysis of the application of the Resource Conservation and Recovery Act (RCRA). However, the court concludes that the magistrate judge clearly understood and properly applied RCRA Section 7002 to the present case. Therefore, the Report and Recommendation of the magistrate judge is adopted. Accordingly, it is hereby

ORDERED and ADJUDGED as follows:

III. DECRETAL PROVISIONS

1. The Report and Recommendation of United States Magistrate Judge Frank J. Lynch Jr. is adopted.

2. Plaintiff Fairway Shoppes' [18-1] Motion for Preliminary Injunction is GRANTED as detailed below.

3. Defendant shall immediately cease discharging perchloroethylene and other hazardous wastes.

4. Pursuant to Federal Rule 65(c), Plaintiff shall post a bond in such sum as Magistrate Judge, shall deem proper. The court respectfully asks the Magistrate Judge to set the sum of the bond (if any) within 15 days from the entry of this order.

5. No later than 30 days from the entry of this order, Defendant shall submit a report detailing the feasibility of the following preventive measures (if such measures are not already in place):

a) a secondary containment system; and

b) an impermeable epoxy seal on the bare concrete floor.

6. Furthermore, as required by the Magistrate Judge, Defendant shall conduct a comprehensive and complete assessment of the contamination at the Shopping Center. This assessment shall be performed in accordance with the procedures detailed in the Florida Department of Environmental Protection guidance document, *Corrective Action for Contamination Site Cases*. The Defendant shall submit a copy of *Corrective Action for Contamination Site Cases* to the court for the record. The assessment shall be conducted as follows:

a) no later than 30 days from the entry of this order, Defendant shall file a report detailing the steps taken by it to complete the environmental assessment,

b) no later than 60 days from the entry of this order, Defendant shall file a final report which includes the lateral and vertical extent of the perc and its related degradation constituents. The report shall also include a proposed remediation plan designed to prevent further lateral and vertical migration of the contaminant plume.

7. The court respectfully requests that the Magistrate Judge monitor compliance with this order and consider all motions related thereto, including motions to adjust and amend these reporting requirements.

8. This order does not limit Plaintiff's right to move for additional relief should the assessment reveal a need for such. In accordance with the Magistrate Act, 28 U.S.C. § 63(b)(1)(A), and Federal Rules of Civil Procedure 72, all such motions, if any, are hereby REFERRED to Magistrate Judge Lynch for final disposition or report, as appropriate.

9. Plaintiff Fairway Shoppes' [13-1] Unopposed Motion for Enlargement of Time to Respond to Defendant Dryclean U.S.A. of Florida, Inc.'s Answer and Counterclaim is GRANTED.

10. Defendant Dryclean U.S.A.'s [46-1] Motion for Oral Argument with Respect to Objections to the March 7, 1996 Report and Recommendation of U.S. Magistrate Judge Regarding Motion for Preliminary Injunction is DENIED.

11. Defendant Dryclean U.S.A.'s [46-2] Motion to Extend Page Limit of Objections to the March 7, 1996 Report and Recommendation of U.S. Magistrate Judge is GRANTED.

12. Defendant Dryclean U.S.A.'s [7-1] Application for Limited Appearance is GRANTED. Teresa A. Woody, Esq. is recognized *pro hoc vice* for the Defendant.

13. Plaintiff's July 22, 1996 Motion to Expedite Resolution of Motion for Preliminary Injunction is mooted by this order.

REPORT AND RECOMMENDATION ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

THIS CAUSE came before the Court upon the motion of Plaintiff, Fairway Shoppes Joint Venture, for entry of a preliminary injunction requiring Defendant, Dryclean U.S.A. of Florida, Inc. ("Dryclean U.S.A."), to cease discharging hazardous wastes and to assess and remediate the groundwater contamination it caused by its past disposal of dry cleaning chemicals at its facility at 7100 Fairway Drive, Palm Beach Gardens, Florida. A day long evidentiary hearing was held on January 29, 1996. Having considered the evidence offered at hearing, reviewed the pleadings and affidavits filed by the parties, and being otherwise advised in the premises, the Court finds and rules as follows:

Findings of Fact

1. Fairway Shoppes Joint Venture ("Fairway Shoppes") is the owner of the Shoppes on the Green Shopping Center located at 7100 Fairway Drive, Palm Beach Gardens, Florida ("Shopping Center"). Since 1986, Dryclean U.S.A. has owned and operated a dry cleaning business at the Shopping Center. Dryclean U.S.A. has been the only operator of a dry cleaning facility at the Shopping Center since it was built in 1986. As part of its dry cleaning operation, Dryclean U.S.A. regularly uses the

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court using the Florida Courts e-portal filing system, which will send a notice of electronic filing to the following: The Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **99orange@ninthcircuit.org**; the Honorable Reginald K. Whitehead, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **nedwards@ninthcircuit.org**; Timothy A Freeland, Special Counsel, Assistant Attorney General, and Jennifer A. Davis, Senior Assistant Attorney General, **timothy.freeland@myfloridalegal.com**, **jennifer.davis@myfloridalegal.com**, **paula.montlary@myfloridalegal.com**, **elizabeth.bueter@myfloridalegal.com**, **lourdes.parodi@myfloridalegal.com**, **capapp@myfloridalegal.com**, **marilyn.muir@myfloridalegal.com**, **scott.browne@myfloridalegal.com**, **stephen.ake@myfloridalegal.com**; Monique H. Worrell, State

Attorney, and Jacqueline Brown, Assistant State Attorney, Orange County State Attorney's Office, 415 North Orange Avenue, Orlando, FL 32802, **mhworrell@sao9.org**, **jbrown@sao9.org**; Kristen J. Lonergan, Chief Legal Counsel, Office of the General Counsel, Florida Department of Corrections, **kristen.lonergan@fdc.myflorida.com**, and the Florida Supreme Court, **warrant@flcourts.org**, **canovak@flcourts.org**.

/s/ Joshua P. Chaykin
Joshua P. Chaykin
Counsel for Appellant

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX O

Appellee's Answer Brief on the Merits, SC2026-0574 (April 16, 2026)

Filing # 246130062 E-Filed 04/16/2026 11:47:18 AM

No. SC2026-0574

In the Supreme Court of Florida

JAMES ERNEST HITCHCOCK ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ANSWER BRIEF ON THE MERITS

On Appeal from the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida
L.T. No. 1976-CF-1942

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April 16, 2026

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ORAL ARGUMENT OBJECTION

The State opposes Hitchcock's request for oral argument. The issues on appeal are straightforward, and it is against this Court's policy to grant oral argument in successive capital appeal cases. *See* Fla. S. Ct. Internal Op. Proc. II.A.3(a) (Successive capital postconviction appeals are treated "in the same manner as" cases "in which review is granted without oral argument.").

CASE AND FACTS AND PROCEDURAL HISTORY

The facts of this case are recited in this Court's opinion on the direct appeal of Hitchcock's conviction and sentence, *Hitchcock v. State*, 413 So. 2d 731 (Fla. 1982):

> Unemployed, ill, and with no place to live, Hitchcock moved in with his brother Richard and Richard's family two to three weeks before the murder. On the evening of the murder, appellant watched television with Richard and his family until around 11:00 p.m. He then left the house and went into Winter Garden where he spent several hours drinking beer and smoking marijuana with friends.
>
> According to a statement Hitchcock made after his arrest, he returned around 2:30 a.m. and entered the house through a dining room window. He went into the victim's bedroom and had sexual intercourse with her. Afterwards, she said that she was hurt and was going to tell her mother. When she started to yell because he would not let her leave the bedroom, Hitchcock choked her and carried her outside. The girl still refused to be quiet so

> appellant choked and beat her until she was quiet and pushed her body into some bushes. He then returned to the house, showered, and went to bed.
>
> At trial Hitchcock repudiated his prior statement. He testified that the victim let him into the house and consented to having intercourse. Following this activity, his brother Richard entered the bedroom, dragged the girl outside, and began choking her. She was dead by the time appellant got Richard away from her. When Richard told him that he hadn't meant to kill her, Hitchcock told him to go back inside and that he, the appellant, would cover up for his brother. According to Hitchcock, he gave his prior statement only because he was trying to protect Richard.

On direct appeal, Hitchcock raised the following claims:

> (1) whether the trial judge improperly precluded the defense from presenting evidence corroborating the defense theory, his cross examination of witnesses, and his explanation of his "false" confession;
>
> (2) the trial judge's communication with the jury during deliberations;
>
> (3) the exemption of mothers with young children from the jury panel, and
>
> (4) the sufficiency of the evidence.

The Florida Supreme Court affirmed Hitchcock's conviction as well as his death sentence. *See id.*

The Court also affirmed the denial of an early motion for postconviction relief. *See Hitchcock v. State*, 432 So. 2d 42 (Fla.

1983)[1]. In later federal habeas corpus proceedings, however, the United States Supreme Court granted certiorari and vacated Hitchcock's death sentence because the jury was instructed not to, and the sentencing judge refused to, consider evidence of nonstatutory mitigating circumstances. *See Hitchcock v. Dugger*, 481 U.S. 393 (1987). Upon remand, Hitchcock was again sentenced to death, which was affirmed on appeal. *See Hitchcock v. State*, 578 So. 2d 685 (Fla. 1990). But the United States Supreme Court again granted certiorari and remanded for reconsideration in light of *Espinosa v. Florida*, 505 U.S. 1079 (1992). *See Hitchcock v. Florida*, 505 U.S. 1215 (1992). This Court subsequently vacated Hitchcock's death sentence and directed the trial court to conduct a new penalty proceeding. *Hitchcock v. State*, 614 So. 2d 483 (Fla. 1993).

Hitchcock was again sentenced to the death penalty, but this Court struck it because evidence portraying Hitchcock as a pedophile was erroneously made a feature of the proceeding. *Hitchcock v. State,* 673 So. 2d 859 (Fla. 1996). Finally, Hitchcock was again sentenced

---

[1] Hitchcock raised two penalty phase claims of ineffective penalty phase counsel and constitutionality of Florida's death penalty, both rejected by this Court. Even if the claims had merit, they were rendered moot by his subsequent resentencing.

to the death penalty for the fourth time. In so doing, the trial court found four aggravators, including (1) the crime was committed by a person under sentence of imprisonment (parole); (2) the crime was committed during commission of the felony of sexual battery; (3) the crime was committed for the purpose of avoiding arrest; and (4) the crime was especially heinous, atrocious, or cruel (HAC). As mitigation, the sentencing court found one statutory mitigating factor, Hitchcock's age (twenty). As to non-statutory mitigation, the court assigned very little weight to six circumstances surrounding the instant crime, some weight to nine circumstances concerning Hitchcock's background, and some weight to eight circumstances concerning Hitchcock's positive character traits.

On appeal Hitchcock argued:

> (1) the trial court erred in permitting the State to put into evidence a three-page narrative report concerning results of a psychological test;
>
> (2) the trial court erred in overruling the defense objection to the State's closing argument as to Hitchcock's mitigation evidence;
>
> (3) the trial court erred in overruling the defense objection to the State's argument as to a defense expert witness;
>
> (4) fundamental error occurred in the State's final argument to the jury;

(5) resentencing is required because the judge in Hitchcock's new trial was removed from the bench during an investigation of bribery charges, and it was error for a substitute judge to rule on Hitchcock's motion for resentencing;

(6) the trial court erred in instructing upon, allowing the State to argue, and finding the aggravating circumstance of avoiding or preventing arrest;

(7) the trial court erred in denying Hitchcock's constitutional challenges to the sentence of imprisonment and felony-murder aggravating circumstances as applied;

(8) the State failed to prove the felony-murder aggravating circumstance based on the underlying felony of rape or sexual battery, and this aggravating circumstance is unconstitutional;

(9) the trial court erred in using the HAC aggravating circumstance and in giving an unconstitutional instruction as to HAC;

(10) the trial court erred in refusing to instruct the jury as to improper doubling of aggravating circumstances;

(11) the trial court erred in considering both the felony-murder and avoid-arrest aggravating circumstances;

(12) the trial court's findings as to mitigation were deficient;

(13) Hitchcock's death sentence is disproportionate;

(14) the trial court erred in permitting testimony showing that his appellate attorney had represented Hitchcock on clemency;

(15) the trial court erred in denying relief based on newly discovered evidence without considering corroborating evidence and circumstances;

(16) the trial court (a substitute judge) erred in ruling on

and denying Hitchcock's motion for a new sentencing proceeding;

(17) the trial court erred in excluding from evidence and refusing to consider the State's prior offer of a life sentence; and

(18) conducting Hitchcock's sentencing proceeding many years after his crime was unconstitutional.

This Court denied relief as to all claims and affirmed his death sentence. *Hitchcock v. State,* 755 So. 2d 638 (Fla. 2000), *cert. denied,* 531 U.S. 1040 (2000).

Hitchcock next unsuccessfully sought postconviction DNA testing pursuant to Fla. R. Crim. P. 3.853, denial of which was affirmed on appeal. *Hitchcock v. State*, 866 So. 2d 23 (Fla. 2004).

Hitchcock's second Rule 3.851 postconviction claims were as follows:

(1) resentencing counsel was ineffective for failing to object to the testimony of Debra Lynn Driggers;

(2) guilt-phase counsel and resentencing counsel were ineffective for failing to object to testimony and argument that the victim was a virgin at the time of the offense;

(3) guilt-phase counsel was ineffective for failing to spend adequate time preparing for trial and thus opened the door to negative character evidence about Hitchcock and for failing to admit evidence implicating Richard Hitchcock in the murder;

(4) resentencing counsel was ineffective for failing to recall Dr. Toomer to explain the Minnesota Multiphasic

Personality Inventory (MMPI) narrative report introduced by the State;

(5) resentencing counsel was ineffective for failing to have Hitchcock evaluated for neuropsychological impairment;

(6) resentencing counsel was ineffective for failing to fully develop available statutory and nonstatutory mitigating evidence;

(7) the State violated Hitchcock's constitutional rights by destroying exculpatory physical evidence;

(8) the trial court's instructions diminished the jury's role in sentencing in violation of *Caldwell v. Mississippi,* 472 U.S. 320, 105 S. Ct. 2633, 86 L.Ed.2d 231 (1985), and counsel was ineffective for not objecting to the instructions;

(9) newly discovered evidence demonstrated that Richard Hitchcock committed the murder;

(10) the State failed to disclose the deficiencies of hair analyst Diana Bass and then knowingly presented the analyst's incompetent and false testimony, guilt-phase counsel was ineffective for failing to challenge the admissibility of Bass's testimony, and this newly discovered evidence of Bass's incompetence undermined Hitchcock's conviction;

(11) resentencing counsel was ineffective for failing to object to the court's felony-murder instruction and for failing to request a jury instruction on the elements of sexual battery;

(12) Hitchcock's constitutional rights were violated because he was not present at the bench conference when peremptory challenges were exercised, trial counsel was ineffective for failing to ensure that Hitchcock was present during all critical stages of the proceedings, and the trial court erred by not ensuring that the transcript was complete;

(13) Florida's capital sentencing scheme is unconstitutional as applied to Hitchcock.

Hitchcock asserted ineffectiveness of appellate counsel by counsel's failure to argue that he was unconstitutionally deprived of notice that he could be convicted under a theory of felony murder and that he was unconstitutionally deprived of a unanimous verdict identifying whether the jury found him guilty of felony murder or premeditated murder. Hitchcock also advanced a claim that Florida's sentencing scheme is unconstitutional pursuant to *Ring*[2] and *Apprendi*[3] along with asserting that he may be incompetent by the time of his execution. This Court affirmed the lower court's denial of his postconviction claims as well as his challenge to appellate counsel's effectiveness. *Hitchcock v. State*, 991 So. 2d 337 (Fla. 2008).

Hitchcock's petition for writ of habeas corpus in the United States Middle District raised the following claims:

> Ground I: The prosecution's closing argument in the fourth resentencing proceeding unfairly denigrated evidence of mitigation presented by Hitchcock and contained numerous factual inaccuracies.
>
> Ground II: The trial court improperly applied and evaluated the aggravating and mitigating factors.

---

[2] *Ring v. Arizona*, 536 U.S. 584 (2002).
[3] *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

> Ground III: Hitchcock's death sentence is not proportional, penalty phase evidence was improperly admitted, and some of his mitigation was improperly excluded.
>
> Ground IV: Defense counsel should have objected to improper testimony from the victim's sister.
>
> Ground V: Defense counsel was ineffective for failing to present mental health mitigation evidence.
>
> Ground VI: Appellate counsel was ineffective in failing to raise a *Caldwell* claim on direct appeal.
>
> Ground VII: Counsel ineffectively failed to object to the sexual battery aggravator, failed to request an instruction outlining the elements of sexual battery, and appellate counsel was ineffective in failing to assert this claim on appeal.

The Eleventh Circuit affirmed the Middle District's denial of relief. *Hitchcock v. Crews*, 745 F. 3d 476 (11th Cir. 2014), *cert. denied*, 574 U.S. 939 (2014).

Successive Postconviction Proceedings Under Warrant

On March 30, 2026, Governor Ron DeSantis signed a death warrant for the execution of Hitchcock and his execution is scheduled to occur on April 30, 2026, at 6:00 p.m. As a result, this Court issued a scheduling order requiring that all proceedings in the circuit court be concluded by April 13, 2026. (R. 115).[4]

On April 1, 2026, pursuant to the circuit court's separate scheduling order, Hitchcock filed demands for additional public records directed to the Florida Department of Corrections (FDOC) and the Florida Department of Law Enforcement (FDLE). (R. 145, 180). Both state agencies filed written objections on April 2, 2026 (R 306, 316), and after conducting a hearing, the circuit court sustained FDOC's and FDLE's objections. (R. 338, 341).

Hitchcock filed his successive motion for postconviction relief on April 7, 2026, raising four claims: (1) denial of access to public records related to the alleged maladministration of the lethal injection protocols is violative of the Eighth Amendment, (2) an actual innocence claim, (3) unreliable hair evidence was improperly adduced

[4] "R" citations are to the record from Hitchcock's active death warrant proceedings in the circuit court.

at trial to exclude Richard Hitchcock as the actual perpetrator; and (4) DNA evidence would corroborate Hitchcock's claim of actual innocence. In addition, Hitchcock also requested a stay of execution. (R. 378-404). The State filed a response on April 8, 2026. (R. 498-522). After conducting a case management hearing on April 9, 2026, the circuit court issued an order summarily denying Hitchcock's successive motion for postconviction relief and also denying his request for a stay of execution on April 13, 2026. (R. 592-610). This appeal follows.

SUMMARY OF THE ARGUMENT

Hitchcock's public records argument is meritless because he fails to demonstrate how the trial court abused its discretion when it refused to grant his public records demands of the FDOC and FDLE. The postconviction court properly summarily denied Hitchcock's method-of-execution claim based on the alleged maladministration of Florida's lethal injection protocol by the FDOC. As the postconviction court properly found, Hitchcock's claim based on heavily redacted documents was entirely speculative and conclusory and failed to establish that Florida's method of execution presents a substantial and imminent risk that is sure or very likely to cause

serious illness and needless suffering. This Court recently rejected the identical allegations of alleged maladministration in *Heath v. State*, 426 So. 3d 1253 (Fla. 2026), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026), and *Trotter v. State*, 428 So. 3d 68 (Fla. 2026), *cert. denied*, 146 S. Ct. 755 (2026) and Hitchcock has offered no compelling reasons to reconsider this Court's recent precedent. Additionally, Hitchcock made no attempt to identify a known and available alternative method of execution that entails a significantly less severe risk of pain; a pleading failure, which standing alone, is sufficient to affirm the lower court's summary denial of his claim.

In his second claim, Hitchcock alleged his execution would be the unconstitutional execution of an innocent man and would violate the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution under *Herrera v. Collins*, 506 U.S. 390, 417 (1993), as well as the corresponding provisions of the Florida Constitution. The postconviction court properly found Hitchcock's claim procedurally barred and not cognizable in postconviction proceedings.

As to Hitchcock's third and fourth claims, the lower court found that this Court previously addressed them and Hitchcock was

therefore procedurally barred from raising either claim in a successive postconviction motion. The State notes that Hitchcock has elected not to seek review of either of these claims.

STANDARD OF REVIEW

"Summary denial of a successive postconviction motion is appropriate if the motion, files, and records in the case conclusively show that the movant is entitled to no relief." *Cole v. State*, 392 So. 3d 1054, 1060 (Fla.), *cert. denied*, 145 S. Ct. 109 (2024) (internal quotations omitted). A postconviction court may properly deny claims that are untimely, not retroactive, procedurally barred, not cognizable, or meritless as a matter of law under controlling precedent. *See, e.g.*, *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020) (affirming summary denial of claims raised in successive postconviction motion as untimely); *Morris v. State*, 317 So. 3d 1054, 1071 (Fla. 2021) (stating that a court may summarily deny a postconviction claim that is procedurally barred); *Mann v. State*, 112 So. 3d 1158, 1162 (Fla. 2013) (holding that because defendant's postconviction claims were "purely legal claims that have been previously rejected by this Court, the circuit court properly summarily denied relief").

With respect to timeliness, "postconviction claims in capital cases must generally be filed within one year after the judgment and sentence become final." *Cole*, 392 So. 3d at 1061 (citing Fla. R. Crim. P. 3.851(e)(2)). A claim filed outside the one-year period is untimely unless one of the following circumstances exists:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2). "It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Mungin*, 320 So. 3d at 624.

"In reviewing a trial court's summary denial, 'this Court must accept the defendant's allegations as true to the extent that they are not conclusively refuted by the record.'" *Id.* (quoting *Tompkins v. State*, 994 So. 2d 1072, 1081 (Fla. 2008)). "However, mere conclusory allegations do not warrant an evidentiary hearing." *Id.* (citing *Anderson v. State*, 220 So. 3d 1133, 1142 (Fla. 2017); *LeCroy v.*

Dugger, 727 So. 2d 236, 238 (Fla. 1998)). On appeal from the summary denial of a successive postconviction motion, this Court "review[s] the postconviction court's decision de novo." *Id.* (citing *Marek v. State*, 8 So. 3d 1123, 1127 (Fla. 2009)).

ARGUMENT

ISSUE I

The postconviction court did not abuse its discretion in denying Hitchcock's demands for additional records from the Florida Department of Corrections and the Florida Department of Law Enforcement.

The trial court did not abuse its discretion by refusing to grant Hitchcock's public records demands from the FDOC and FDLE. Hitchcock failed to demonstrate why any of the records he sought were related to a colorable claim. Hitchcock contends that denial of his request for additional public records violates equal protection and is based on what he claims to be a "manufactured" burden, i.e., that his demands must be related to a colorable claim. The lower court properly denied Hitchcock's demands.

Initially, Hitchcock's weak assertion that neither rule nor statute mandates that he establish his demands be related to a "colorable claim" is spurious. This requirement is based on this Court's interpretation and application of Rule 3.852 and Section 27.7081, Florida Statutes. This Court has consistently required that such demands identify a colorable claim; so-called "fishing expeditions" are thus precluded by this requirement. *Muhammad v.* State, 132 So. 3d 176, 200 (Fla. 2013). See *Valle v. State*, 70 So. 3d

530, 548 (Fla. 2011) ("Valle has failed to establish how the production of such records relates to a colorable Eighth Amendment challenge.") Hitchcock cannot demonstrate the trial court erred, let alone that it abused its discretion in denying his demands.[5] *Tanzi v. State*, 407 So. 3d 385, 391 (Fla. 2025), *cert. denied,* 145 S. Ct. 1914 (2025) (denial of records requests subject to abuse of discretion standard of review on appeal) (citing *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024)). *See also*, *Willacy v. State*, No. SC2026-0519, 2026 WL 1021168 (Fla. April 15, 2026).

A. No abuse of Discretion Has Been Shown

Hitchcock sought numerous records predicated on heavily redacted documents apparently disclosed in unrelated litigation (the "Walls" records). He relied upon those records to speculate that the FDOC may not follow its protocol in his execution. Both FDLE and FDOC submitted detailed responses opposing disclosure of

[5]Of course, this is a highly deferential review of the postconviction court's ruling on records requests. *See Muhammad*, 132 So. 3d at 200 (noting "[d]iscretion is abused only when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the trial court.'") (quoting *State v. Coney*, 845 So. 2d 120, 137 (Fla. 2003).

additional records. (R. 305-315, 316-336). Florida has a detailed lethal injection protocol that specifies the drugs used, and the amounts with specific directions that a team member check the expiration dates of the drugs before they are used in an execution. (R. 330). Nothing in the heavily redacted general inventory records cited by Hitchcock pierces the presumption that the FDOC follows its protocol. This Court has consistently rejected the various constitutional arguments made by defendants based upon the same records Hitchcock relies upon here. *See Willacy v. State*, No. SC2026-0519, 2026 WL 1021168, at *6 (Fla. Apr. 15, 2026) ("Moreover, we have repeatedly rejected arguments that denials of requests under rule 3.852 for public records regarding Florida's administration of its lethal injection protocol or speculative interagency communications violate the right of access to courts, due process, or equal protection.") (string cites omitted).

Challenges to the constitutionality of Florida's lethal injection protocol as currently administered have been fully considered and repeatedly rejected by this Court. *Asay v. State*, 224 So. 3d 695 (Fla. 2017) (holding that use of etomidate as the first drug in Florida's lethal injection protocol did not violate the Eighth Amendment

because it did not create a substantial risk of serious harm); *Long v. State*, 271 So. 3d 938, 943-46 (Fla. 2019) ("Since approving the current lethal injection protocol in *Asay VI*, we have repeatedly affirmed the summary denial of challenges to the protocol, including challenges to the use of etomidate as the first drug in the protocol."). And, this Court has repeatedly and consistently upheld lethal injection records denials under the current protocol. *See Cole v. State*, 392 So. 3d 1054, 1065 (Fla.), *cert. denied*, 145 S. Ct. 109 (2024); *Tanzi v. State*, 407 So. 3d 385, 391 (Fla.), *cert. denied*, 145 S. Ct. 1914 (2025); *Heath v. State*, 426 So. 3d 1253, 1264 (2006), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026). The postconviction court did not abuse its broad discretion in rejecting Hitchcock's demand for additional records.

B. Due Process, Equal Protection and Access to Records

Hitchcock's contention that the postconviction court's denial of his demands for lethal injection records violated his Fourteenth Amendment right to due process is meritless. *See generally Abdool v. Bondi*, 141 So. 3d 529, 544 (Fla. 2014) ("To assess whether a violation of due process has occurred, we must first decide whether the complaining party has been deprived of a constitutionally protected

liberty or property interest"). The United States Supreme Court has long rejected the notion of a constitutional right to discovery founded on access to the courts or due process. *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (rejecting a constitutional claim that "the State must enable the prisoner to *discover* grievances, and to *litigate effectively* once in court") (emphasis in original); *Gray v. Netherland*, 518 U.S. 152, 168 (1996) (noting the Supreme Court's repeated admonitions that due process has "little to say regarding the amount of discovery which the parties must be afforded" and that there is "no general constitutional right to discovery" even for criminal defendants at trial). *See also Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1260, 1267 (11th Cir. 2014) (relying on *Lewis* to reject a due process right to lethal injection discovery and collecting cases).

Hitchcock's allegations are speculative and insufficient to warrant relief. Hitchcock argues that he was denied due process by the State's refusal to provide additional records. However, the lower court rejected his public records requests, relying upon settled precedent in sustaining both state agency's objections. (R. 341-346, 601). Moreover, any attempt to challenge the constitutionality of Florida's well-established rules governing public records in

postconviction fails as a matter of well-established law. *See Randolph v. State*, 422 So. 3d 166, 172 (Fla. 2025), *cert. denied,* 146 S. Ct. 819 (2025) (noting that the court has frequently and consistently rejected constitutional challenges to Florida's governing rules for public records production) (string citations omitted); *Cole*, 392 So. 3d at 1066 (rejecting claim that "denying him access to these (lethal injection) records violates his rights to due process and access to the courts under the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.") (citation omitted).

Similarly, Hitchcock's assertion of a potential equal protection violation does not alleviate or cure his failure to establish a risk of substantial harm under the Eighth Amendment. A prisoner lodging a method-of-execution claim "faces an exceedingly high bar." *See Barr v. Lee*, 591 U.S. 979, 980 (2020) (per curiam). His allegations come nowhere near the mark. Hitchcock's equal protection claim is frivolous.

Hitchcock's equal protection claim, based on his status as a convicted murderer, suggests that he is improperly treated differently from the general public who has broader access to public records

than capital defendants. He contends that he, unlike any other seeker of public records, is required to demonstrate that he has made his own search, that his requests are relevant, and that his requests are not overbroad or burdensome. However, Hitchcock, unlike any other member of the public who seeks public records, is given an attorney to obtain them, a special central repository to store them, and is not charged for them. His equal protection challenge fails because Hitchcock and the ordinary citizen seeking public records are not similarly situated. *Duncan v. Moore*, 754 So. 2d 708 (Fla. 2000).

Moreover, Hitchcock is being treated exactly the same as other death-sentenced inmates under the etomidate protocol. He is not subject to a new or changed protocol. In *Ferguson v. Warden, Florida State Prison*, 493 Fed. Appx. 22, 25–26 (11th Cir. 2012) (unpublished) the court rejected a similar equal protection challenge:

> Ferguson fails to assert that any of the alleged deficiencies will result in disparate treatment from other death row inmates. Under Florida's 2012 protocol, all death row inmates facing execution will be subject to the same sequence of drugs, the same procedures, and the same safeguards in the execution process. Ferguson has presented no evidence to substantiate his claims of disparate treatment.

Id. See also King v. State, 51 Fla. L. Weekly S71 (Fla. Mar. 10, 2026) ("More fundamentally, because King has not asserted a colorable claim for relief regarding any constitutionally redressable disparate treatment, we find no error in the circuit court's decision to deny his demand for [lethal injection] records or his motion to vacate his judgment and sentence).

Hitchcock will receive the same drugs, in the same sequence with the same consciousness check as other inmates. As noted, his allegations fall far short of establishing any deviations in the past, much less one that will be "sure" or "very likely" applicable to him in the future. *See generally DeYoung v. Owens*, 646 F.3d 1319, 1328 (11th Cir. 2011) (rejecting inmate's equal protection claim based upon the assertion that Georgia deviates from its protocol because inmate failed to show a substantial likelihood of success in the underlying action to support a stay of execution).

Hitchcock's reliance on Justice Sotomayor's discussion of a similar public records demand in *Trotter v. Florida*, 146 S. Ct. 755 (2026) does not further his claim here. It has no precedential value. No other Justice of the United States Supreme Court joined Justice Sotomayor's concurrence in the denial of a stay of execution and in

the denial of certiorari for Mr. Trotter whose execution was carried out on February 24, 2026. In fact, Justice Sotomayor agreed that Trotter did not "show that Florida's administration of its lethal-injection protocol is 'sure or very likely to cause serious and needless suffering' as the Court's Eighth Amendment precedents require." *Id.*

Hitchcock had no due process right to demand sensitive and confidential lethal injection records in search of a claim.[6] And for the reasons argued by the State below, Hitchcock did not present a colorable method-of-execution claim. *See* Fla. R. Crim. P. 3.852(k) (limiting the scope of production of public records under any sub-section of rule 3.852 to those that are "either relevant to the subject matter of the proceedings under rule 3.851 or are reasonably

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[6]Hitchcock's fishing expedition for lethal injection records has no foundation in due process or the Eighth Amendment. *See Jones v. Comm'r, Georgia Dept. of Corr.*, 812 F.3d 923, 925 (11th Cir. 2016) (Circuit judges, Marcus, Carnes, Tjoflat, Hull, Pryor (William) (statement on the denial of rehearing en banc):

> By insisting that he has a right to discovery in the absence of presenting a well-pleaded complaint, Jones travels on the novel idea that the law will (or should) allow discovery first, and only then require him to meet the standards prescribed by the Supreme Court in *Baze v. Rees*, 553 U.S. 35, 50, 52, 128 S. Ct. 1520, 170 L. Ed. 2d 420 (2008) (plurality opinion), and *Glossip v. Gross,* —— U.S. ——, 135 S. Ct. 2726, 2737, 192 L. Ed. 2d 761 (2015).

calculated to lead to the discovery of admissible evidence"). Therefore, the postconviction court did not abuse its discretion when it denied Hitchcock's demand for lethal injection records. *E.g.*, *Tanzi*, 407 So. 3d at 391 (applying the abuse of discretion standard to the denial of a demand for additional records and concluding that the postconviction court did not abuse its discretion or violate due process in denying a demand for such records because the records did not relate to a colorable claim). This Court should affirm.

C. Hitchcock's Speculative Eighth Amendment Claim

Hitchcock contends that Florida will fail to follow its detailed lethal injection protocol which will result in a violation of Hitchcock's right to be free of cruel and unusual punishment under the Eighth Amendment. However, no matter how he tries to spin it, Hitchcock relies on the same records that were soundly rejected by this Court as a basis for Eighth Amendment challenges in two recent cases under death warrant. *Trotter v. State*, 428 So. 3d 68, 73 (Fla. 2026), *cert. denied*, 146 S. Ct. 755 (2026); *Heath v. State*, 426 So. 3d 1253, 1264 (Fla. 2026), *cert. denied,* No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026). His slightly different spin on the same speculative factual basis does not make his claim any stronger. He cites the same

expert affidavit which this Court rejected as the basis for an Eighth Amendment claim in *Trotter*. Dr. Buffington, as cited in Hitchcock's motion, opined that FDOC needs better record keeping having "an organized, accurate and effective tracking model to ensure that the correct substances, as approved within the FDOC, have been properly acquired and that product dating and aging are being tracked for substances that are awaiting future executions." (R. 487-495).

Hitchcock relies upon the "Walls" records to support these allegations. (R. 445-486). However, none of these pages in the appendix contain any executed defendant's name or indicate that the drugs were used during any execution. They simply contain lines for "drug name," "package size," and "NDC#," and columns for "date," "invoice name/#," "Lot #," "Exp. Date," "MFR," "Received/Used (+/-)," and "balance." The "Received/Used (+/-)" column contains numbers with either the + or - symbol.

An Eighth Amendment method-of-execution claim requires the defendant to "(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and

available alternative method of execution that entails a significantly less severe risk of pain." *Randolph*, 422 So. 3d at 173 (Fla. 2025); *Bucklew v. Precythe*, 587 U.S. 119, 134, 140 (2019) (holding that "*all* Eighth Amendment method-of-execution claims" must "meet the *Baze-Glossip*[7] test") (emphasis added).[8]

Both this Court and the United States Supreme Court have held that prison staff are entitled to a strong presumption that they follow their method-of-execution protocol. *See e.g.*, *Baze*, 553 U.S. at 53-54; *Cole*, 392 So. 3d at 1065.[9] As a result, claims asserting that FDOC fails to follow its protocol must also allege legally sufficient facts to pierce that presumption before any evidentiary hearing. *Hannon v. State*, 228 So. 3d 505, 509 (Fla. 2017) (affirming summary

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[7] *Baze v. Rees*, 553 U.S. 35 (2008) (plurality opinion); *Glossip v. Gross*, 576 U.S. 863 (2015).

[8] As the *Bucklew* Court noted, the Eighth Amendment does not require "the avoidance of all risk of pain" in any method of execution. *Bucklew*, 587 U.S. at 134. How the Eighth Amendment applies to methods of execution "tells us that [it] does not guarantee a prisoner a painless death–something that, of course, isn't guaranteed to many people, including most victims of capital crimes." *Id.* (citing *Glossip*, 576 U.S. at 868-69). That is most certainly true here as Hitchcock's victim suffered a prolonged and agonizing death.

[9] *See also Valle v. State*, 70 So. 3d 530, 545-49 (Fla. 2011); *Davis v. State*, 742 So. 2d 233, 236 (Fla. 1999); *Provenzano v. State*, 739 So. 2d 1150, 1153 (Fla. 1999).

denial of a claim that FDOC is "inconsistent with its protocol" because the allegations were insufficient to overcome the presumption that FDOC complies with the protocol).

Knowing full well this Court has rejected this claim under three recent warrants, Hitchcock attempts to raise this claim under the guise of Equal Protection. But this Court has made clear that no matter how the inmate attempts to frame his argument, it still must pass through an Eighth Amendment analysis. *Trotter*, 428 So. 3d at 73 ("While Trotter contends that his lethal injection claim is not a traditional "method-of-execution claim," the gist of his argument remains that executing him by lethal injection–given the allegations he raises–constitutes cruel and unusual punishment.").

Hitchcock's nod to equal protection does not salvage his claim. There is no such thing as a standalone failure-to-follow-protocol Eighth Amendment claim exempted from these requirements.[10]

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[10] *E.g., Lightbourne v. McCollum*, 969 So. 2d 326, 341 (Fla. 2007) (noting, despite concerns FDOC failed to follow protocol in prior executions, the court refused to stay an execution when nothing established the prior executions "caused unnecessary and wanton pain" or involved "torture or a lingering death"); *Jordan v. Mississippi State Executioner*, No. 25-70013, 2025 WL 1752391, at *2 & n.2, *3 (5th Cir. June 24, 2025) (denying a stay of execution despite officials

Where an Eighth Amendment claim alleges the risk of future harm at an execution, "the conditions presenting the risk must be '*sure or very likely* to cause serious illness and needless suffering,' and give rise to 'sufficiently *imminent* dangers.'" *Baze*, 553 U.S. at 50 (quoting *Helling v. McKinney*, 509 U.S. 25, 33, 34–35 (1993)); *Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1260, 1265 (11th Cir. 2014) (noting that mere speculation "cannot substitute for evidence that the use of the drug is sure or very likely to cause serious illness and needless suffering").

Accordingly, Hitchcock's allegations must be legally sufficient to prevail on both prongs of the *Baze-Glossip* test and pierce the strong presumption that FDOC will follow its written protocol for this Court to grant an evidentiary hearing. *See Cole*, 392 So. 3d at 1065 (speculative lethal injection allegations insufficient to meet the *Baze-Glossip* test).

FDOC's protocol does not require contemporaneous or exact record keeping for the pharmaceuticals used on condemned inmates during an execution. It does require that drugs used in an execution

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admitting they had not performed required consciousness checks in prior executions).

not be beyond their expiration date and designates a team member for this task. (R. 435 para. 6*)* (lethal injection protocol requires that a designated execution team member "ensure that the lethal chemicals have not reached or surpassed their expiration dates" and FDLE monitors should be responsible for maintaining "a detailed log" of execution chamber occurrences but not of the pharmaceuticals used); *Troy v. State*, 57 So. 3d 828, 839 (Fla. 2011) (holding the protocol's failure "to require adequate record-keeping" did not give rise to an Eighth Amendment claim). Nor is FDOC required to reduce every aspect of its protocol to writing. *Sims v. State*, 754 So. 2d 657, 666, 668 (Fla. 2000). Florida courts cannot "micromanage the executive branch in fulfilling its own duties relating to executions." *Troy*, 57 So. 3d at 839.

Since the protocol does not require the record keeping Hitchcock relies on, his speculative reliance on ambiguous and heavily redacted records provides even less reason to believe FDOC actually deviated from its protocol.[11] Since inmates have raised

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[11]*Baze,* 553 U.S. at 53–61 (rejecting claims regarding the inadequate administration of the lethal injection protocol, including the risk that the procedures will not be properly followed by the department of corrections).

speculative claims about FDOC records, three additional executions have been carried out without reported incident.

In conclusion, there is nothing presented by Hitchcock that requires this Court to reconsider the etomidate protocol or its prior precedent affirming denial of public records claims relating to FDOC's administration of the protocol. The trial court's decision below was not an abuse of discretion. Accordingly, this Court should affirm the lower court's ruling.

D. Hitchcock fails To Name An Alternative Execution Method

Finally, Hitchcock does not even attempt to identify a "known and available alternative method of execution that entails a significantly less severe risk of pain" and thus fails the second prong of the *Baze-Glossip* test as a matter of law. This Court recently rejected a similar records-based claim in *Trotter,* squarely rejecting the notion that the defendant did not have to name an alternative method of execution. *Trotter*, 428 So. 3d at 73 ("Moreover, because Trotter incorrectly maintains that the *Glossip* requirements do not apply to his claim, he fails to identify an alternative method of

execution."). Hitchcock makes no attempt to distinguish *Trotter*. Rather than allege a "feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain" as required, *Bucklew*, 587 U.S. at 134, Hitchcock simply ignores that well established requirement. As noted, "*all* Eighth Amendment method-of-execution claims" are controlled by *Baze-Glossip*. *Bucklew*, 587 U.S. at 134 (emphasis added); *Baze*, 553 U.S. at 50 (quoting *Helling v. McKinney*, 509 U.S. 25, 33, 34-35 (1993)). The postconviction court correctly concluded that Hitchcock's motion also failed because he did not name an alternative method of execution. (R. 530).

In his motion below, Hitchcock relied on historical execution incidents and protocol reviews fares no better. Past events do not establish a present constitutional violation. Further, following the Angel Diaz execution, Florida revised its lethal injection protocol, which this Court later upheld. *Lightbourne v. McCollum*, 969 So. 2d 326, 352-53 (Fla. 2007); *see also Asay v. State*, 224 So. 3d 695 (Fla. 2017) (upholding Florida's current lethal injection protocol).[12] And

[12] Notably, FDC has successfully implemented its etomidate protocol more than thirty times since its adoption in 2017. *See*

earlier electric chair litigation likewise resulted in investigation and procedural modifications, not invalidation of executions. *See Buenoano v. State*, 565 So. 2d 309 (Fla. 1990).

Indeed, it is unclear what relief Hitchcock seeks from this Court. Rather than identify a known and available alternative, Hitchcock asks this Court to stay his execution and order the release of FDOC records so that he can pursue this claim, presumably without an active warrant. This approach, however, is not what the *Baze-Glossip* test mandates. The *Baze-Glossip* test requires the defendant point to a readily-implemented alternative execution *method* that the State can quickly carry out, not provide a wish-list of abstract reforms and investigations.[13] *See id.* Hitchcock's failure to plead an alternative execution method that would significantly reduce his risk of a painful

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https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present. And, since the FDOC investigated and revamped its lethal injection protocol following the Angel Diaz execution, Florida has successfully implemented its lethal injection protocol some 66 times without mishap.

[13]Hitchcock's nebulous suggestion of an inquiry into FDOC's protocol administration runs afoul of the Supreme Court's admonition that a prisoner cannot succeed on a method-of-execution challenge by merely showing a marginally safer alternative, and that courts should not be transformed into "boards of inquiry" charged with determining "best practices" for executions. *Baze*, 553 U.S. at 51; *see also Muhammad v. State*, 132 So. 3d 176, 197 (Fla. 2013).

death is fatal to his claim. *See Randolph*, 422 So. 3d at 173 (affirming summary denial of a lethal injection claim where the defendant failed to propose a "readily implemented" execution method that "in fact significantly reduces" the "substantial risk of severe pain").

For all these reasons, this Court should affirm summary denial of Hitchcock's challenge to Florida's lethal injection protocol.

ISSUE II

The lower court did not abuse its discretion in denying Hitchcock's claim of actual innocence.

Hitchcock asked the lower court to set aside his death sentence because execution of an innocent man would violate the Eighth Amendment. Hitchcock has raised this same claim numerous times. He contends that despite his initial confession to rape and murder, it was his brother Richard who killed the victim. Hitchcock said as much during his 1977 trial, and his jury convicted him nevertheless. *Hitchcock v. State*, 413 So. 2d 741, 744 (Fla. 1982) (finding evidence that his brother Richard was the killer was "too remote to be relevant"). He advanced this as a newly discovered evidence postconviction claim in 1996. At the evidentiary hearing, Hitchcock's sister Wanda testified that Richard told her he killed Cynthia. The

court denied relief because it found her testimony unworthy of belief (R. 930), a determination this Court later affirmed. *Hitchcock*, 755 So. 2d 638 at 645 (affirming denial of Hitchcock's actual innocence claim because it was not relevant to his resentencing proceeding).

Hitchcock raised the claim, again alleging newly discovered evidence, and presented testimony from a number of family members who all recalled Richard, under various circumstances, having confessed to killing Cynthia. The court found none of Hitchcock's witnesses to be credible, largely because despite the fact that they were members of Hitchcock's family, not one of them stepped forward to corroborate the claim until nearly twenty years after Hitchcock's 1977 conviction, after Hitchcock had been sentenced to death for the third time. The extensive delay in coming forward, the court concluded, weighed heavily against their credibility. (R. 942). This Court affirmed that outcome, specifically noting with approval the lower court's assessment that the witnesses presented by Hitchcock lacked credibility. *Hitchcock v. State*, 991 So. 2d 337, 349 (Fla. 2008) (witnesses who testified that brother Richard confessed to the murder "suffered from an inherent lack of credibility" and the claim was properly rejected as newly discovered evidence for that reason).

Hitchcock now asserts an Eighth Amendment claim and contends that his execution would be cruel and unusual because he is actually innocent, and once again advances several of the same witnesses in support. Aside from the fact that none of his witnesses have ever been deemed credible by any judge who heard them testify, Florida does not recognize actual innocence as a postconviction claim. *Sweet v. State*, 293 So. 3d 448 (Fla. 2020).

To the extent that Hitchcock asserts that refusal to consider actual innocence in this forum violates the Eighth Amendment, this Court has previously held that a standalone actual innocence claim must be raised on direct appeal and summary denial of an actual innocence claim in a postconviction motion does not violate the Eighth Amendment. *Tompkins v. State*, 994 So. 2d 1072 (Fla. 2008).

Hitchcock has not been deprived of his ability to advance this frivolous claim; he has argued it no less than three times without success despite full advantage of evidentiary development.[14] And

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[14] This claim is also untimely. Hithcock presents no new evidence in support of this previously rejected claim. Postconviction claims raised more than a year after the judgment and sentence become final are untimely and must "meet an exception to the time-limit rule-otherwise the claim" should be summarily denied. *Davis v. State*, 417 So. 3d 242, 247 (Fla. 2025) (citing Fla. R. Crim. P. 3.851(d)(2), (e)(2)).

while the State does not disagree, in theory, with his premise that executing an innocent man is cruel and unusual, we are in no danger of any Eighth Amendment violation as Hitchcock is clearly not an innocent man. This claim has been rejected over and over and the lower court's similar rejection of this frivolous claim should be affirmed.

ISSUE III

A STAY OF EXECUTION IS NOT WARRANTED HERE, NOR IS IT GRANTED AS A MATTER OF COURSE.

A stay of execution is not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Florida's standard for a stay of execution requires a showing that "there are substantial grounds upon which relief might be granted." *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2023); *see also Barwick v. State*, 361 So. 3d 785, 791 (Fla. 2023).

Hitchcock's case has been thoroughly litigated in both state and federal courts over the last forty years. The State rejects any notion that Hitchcock is innocent or that any of the previously filed and rejected claims come anywhere near the mark of legal innocence. The State of Florida and the surviving victims of Hitchcock's crimes have

an enormous interest in the finality and timely enforcement of valid criminal judgments and sentences. *Ledford v. Comm'r, GA Dep't of Corr.* 856 F. 3d 1312, 1320 (11th Cir. 2017) (denying an emergency stay of execution in a capital case because the claims were time-barred, not substantial, and noting the State and the victims' interest in the finality of the sentence).

Hitchcock confessed to the rape and murder after his arrest, stating he returned to the house around 2:30 a.m. and entered through a dining room window. He went into the victim's bedroom and raped her and afterwards, when she started to yell, and would not be quiet, he choked her to death and carried her outside and pushed her body into some bushes. *Hitchcock v. State*, 413 So. 2d 741, 743 (Fla. 1982).

This Court should deny the requested stay because Hitchcock's repackaged "cumulative innocence" theory is not cognizable and falls short of any recognized innocence standard. The Supreme Court has made clear that claims of actual innocence operate at most as a narrow gateway requiring new reliable evidence demonstrating that it is more likely than not that no reasonable juror would have convicted him. *Schlup v. Delo*, 513 U.S. 298, 324-327 (1995). Nor

does his case approach the extraordinarily high threshold for any freestanding innocence claim which the Supreme Court has described as requiring truly persuasive proof of innocence. *Herrera v. Collins*, 506 U.S. 390, 417 (1993). Because Hitchcock advances no cognizable claim, no new evidence, and no likelihood of success, the equities weigh decisively against a stay.

CONCLUSION

Based on the authorities and arguments presented herein, this Court should affirm the summary denial of Hitchcock's successive motion for postconviction relief and deny his request for a stay of execution.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of April, 2026, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Eric Pinkard, Chief Assistant CCRC-M, Joshua Chaykin, Cortney Hackett, and Christopher Clemente, Assistants CCRC-M, Capital Collateral Regional Counsel-Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637, **pinkard@ccmr.state.fl.us, chaykin@ccmr.state.fl.us, hackett@ccmr.state.fl.us, clemente@ccmr.state.fl.us, support@ccmr.state.fl.us,** and the Florida Supreme Court, **warrant@flcourts.org, canovak@flcourts.org**.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Bookman Old Style, in compliance with Florida Rule

of Appellate Procedure 9.045(b). This brief contains 7695 words, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2)(B).

/s/ Timothy A. Freeland
Counsel for State of Florida

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX P

Reply Brief to State's Answer Brief on the Merits, SC2026-0574 (April 17, 2026)

Filing # 246212313 E-Filed 04/17/2026 10:19:19 AM

IN THE SUPREME COURT OF FLORIDA
CASE NO: SC2026-0574

JAMES HITCHCOCK,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE _ JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA
Lower Tribunal No. 481976CF001942000AOX

REPLY TO THE STATE'S ANSWER BRIEF ON THE MERITS

CAPITAL CASE - DEATH WARRANT SIGNED

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PRELIMINARY STATEMENT ABOUT THE RECORD

The postconviction record on appeal for the current death warrant litigation consists of one volume and is referenced to as "PCR" followed by the page number.

References to Appellant's Initial Brief filed on April 15, 2026, are cited as "IB/" followed by the page number(s).

References to the Appellee's Answer Brief on the Merits ("Answer Brief") filed on April 16, 2026, are referred to as "AB/" followed by the page number(s).

INTRODUCTION

The Petitioner, James Hitchcock ("Mr. Hitchcock"), relies on arguments presented in his Initial Brief, filed on April 15, 2026; he offers the following Reply to State's Answer Brief on the Merits filed on April 16, 2026. Any arguments not contained herein should not be considered waived, and Mr. Hitchcock relies on the merits raised in his Initial Brief.

ARGUMENT

CLAIM 1:

I. The circuit court abused its discretion in denying Mr. Hitchcock's demands for additional public records from the Florida Department of Corrections ("FDOC") and the Florida Department of Law Enforcement ("FDLE"). The circuit court's abuse of discretion amounted to a violation of Mr. Hitchcock's rights to due process, equal protection, and access to the courts as guaranteed by the U.S. and Florida Constitutions.

Discretion is abused only when judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the circuit court. *State v. Coney*, 845 So. 2d 120, 137 (Fla. 2003) (*quoting*, *White v. State,* 817 So. 2d 799, 806 (Fla. 2002)).

Mr. Hitchcock relies on the arguments raised in his Initial Brief to support his contention that he met the manufactured burden to connect his demands for additional records to a colorable claim. Despite the absence of any "colorable claim" language in the statute, Mr. Hitchcock maintains that his demands not only fulfilled the requirements of the statute, but also the additional, manufactured burden imposed by the agencies and the courts, in violation of his due process and equal protection rights under the Fifth and

Fourteenth amendments to the U.S. Constitution and corresponding provisions under the Florida Constitution.

Although this Court has found, and the Respondent argue, that demands for additional public records must identify a colorable claim to protect against alleged fishing expeditions, any requirement that forces a capital postconviction inmate to overcome additional obstacles is a violation of Mr. Hitchcock's rights under the U.S. and Florida constitutions. The requirement is to identify a colorable claim, not to prove its merits prior to even a case management conference occurring. This very court recognized this in *Willacy v. State*, providing the definition for the term "colorable claim" "follows from the rule's mandate—that requested records be relevant to a postconviction proceeding or reasonably calculated to lead to admissible evidence. In this context, the relevancy of the requested records, or their ability to be reasonably calculated to lead to admissible evidence, is directly measured by their connection to a colorable claim for relief." No. SC2026-0519, 2026 WL 1021168, at *5 (Fla. Apr. 15, 2026).

The circuit committed an abuse of discretion by denying Mr. Hitchcock access to the requested records through the requirement

that capital postconviction inmates identify a colorable claim, despite said requirement not being enumerated in the Florida statutes or rules of criminal procedure. Additionally, the circuit court erred in concluding that Mr. Hitchcock failed to identify a colorable claim. Mr. Hitchcock presented evidence from the *Walls* case[1] that indicate that FDOC has failed to follow their own lethal injection protocols during several recent executions. The requested records are directly connected to a colorable claim for relief. It cannot be logically argued that lethal injection protocol records would not be directly connected to a challenge to Florida's use of lethal injection execution protocol. This is consistent with this Court's recent holding in *Willacy v. State* decided April 15, 2026.

A plain reading of the *Walls* records supports Mr. Hitchcock's concerns, and neither the State nor any involved agency have offered a reasonable alternative explanation to Mr. Hitchcock's reading of the *Walls* records. Furthermore, the existence of questionable entries in the *Walls* records sufficiently overcome any presumption that the agencies are complying with the requisite lethal injection protocol. If

[1] *Walls v. Dixon,* No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025)

Mr. Hitchcock were misreading/misinterpreting the *Walls* records as the Respondent has alleged, then either the agencies and/or the State should be able to offer an acceptable explanation.

The Respondent's Answer Brief cites to this Court's finding in *Willacy v. State*, No. SC2026- 0519, 2026 WL 1021168, at *6 (Fla. Apr. 15, 2026). Mr. Hitchcock argues that he should be allowed the opportunity to present testimony from Dr. Buffington, an expert in pharmacology, regarding the importance of the information requested in Mr. Hitchcock's public records demands. Dr. Buffington's testimony would allow this Court to assess the error in the circuit court's determination that Mr. Hitchcock failed to show how the requested records relate to a colorable claim. The Respondent's citations to past cases that preceded the revelations contained within the *Walls* records are not relevant to this Court's consideration, because the constitutional claims raised in those cases were not based on the same premise.

The continued denial of access to the requested records violates Mr. Hitchcock's rights to due process and access to the courts, because an affirmation of the circuit court's denial would operate to prevent not only Mr. Hitchcock, but also any other capital

postconviction inmate from raising a maladministration claim at any point in the postconviction litigation, in perpetuity.

Furthermore, unlike capital postconviction inmates in other states, Mr. Hitchcock and other similarly situated capital postconviction inmates in Florida are precluded from raising a challenge under the *Baze-Glossip*[2] framework (or any Eighth Amendment challenge). Therefore, because Florida imposes additional requirements for capital postconviction inmates which operate to prevent them from making a *Baze-Glossip* (or any Eighth Amendment challenge), this Court should find that Florida's death penalty/lethal injection scheme, as a whole, is unconstitutional.

The Respondent's reliance on *Lewis v. Casey*, 518 U.S. 343, 354 (1996) is misplaced. The Respondents incorrectly assert that the United States Supreme Court "has long rejected the notion of a constitutional right to discovery founded on access to the courts or due process." AB/20. The Supreme Courts has consistently held that due process requires certain discoverable material. See generally, *Brady v. Maryland*, 373 U.S. 83 (1963). Nonetheless, due

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[2] *Baze v. Rees*, 553 U.S. 35 (2008); *Glossip v. Gross*, 576 U.S. 863 (2015)

process does require that inmates and defendants are given and provided "...with the tools needed to attack sentences directly or collaterally." *Bounds v. Smith*, 430 U.S. 817 (1977). As Mr. Hitchcock argues, meaningful access necessarily includes access to public records.

As the Respondent's Answer Brief states, "[the] requirement [that Mr. Hitchcock's demands be related to a colorable claim] is based on this Court's **interpretation** and application of Rule 3.852 and Section 27.7081, Florida Statutes." (Emphasis added). Unlike other members of the public, the Florida statutes, rules, and case law, require Mr. Hitchcock (and other capital postconviction inmates) to provide a justification for public records requests, thus subjecting him (and other similarly-situated capital postconviction defendants) to a requirement that is not imposed on any other public records seekers, in violation of his right to equal protection.

Florida provides its citizens with the right to access public records. By denying Mr. Hitchcock records via the imposition of requirements for him that other members of the public do not have, he and all other capital postconviction inmates are being treated differently. The requirement that Mr. Hitchcock provide any reason,

under Fla. Stat. § 27.7081, Fla. R. Crim. P. 3.852, or identify a colorable claim, violates his equal protection rights by treating him differently than any other member of the public.

The Respondent argues that Mr. Hitchcock's equal protection rights have not been violated, because although he is treated differently than other members of the public regarding public records, he is provided with an attorney. This position is inapposite and of no moment; it utterly fails to comprehend the totality of the equal protection claim.

A violation of an individual's right to equal protection is not remedied by the mere provision of an attorney. Mr. Hitchcock is provided with an attorney because he is a capital postconviction inmate, not solely for the purpose of remedying violations of his equal protection rights. The remedy for an equal protection violation is not court-appointed and statutorily required counsel – it's similar treatment. The courts do not treat Mr. Hitchcock, as a capital postconviction inmate, similarly to other members of the public when it comes to public records requests. The Respondent cited to *Duncan v. Moore*, 754 So. 2d. 708 (Fla. 2000), which in no way suggests that an equal protections violation is remedied by the provision of counsel.

The Respondent further mischaracterizes Mr. Hitchcock's equal protection claim by arguing that Mr. Hitchcock is treated the same as any other capital postconviction inmate. In fact, Mr. Hitchcock's argument supports the notion that he is being treated the same as other capital postconviction inmates. The problem arises from the disparate treatment of public records requests from ordinary citizens and the public records requests of capital postconviction inmates. Thus, Respondent's reliance on *Ferguson v. Warden, Florida State Prison*, 493 Fed. Appx. 22, 25–26 (11th Cir. 2012) (unpublished) is also misplaced, because Mr. Hitchcock is not arguing he is being improperly treated differently than other capital postconviction inmates.

Mr. Hitchcock's filings have consistently advanced the argument that the violation of his right to equal protection is based on his status as a member of a class that the State and the courts are treating differently than **other members of the public**.

Additionally, the Respondent maintains that Mr. Hitchcock has failed to prove, and will be unable to prove, a "method-of-execution" claim. However, Mr. Hitchcock is not challenging the method of execution but rather the maladministration of the approved methods

in Florida, which is the entire premise of his requests for additional public records and the resulting violation of his constitutional rights. Mr. Hitchcock is not claiming – and has never claimed - that he is currently able to prove a maladministration claim without the records he sought; rather, his claim has always been that because he is being prevented from doing so, he is *unable* to investigate and develop a maladministration claim - despite SCOTUS providing the framework for the claim in the *Baze-Glossip* test.

Mr. Hitchcock cited Justice Sotomayor's published statement on the SCOTUS denial of certiorari in *Trotter v. Florida,*[3] regarding similar public records requests, but he also recognizes that the statement is not binding. Justice Sotomayor's published statement is, however, persuasive and supports Mr. Hitchcock's position that the Florida courts and agencies have placed him in a "Catch-22" regarding access to lethal injection records and the futile attempt to prove a maladministration claim (without records). Although SCOTUS denied certiorari in Mr. Trotter's case, unlike Mr. Hitchcock, Mr. Trotter actually attempted to argue his ability to prove a

[3] *Trotter v. State of Florida, et. al*, 607 U.S. ___ (2026)

maladministration claim, notwithstanding the denial of relevant records. Mr. Hitchcock, to the contrary, argues that the courts and agencies' - through the refusal to provide access to the requested records - are preventing him from raising a maladministration claim.

The Respondent's position that Mr. Hitchcock made no attempt to distinguish the *Trotter* case from his own, is inaccurate. Throughout his warrant litigation through filings and during argument at the hearings on April 2, 2026, and April 9, 2026, Mr. Hitchcock repeatedly distinguished his case from Mr. Trotter's case. The circuit court directly asked postconviction counsel how Mr. Hitchcock's case is distinguishable from *Trotter* during the April 2, 2026, public records hearing, and postconviction counsel stated:

> So, Your Honor, Trotter put forth a claim of an Eighth Amendment violation without having these records to put forth. And so our position is that -- is that we're being deprived access to these records to be able to put forth a claim, Your Honor, an Eighth Amendment claim. And so we are in this Catch-22 position just like Justice Sotomayer mentioned in the Melvin Trotter case, and that was a different claim than what we're making, they made an Eighth Amendment claim. Our position is we're being prevented from making an Eighth Amendment claim. So, ultimately, the cases and claims are different, Your Honor.

PCR/372.

Despite consistently repeating the same explanation regarding the differences between Mr. Hitchcock's and Mr. Trotter's arguments, the Respondent continues to misconstrue and mischaracterize Mr. Hitchcock's claim. Additionally, Mr. Hitchcock has made it clear that his argument is separate and distinct from arguments related to the general unconstitutionality of the lethal injection as a method of execution; rather, Mr. Hitchcock's arguments are narrowly directed at questions over whether the agencies tasked with carrying out the State's executions are following the approved protocol.

The Florida Constitution provides Mr. Hitchcock with a right to access public records; therefore, he is entitled to receive similar treatment as ordinary citizens. There is no rational basis, nor is there a legitimate purpose for subjecting capital postconviction inmates, including Mr. Hitchcock, to disparate treatment. The only possible acceptable explanation for imposing additional requirements on capital postconviction inmates' access to public records would be for the purpose of expediting public records litigation – a purpose which is already served by the requirement that the demands go through postconviction counsel, in combination with the *statutorily specified* timelines related to the public records process. Capital

postconviction attorneys are statutorily prohibited from making public records demands beyond the scope of the representation of their client. Thus, the added requirement that capital postconviction inmates provide a reason for the records they seek, serves no rational or legitimate basis.

II. Reply to the Respondent's position regarding the *Walls* records.

The Respondent argued that Mr. Hitchcock's reliance on the *Walls* records is misplaced, because the *Walls* records do not contain the name of any previously executed defendant or indicate that the drugs were used during execution.

First, if the drugs were not used for executions on dates which correspond with executions, that raises a legitimate inquiry into why FDOC used the drugs on those dates. Secondly, if the State is suggesting that there is no indication that the drugs were removed for the purposes of an execution on dates which correspond with executions, then there exists a legitimate inquiry into what drugs, if any, FDOC used during the execution that occurred on the relevant date. Surely, the State is not suggesting that the drugs were removed for some other purpose than carrying out executions. The State's own

assertions support the need for public record disclosure to resolve questions about FDOC's handling of the drugs and whether the specifically approved drugs were even used.

The State's position completely ignores the reasonable inference that can be drawn from the correlation of the dates and measurements contained within the logs directly with the known dates of executions in Florida (as noted in Mr. Hitchcock's demands for additional public records). The drugs are logged and kept for the purpose of executions; otherwise, the logs are pointless. Neither the State, nor the relevant agencies have offered a "correct" interpretation of the data recorded in the logs; nor have they offered a cogent explanation on the correlation between the data in the records and the dates of the executions that occurred in Florida.

The Respondent's Answer Brief dedicated a full section to the argument that Mr. Hitchcock failed to raise an Eighth Amendment claim under the *Baze-Glossip* test; however, as Mr. Hitchcock repeatedly expressly stated throughout the warrant litigation, without the requested records, Mr. Hitchcock **cannot** meet the requirements for an Eighth Amendment challenge as outlined in *Baze-Glossip*. Based on the arguments Mr. Hitchcock raised

throughout his post-warrant litigation, the only "alternative method of execution" option he could possibly suggest would simply involve the agencies' dedication to following the State's expressly stated and approved lethal injection protocols, using properly stored, non-expired drugs, in the proper amounts. The courts' denial of access to the requested records sets the dangerous precedent that the State of Florida can execute the condemned using unapproved and untested methods, without consequence, check, or balance.

CLAIM 2:

I. The circuit court abused its discretion by denying Mr. Hitchcock's claim of actual innocence without consideration of the compelling case of innocence.

In the Answer Brief, the Respondent explicitly noted that they do not disagree with the notion that the execution of an innocence man is cruel and unusual. It is the Respondent's position, however, that Mr. Hitchcock is not innocent. The only alleged evidence of Mr. Hitchcock's guilt is his recanted confession – a confession offered by a 20-year-old man, who was suffering from depression, guilt-ridden, and operating under a self-imposed, misplaced sense of allegiance to his brother – following days of isolated imprisonment and repeated interrogations. It was an abuse of discretion to deny Mr. Hitchcock's

claim that his execution would violate the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution and corresponding provisions of the Florida Constitution, since the court did not evaluate Mr. Hitchcock's claim on the merits of whether he is actually innocent.

On the merits of this claim, the Respondent argues that, at no point in Mr. Hitchcock's postconviction appellate litigation did the circuit court find Mr. Hitchcock's witnesses credible, which the circuit court largely attributed to the witnesses' delays in coming forward with information of Mr. Hitchcock's innocence. The circuit court's credibility findings related to (the lack of credibility of) Mr. Hitchcock's witnesses are unreasonable for multiple reasons. Although the trial court took issue with the witnesses' familial relationship to Mr. Hitchcock, the trial court ignored the fact that those family members were also related to Richard Hitchcock ("Richard")[4], the man who made multiple confessions to the murder of Cynthia Driggers and was known to abuse female relatives.

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[4] It should be noted that Mr. Hitchcock's successive postconviction motion notes Wanda Green ("Ms. Green") is Richard's stepdaughter. This was an error and it should be noted that Ms. Green is Mr. Hitchcock and Richard's sister.

Despite the circuit court's findings, no jury has ever heard the compelling evidence of innocence revealed during Mr. Hitchcock's postconviction proceedings. If faced with the evidence of Mr. Hitchcock's innocence that has been revealed since his conviction, no reasonable juror would have convicted him. No reasonable juror would convict someone when presented with the testimony of multiple witnesses who are willing to state, under oath, that another person confessed to the murder instead. See *Schlup v. Delo*, 513 U.S. 298, 324-327 (1995). Mr. Hitchcock's case meets the threshold for freestanding innocence claims as set by SCOTUS in *Herrera v. Collins*, 506 U.S. 390, 417 (1993).

The circuit court's prior finding regarding the (lack of) credibility of the witnesses ignored the hardship a person faces when deciding to accuse a family member of murder. Additionally, the circuit court failed to consider that all the witnesses testified to facing attacks and threats from Richard. Therefore, it is entirely reasonable that the witnesses were afraid of retribution from Richard if they came forward, and the State failed to take action, or if Mr. Hitchcock's attorneys were unsuccessful in overturning his conviction. Even if Mr. Hitchcock's conviction had been overturned, that would not have

assured the witnesses any safety, because the State has always refused to accept the possibility that it was Richard – not James – who murdered Cynthia Driggers. The witnesses came forward after Richard's death, when they would no longer be forced to fear for their safety. As such, this Court should reconsider.

Understanding that the Respondent's position and the circuit court's determination that Mr. Hitchcock's claims of actual innocence are procedurally barred, Mr. Hitchcock stands firm on the argument advanced in his Initial Brief, that denying consideration of this claim due to a procedural bar, amounts to a manifest injustice. There can be no greater manifest injustice than the execution of an innocent man. The Respondent argues that there is no danger of executing an innocent man in this case, but the State's case relies on a confession that was recanted when Mr. Hitchcock testified under oath and told the jury what happened. Other than Mr. Hitchcock's confession, the State cannot point to any other evidence of his guilt that Mr. Hitchcock's testimony does not explain.

Mr. Hitchcock is innocent. His execution would be a manifest injustice, and this Court should intervene.

CONCLUSION AND RELIEF SOUGHT

Mr. Hitchcock has put forward substantial grounds upon which relief may be granted, and this Court should grant a stay and order the disclosure of public records. Additionally, this Court should grant a stay for the circuit court to consider Mr. Hitchcock's claim of actual innocence on the merits.

For Claim 1, Mr. Hitchcock has established that his demands for additional public records from FDOC and FDLE demonstrated relevance to a colorable claim, are related to the current postconviction proceedings, and are reasonably calculated to lead to the discovery of admissible evidence, rebutting the presumption that FDOC does and will comply with its own protocols. The requested records are specifically listed and are neither overly broad nor unduly burdensome. The agencies should be keeping the records up to date as a matter of their course of business, duties, and the protocol, and should have no issues with obtaining and disclosing the records in this age of technology.

The records sought are necessary for Mr. Hitchcock to support a timely claim that FDOC's failure to follow the lethal injection protocols is unconstitutional. The circuit court should conduct an in-

camera inspection and release records that are exempt and/or confidential according to the statute, redacting any portions necessary to exclude information that would suggest identity of the executioners and the suppliers of the lethal injection drugs.

For Claim 2, Mr. Hitchcock has put forward a compelling case of actual innocence that would render his execution constitutionally intolerable under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. Procedural bars should not prevent consideration of the cumulative review of Mr. Hitchcock's innocence and said denial would be a manifest injustice. There is no greater manifest injustice than an innocent man being executed.

WHEREFORE, Mr. Hitchcock asks this Court for an Order directing the lower court to grant Mr. Hitchcock's demands for additional public records from FDOC and FDLE. Additionally, Mr. Hitchcock requests an order allowing an evidentiary hearing for Claims 1 and 2 of his successive postconviction motion filed on April 7, 2026, upon remand.

If this matter cannot be resolved before April 30, 2026, Mr. Hitchcock asks this Court to stay his execution until the requested records have been received; Mr. Hitchcock has a reasonable amount

of time to review the records and consult with an expert; draft and file a successive postconviction motion; and for the circuit court and/or this Court to have a reasonable amount of time to rule on the postconviction motion.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Counsel certifies that this Reply Brief is produced in Bookman Old Style 14-point font in compliance with the requirements of Florida Rules of Appellate Procedure 9.100. The word count is 3,836.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of April, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court using the Florida Courts e-portal filing system, which will send a notice of electronic filing to the following: The Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **99orange@ninthcircuit.org**; the Honorable Keith Carsten, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **19orange@ninthcircuit.org**; Timothy A Freeland, Special Counsel, Assistant Attorney General, and Jennifer A. Davis, Senior Assistant Attorney General,

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/s/ Joshua P. Chaykin
Joshua P. Chaykin
Counsel for Appellant

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX Q

"Execution by Lethal Injection Procedures," dated Feb. 18, 2025.

FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary

501 SOUTH CALHOUN STREET
TALLAHASSEE, FLORIDA 32399-2500
FDC.MYFLORIDA.COM

EXECUTION BY LETHAL INJECTION PROCEDURES

PURPOSE: To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

APPLICATION: This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

DEFINITIONS:

(1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.

(2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.

(3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.

(4) **Minister of religion**, where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor's Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a

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review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

(5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

SPECIFIC PROCEDURES:

(1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.

(2) **Selection of the Executioners:**

(a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.

(b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.

(3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved

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staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

(a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.

(f) The team warden shall select other execution team members to carry out the following tasks:

1. Showering and preparation of the inmate.
2. Ensuring that the equipment necessary for an execution is in proper working order.
3. Escorting the inmate from his/her cell to the execution chamber.
4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.

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5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minster of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

(4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

(a) Issues related to problems with equipment needed to carry out an execution.

(b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.

(c) The inmate is not rendered unconscious after the administration of the etomidate injection.

(d) Combative inmate.

(e) Incapacity of any execution team member or executioner.

(f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.

(g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.

(h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.

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(5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) **FDLE Monitors:**

(a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.

(b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.

(c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) **Approximately One (1) Week Prior to Execution:**

(a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.

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(b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) **On the Day of Execution:**

(a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars ($40) or less, is available at the institution, and is approved by the food service director.

(b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

(c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.

(d) A designated execution team member will ensure that the PA system is fully functional.

(e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.

(f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:

(1) Etomidate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

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(2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who

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prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

(h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

(i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.

(j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.

(k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) **Approximately Thirty (30) Minutes Prior to Execution:**

(a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.

(b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.

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(c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.

(d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.

(e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

(f) Designated members of the execution team will secure the restraining straps.

(g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.

(h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.

(i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.

(j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) **Approximately Fifteen (15) Minutes Prior to Execution:**

(a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.

(b) Authorized media witnesses will be secured in the witness room of the execution chamber.

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(c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.

(d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.

(e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.

(f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

(a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.

(b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.

(c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:

(1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

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(2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).

(5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.

(6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension

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set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.

(d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.

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(e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.

(f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.

(g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.

(h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

(i) The designated team member will close the window covering to the witness gallery.

(j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

(a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.

(b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.

(c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.

(d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.

(e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.

(f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

(a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.

(b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.

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(c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

(15) **Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Richard D. Dixon

RICKY D. DIXON
SECRETARY

2/18/2025

DATE

501 SOUTH CALHOUN STREET
TALLAHASSEE, FLORIDA 32399-2500
FDC.MYFLORIDA.COM

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX R

Frank Walls FDOC Records

Part 1 of 2

DRUG NAME: Etomidate 2mg/mL (20mg/10mL) PACKAGE SIZE: 10 x 10mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/24/25	[redacted]		3/2027	[redacted]	+100	100

PET. APP. 586

DRUG NAME Etomidate 2mg/10ml PACKAGE SIZE 10x10ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
9-30-19	[redacted]		06-2021	[redacted]	+ 100 X	100
6-14-19			June 202		+ 100 X	200
8-27-20			06-2021		+ 160 X	
8-27-20			01-2022		+ 40 X	400
9-11-20			06-2021		+ 60 X	460
12-14-20			06-2021		+ 30	490
12-14-20			01-2022		+ 110 ✓	600
6-28-21					- 450	150
8-06-21			07-2022		+ 120 X	270
2-3-22			01-2022		- 150	120
12-08-22			07-2022		- 120	—0—
2-20-23			11-2024		+ 40	40
3-02-23			12-2024		+ 50	90
3-06-23			12/2024		+ 50	140
1-3-25			11-2024		-40	100
1-3-25			12-2024		-50	50
1-3-25			11-2024		-50	0
4/21/25			01-2027		+100	100

PET. APP. 587

DRUG NAME: Etomidate 2mg/mL (40mg/20mL) **PACKAGE SIZE:** 10 x 20mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/24/25	[redacted]		3/2027	[redacted]	+ 100	100

PET. APP. 588

DRUG NAME Etomidate 40mg/20mL PACKAGE SIZE 10x20mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
4-23-25	Balance From Previous Page			[redacted]		330
4-8-25	[redacted]		5-25		-10	320
5-1-25			5-25		-10	310
5-15-25			5-25		-10	300
5-23-25			1-27		+100	400
5-29-25			5-25		-10	390
6/12/25			6-25		-10	380
6/25/25			6-25		-50	330

PET. APP. 589

DRUG NAME Potassium Acetate 2mEq/mL 20mL PACKAGE SIZE 25x20mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/14/23	Balance					361
6/15/23	[redacted]	[redacted]	6/2023	[redacted]	-12	349
7/19/23			06/2023		-2	347
9/3/23			12/2024		-12	335
10/3/23			10/2025		-47	288
10-3-23			12/2024		-12	276
8-29-24			12/2024		-12	264
1-3-2025			12-2024		-64	200
2-13-25			10-2025		-12	188
3/20/25			10-2025		-12	176
3/18/25			11/30/26		+25	201
3/18/25			9/30/26		+50	251
4/7/25			9/30/26		+25	276
4/7/25			4/30/27		+50	326
4/8/25			10-2025		-12	314
4/16/25			9/30/26		-25	289
5/1/25			10-2025		-12	277
5/15/25			10-2025		-12	265
6/12/25			10-2025		-7	258
6/25/25			10-2025		-17	241
7/16/25			10-2025		-12	229

DRUG NAME: Potassium Acet. 2mEq/mL PACKAGE SIZE: 25 x 20mL vials

NDC# [redacted]

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	1 vial = #1 RECEIVED/USED (+/-)	BALANCE
5/23/25	[redacted]		12/2026	[redacted]	+ 100	100

PET. APP. 591

DRUG NAME ROCURONIUM 100mg/10ml PACKAGE SIZE 10 X 10 ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
3-07-24	[redacted]	[redacted]	JAN 2025	[redacted]	+ 10	10
3/11/24			JUN 2025		+ 80	90
1-3-2025			03/2026		+30	120
3-6-2025			03/2026		+ 100	220
3/20/25			JUN 2025		- 20	200
4-2-25			Mar 2026		+ 200	400
4-8-25			JUN 2025		-20	380
4-16-25			JUN 2025		-10	370
5/1/25			JUN 2025		-20	350
4/23/25			10/2026		+30	380
4/23/25			3/2026		+70	450
5/23/25			10/2026		+100	550
6/9/25			JUN 2025		- 10	540
6/12/25			JUN 2025		-10	530
6/12/25			3/2026		-10	520
6/25/25			3/2026		-10	510
7/16/25			3/2026		-20	490

DRUG NAME ROCURONIUM 50 mg / 5 ml PACKAGE SIZE 10 x 5 ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
3-07-24	[redacted]		JUN 2025	[redacted]	+ 40	40
1-3-2025			Sep 2025		+90	130
4-2-2025			APR 2026		+80	210
4-2-2025			AUG 2026		+40	250
5-15-2025			JUN 2025		-40	210

DRUG NAME ROCURONIUM 50mg/5ml PACKAGE SIZE 10 vial of 5ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
8-15-23	[redacted]		01. 2026	[redacted]	+ 100	100

PET. APP. 594

DRUG NAME: Sodium CL 0.9% (BAG) PACKAGE SIZE: 10 x 1000 mL

NDC# [redacted]

(1 bag = #1)

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5/23/25	[redacted]		2/2026	[redacted]	+20	20

PET. APP. 595

DRUG NAME: Sodium CL 0.9% (BAG) **PACKAGE SIZE:** 12 x 1000mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5/7/25	[redacted]		01/2027	[redacted]	+ 12	12

PET. APP. 596

DRUG NAME Sodium Cl 0.9% PACKAGE SIZE 12 x 1000 ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5-20-2021	[redacted]	[redacted]	9-2023	[redacted]	+ 24	24
3-15-2023			4-2025		+ 12	36
5/3/23			9/2023		-4	32
10-2-23			9-2023		- 20	12
03-01-24			01-2026		+ 12	24
8-29-24			4-2025		-2	22
2-13-25			4-2025		-2	20
3-17-25			2-2027		+24	44
3-17-25			2-2027		+24	44
3/20/25			1-2026		-2	42
4/8/25			4-2025		-8	34
4/8/25			1-2026		-4	30
5/1/25			1-2026		-2	28
5/15/25			1-2026		-2	26
5/29/25			7-2027		+12	38 ✓
6/2/25			8-2027		+24	62 ✓
6/12/25			1-2026		-2	60

DRUG NAME Sodium Chloride 0.9% PACKAGE SIZE 25 x 20mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
8/14/24	[redacted]		Oct-01-2025	[redacted]	+50	+50
7-13-25			Oct-01-2025		-6	44
~~3-6-25~~			~~Jul-31-202~~		~~+25~~	~~69~~ Incorrect Invoice # -ML
3-6-25			Jul-31-202		+25	69
3/20/25			10-01-202		-6	63
4/2/25			07-31-202		+50	113
4/8/25			10-01-2025		-6	107
5/1/25			10-01-2025		-6	101
5/15/25			10-01-2025		-6	95
5/23/25			7-31-202		+50	145 ✓
6/12/25			Jul-31-202		-6	139
6/25/25			10-01-2025		-6	133
7/16/25			10-01-2025		-7	126

DRUG NAME HYDROXYZINE HCl 25mg/ml PACKAGE SIZE 25 x 1 ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
02-01-2024	[redacted]		MAR 2025	[redacted]	+ 25	25
8-29-2024			Mar 2025		- 2	23
1-3-2025			08-2026		+25	48
2-13-25			Mar 2025		-3	~~45~~ 45
3/20/25			Mar 2025		-3	42
4-2-25			Aug 2026		+25	67
4/8/25			Aug 2026		-4	63
4/16/25			MAR 2025		-17	46
5/1/25			Aug 2026		-4	42
5/15/25			Aug 2026		-3	39
5/23/25			Aug 2026		+25	64
6/12/25			Aug 2026		-3	61
6/25/25			Aug 2026		-2	59
7/16/25			Aug 2026		-2	57

DRUG NAME Lidocaine Hcl 1% 10ml PACKAGE SIZE 25 x 10ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
1-3-2025	[redacted]	[redacted]	Sep 2026	[redacted]	+25	25
3/20/25			Sep 2026		-2	23
4-08-25			Sep 2026		-2	21
5/1/25			Sep 2026		0	21

[redacted]

[redacted]

INVOICE DATE 05/07/2025
PO
ORDER DATE 03/05/2025
SHIP DATE 05/07/2025 **PIECES INVOICED** 1

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			[redacted]													
			1	1	1		[redacted]	SODIUM CL IS 0.9% 12X1000ML LF ✓	12X10 IS			[redacted]	EXP: 1/27 [redacted]	62.83	62.83	[redacted]

SUMMARY

TOTAL RX	62.83
TOTAL OTC	0.00
NET AMOUNT	62.83

[redacted]

[redacted]

[redacted]

SUB TOTAL	62.83
GRAND TOTAL	**62.83**
TOTAL DUE BY	**06/06/2025**

PET. APP. 601

[redacted]

INVOICE DATE 05/23/2025
PO
ORDER DATE 05/22/2025
SHIP DATE 05/23/2025 PIECES INVOICED 29

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	DMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]																
			2	2	2 ✓			SODIUM CL IS 0.9% 10X1000ML [redacted]	10X10	IS		EXP: 2/26		26.82	53.64	
			4	4	4 ✓			POTASS ACET SD 2MEQ/ML25X20ML FTV [redacted]	25X20	SD		EXP: 12/26		123.34	493.36	
			10	10	10 ✓			ROCURONIUM MD 10MG/ML 10X10ML [redacted]	10X10	MD		EXP: 10/26		41.29	412.90	
			10	10	10 ✓			ETOMIDATE SD 2MG/ML 10X20ML [redacted]	10X20	SD		EXP: 1/27		39.35	393.50	
			1	1	1 ✓			HYDROXYZ HCL SD 25MG/ML 25X1ML [redacted]	25X1M	SD		EXP: 8/26		441.59	441.59	
			2	2	2 ✓			SODIUM CL SF 0.9% 25X20ML [redacted]	25X20	SF		EXP: 7/31/26		22.24	44.48	

----------SUMMARY----------

TOTAL RX	1,839.47
TOTAL OTC	0.00
NET AMOUNT	1,839.47

[redacted]

[redacted]

[redacted]

SUB TOTAL	1,839.47
GRAND TOTAL	1,839.47
TOTAL DUE BY	06/22/2025

PET. APP. 602

[redacted]

[redacted]

INVOICE DATE 05/29/2025
PO
ORDER DATE 03/05/2025
SHIP DATE 05/29/2025 PIECES INVOICED 1

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			1	1	1	[redacted]		SODIUM CL IS 0.9% 12X1000ML EXC	12X10	IS		✓	[redacted] EXP: 7/27	29.99	29.99	[redacted]

----------SUMMARY----------

TOTAL RX	29.99
TOTAL OTC	0.00
NET AMOUNT	29.99

[redacted]

[redacted]

SUB TOTAL	29.99
GRAND TOTAL	29.99
TOTAL DUE BY	06/28/2025

PET. APP. 603

[redacted]

[redacted]

INVOICE DATE 06/24/2025
PO
ORDER DATE 04/01/2025
SHIP DATE 06/24/2025 **PIECES INVOICED** 20

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			[redacted]					[redacted]					[redacted]			
			10	10	8	X	[redacted]	ETOMIDATE SD 2MG/ML 10X20ML	10X20	SD		[redacted]	EXP: 3/27	41.96	335.68	[redacted]
			[redacted]													
			10	10	8	X		ETOMIDATE SD 2MG/ML 10X10ML	10X10	SD			[redacted]	30.03	240.24	
			[redacted]										> EXP: 3/27			
			10	10	2	X		ETOMIDATE SD 2MG/ML 10X10ML	10X10	SD				30.03	60.06	
			10	10	2	X		ETOMIDATE SD 2MG/ML 10X20ML	10X20	SD			[redacted]	41.96	83.92	

SUMMARY

TOTAL RX	719.90
TOTAL OTC	0.00
NET AMOUNT	719.90

EXP: 3/27

[redacted]

[redacted]

SUB TOTAL	719.90
GRAND TOTAL	**719.90**
TOTAL DUE BY	**07/24/2025**

PET. APP. 604

[redacted]

[redacted]

INVOICE DATE 06/02/2025
PO
ORDER DATE 04/01/2025
SHIP DATE 06/02/2025 PIECES INVOICED 2

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UO M	DESCRIPTION	SIZE	FORM	CLAS:	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			2	2	2	[redacted]		SODIUM CL IS 0.9% 12X1000ML EXC	12X10	IS		[redacted]	EXP 8/27	29.99	59.98	[redacted]

----------SUMMARY----------

TOTAL RX	59.98
TOTAL OTC	0.00
NET AMOUNT	59.98

[redacted]

[redacted]

[redacted]

SUB TOTAL	59.98
GRAND TOTAL	59.98
TOTAL DUE BY	07/02/2025

PET. APP. 605

No. _____

In the Supreme Court of the United States

JAMES HITCHCOCK,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: April 30, 2026, at 6:00 PM ET

APPENDIX S

Frank Walls FDOC Records

Part 2 of 2

DRUG NAME: Etomidate 2mg/mL Package Size: 10 x 10 mL Page: 1

[redacted] PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
6/24/25	[redacted]			3/31/2027	+ 100	100

PET. APP. 607

DRUG NAME: Etomidate 20mg/10mL **Package Size:** 10 x 10mL [redacted] **Page:** 2

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
4/21/25	[redacted]			1/31/2027	+100	100

PET. APP. 608

DRUG NAME: Etomidate 2mg/mL (20mg) Package Size: 10 x 10mL

[redacted]

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
9/22/2025	[redacted]			04/30/2027	+48	48
9/22/2025				04/30/2027	+2	50

PET. APP. 609

DRUG NAME: Etomidate 2mg/mL (40mg/20mL) Package Size: 10 x 20mL

[redacted]

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
6/24/25	[redacted]			3/31/2027	+100	100
7/28/25				3/31/2027	+50	150

PET. APP. 610

DRUG NAME: Etomidate 40mg/20mL **Package Size:** 10 x 20mL (10 vials) **Page:** 2

[redacted]

PREVIOUS BALANCE: 330

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
4/8/25	[redacted]			5/31/2025	-10	320
5/1/25				5/31/2025	-10	310
5/15/25				5/31/25	-10	300
5/23/25				1/31/2027	+100	400
5/29/25				5/31/2025	-10	390
6/12/25				6/30/2025	-10	380
6/25/25				6/30/2025	-50	330
7/28/25				7/31/2025	-10	320
8/1/25				7/31/2025	-20	300
8/19/25				1/31/2025	-10	290
8/29/25				1/31/2025	-10	280
9/17/25				1/31/2025	-10	270
9/30/25				1/31/2025	-10	260

DRUG NAME: Hydroxyzine HCL 25mg/mL Package Size: 25 x 1 mL

[redacted]

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
2/1/2024	[redacted]			03/31/2025	+ 25	25
8/29/2024				3/31/2025	- 2	23
1/3/2025				8/31/2026	+ 25	48
2/13/2025				3/31/2025	- 3	45
3/20/2025				3/31/2025	- 3	42
4/2/2025				8/31/2026	+ 25	67
4/8/2025				8/31/2026	- 4	63
4/16/2025				3/31/2025	- 17	46
5/1/2025				8/31/2026	- 4	42
5/15/2025				8/31/2026	- 3	39
5/23/2025				8/31/2026	+ 25	64
6/12/25				8/31/2026	- 3	61
6/25/25				8/31/2026	- 2	59
7/16/25				8/31/2026	- 2	57
7/28/25				8/31/2026	+ 25	82
7/28/25				8/31/2026	- 2	80
8/19/25				8/31/2026	- 2	78
8/29/25				8/31/2026	- 2	76
9/17/25				8/31/2026	- 2	74
9/30/25				8/31/2026	- 2	72

DRUG NAME: Lidocaine HCL 1% (10mL) Package Size: 25 x 10mL

[redacted]

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
1/3/25	[redacted]			09/30/2026	+25	25
3/20/25				9/30/2026	-2	23
4/8/25				9/30/2026	-2	21
7/28/25				9/30/2027	+50	71

PET. APP. 613

DRUG NAME: Potassium Acetate 2mEq/ml Package Size: 25 x 20mL

[redacted]

Page: 4

PREVIOUS BALANCE: 193

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
9/17/25	[redacted]			10/31/2025	-12	181
9/30/25				10/31/2025	-12	169

PET. APP. 614

DRUG NAME Potassium Acetate 2mEq/mL 20mL PACKAGE SIZE 25x20mL

[redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/14/23	Balance					361
6/19/23			6/2023		-12	349
7/19/23			06/2023		-2	347
9/3/23			12/2024		-12	335
10/3/23			10/2025		-47	288
10-3-23			12/2024		-12	276
8-29-24			12/2024		-12	264
1-3-2025			12-2024		-64	200
2-13-25			10-2025		-12	188
3/20/25			10-2025		-12	176
3/18/25			11/30/26		+25	201
3/18/25			9/30/26		+50	251
4/7/25			9/30/26		+25	276
4/7/25			4/30/27		+50	326
4/8/25			10-2025		-12	314
4/16/25			9/30/26		-25	289
5/1/25			10-2025		-12	277
5/15/25			10-2025		-12	265
6/12/25			10-2025		-7	258
6/25/25			10-2025		-17	241
7/16/25			10-2025		-12	229
7/28/25			10-2025		-12	217
8/19/25			10-2025		-12	205
8/29/25			10-2025		-12	193

DRUG NAME: Potassium Acet. 2mEq/mL **Package Size:** 25 x 20mL [redacted] **Page:** 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
5/23/25	[redacted]			12/31/2026	+100	100
7/28/25				12/31/2026	+125	225

PET. APP. 616

DRUG NAME: Potassium Act. 2 mEq/mL Package Size: 25 x 50mL

[redacted]

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
7/28/25	[redacted]			10/31/2026	+ 50	50

PET. APP. 617

DRUG NAME Sodium Chloride 0.9% [redacted] PACKAGE SIZE 25 x 20mL

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
8/14/24	[redacted]	[redacted]	Oct-01-2025	[redacted]	+50	+50
7-13-25	[redacted]	[redacted]	Oct-01-2025	[redacted]	-6	44
~~3-6-25~~	[redacted]	[redacted]	~~Jul-31-202~~	[redacted]	~~+25~~	~~69~~ Incorrect Invoice # [redacted]
3-6-25	[redacted]	[redacted]	Jul-31-202	[redacted]	+25	69
3/20/25	[redacted]	[redacted]	10-01-202	[redacted]	-6	63
4/2/25	[redacted]	[redacted]	07-31-2026	[redacted]	+50	113
4/8/25	[redacted]	[redacted]	10-01-2025	[redacted]	-6	107
5/1/25	[redacted]	[redacted]	10-01-2025	[redacted]	-6	101
5/15/25	[redacted]	[redacted]	10-01-2025	[redacted]	-6	95
5/23/25	[redacted]	[redacted]	7-31-2026	[redacted]	+50	145
6/12/25	[redacted]	[redacted]	Jul-31-202	[redacted]	-6	139
6/25/25	[redacted]	[redacted]	10-01-2025	[redacted]	-6	133
7/16/25	[redacted]	[redacted]	10-01-2025	[redacted]	-7	126
7/28/25	[redacted]	[redacted]	10-31-2026	[redacted]	+50	176
7/28/25	[redacted]	[redacted]	10-01-2025	[redacted]	-6	170
8/19/25	[redacted]	[redacted]	10-01-205	[redacted]	-1	169
8/19/25	[redacted]	[redacted]	7-31-2026	[redacted]	-5	164
8/28/25	[redacted]	[redacted]	7-31-2026	[redacted]	-6	158
9/17/25	[redacted]	[redacted]	7-31-2026	[redacted]	-6	152
9/30/25	[redacted]	[redacted]	7-31-2026	[redacted]	-6	146

DRUG NAME: Sodium CL 0.9% (BAG) Package Size: 10 x 1000mL Page: 1

[redacted] PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
5/23/25	[redacted]			2/28/2026	+ 20	20

PET. APP. 619

DRUG NAME: Sodium CL 0.9% (BAG) Package Size: 12 x 1000mL [redacted]

Page: 1

PREVIOUS BALANCE: ~~0~~

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
5/7/2025	[redacted]			01/31/2027	+12	12

PET. APP. 620

DRUG NAME Sodium Cl 0.9% [redacted] PACKAGE SIZE 12 x 1000 ml

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5-20-2021	[redacted]	[redacted]	9-2023	[redacted]	+ 24	24
3-15-2022			4-2025		+ 12	36
5/3/23			9/2023		-4	32
10-2-23			9-2023		- 20	12
03-01-24			01-2026		+ 12	24
8-29-24			4-2025		-2	22
2-13-25			4-2025		-2	20
~~3-17-25~~			~~2-2027~~		~~+24~~	~~44~~
3-17-25			2-2027		+24	44
3/20/25			1-2026		-2	42
4/8/25			4-2025		-8	34
4/8/25			1-2026		-4	30
5/1/25			1-2026		-2	28
5/15/25			1-2026		-2	26
5/29/25			7-2027		+12	38
6/2/25			8-2027		+24	62
6/12/25			1-2026		-2	60

DRUG NAME: Rocuronium 50mg/5mL Package Size: 10 x 5mL Page: 1

[redacted]

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
3/7/2024	[redacted]			06/31/2025	+ 40	40
1/3/2025				9/30/2025	+ 90	130
4/2/25				4/30/2026	+ 80	210
4/2/25				8/30/2026	+ 40	250
5/15/25				6/31/2025	− 40	210
7/28/25				10/31/2026	+360	570
8/19/25				9/30/2025	−40	530
8/29/25				9/30/2025	−40	490
9/17/25				9/30/2025	−10	480

PET. APP. 622

DRUG NAME: Rocuronium 50mg/5mL Package Size: 10 x 5mL

[redacted]

Page: 1

PREVIOUS BALANCE: ~~0~~

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
8/15/2023	[redacted]			01/31/2026	+100	100

PET. APP. 623

DRUG NAME: Rocuronium 100mg/10mL Package Size: 10 x 10mL (10 per box) Page: 1

[redacted] PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
3/7/24	[redacted]			06/31/2025	+ 10	10
3/11/24				06/31/2025	+ 80	90
1/3/2025				3/31/2026	+ 30	120
3/6/25				3/31/2026	+ 100	220
3/20/25				6/31/2025	- 20	200
4/2/25				3/31/2025	+ 200	400
4/8/25				6/31/2025	- 20	380
4/16/25				6/31/2025	- 10	370
4/23/25				10/31/2026	+ 30	400
4/23/25				3/31/2026	+ 70	470
5/1/25				6/31/2025	- 20	450
5/23/25				10/31/2026	+ 100	550
6/9/25				6/31/2025	-10	540
6/12/25				6/31/2025	-10	530
6/12/25				3/31/2026	-10	520
6/25/25				3/31/2026	-10	510
7/16/25				3/31/2026	-20	490
7/28/25				10/31/2026	+240	730
7/28/25				3/31/2026	- 20	710
7/28/25				10/31/2026	-10	700
9/17/25				3/31/2026	-15	685
9/30/25				3/31/2026	-20	665

[redacted]

[redacted]

INVOICE DATE 07/28/2025 [redacted]
PO
ORDER DATE 07/25/2025 [redacted]
SHIP DATE 07/28/2025 **PIECES INVOICED** 77

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
[redacted]			[redacted]				[redacted]						[redacted]			[redacted]
			5	5	4			POTASS ACET SD 2MEQ/ML25X20ML FTV	25X20	SD			EXP: 12/26	77.38	309.52	
			[redacted]													
			24	24	21			ROCURONIUM MD 10MG/ML 10X10ML	10X10	MD			10/26	21.66	454.86	
			[redacted]													
			24	24	3			ROCURONIUM MD 10MG/ML 10X10ML	10X10	MD			10/26	21.66	64.98	
			36	36	22			ROCURONIUM MD 10MG/ML 10X5ML	10X5M	MD			10/26	20.48	450.56	
			[redacted]													
			36	36	14			ROCURONIUM MD 10MG/ML 10X5ML	10X5M	MD			10/26	20.48	286.72	
			[redacted]													
			5	5	5			ETOMIDATE SD 2MG/ML 10X20ML	10X20	SD			3/27	41.73	208.65	
			1	1	1			HYDROXYZ HCL SD 25MG/ML 25X1ML	25X1M	SD			8/26	459.02	459.02	
			2	2	2			LIDOCAINE HCL MD 1% 25X10ML	25X10	MD			4/27	18.93	37.86	
			5	5	1			POTASS ACET SD 2MEQ/ML25X20ML FTV	25X20	SD			12/26	77.38	77.38	
			2	2	2			POTASS ACET SD 2MEQ/ML25X50ML FTV	25X50	SD			10/26	254.65	509.30	
			2	2	2			SODIUM CL SF 0.9% 25X20ML	25X20	SF			10-31-26	54.38	108.76	

SUMMARY

TOTAL RX	2,967.61
TOTAL OTC	0.00
NET AMOUNT	2,967.61

[redacted]

SUB TOTAL	2,967.61
GRAND TOTAL	**2,967.61**
TOTAL DUE BY	**08/27/2025**

Invoice

[redacted]

Invoice Date: 9/18/2025

[redacted]

Order Date 9/15/2025

[redacted]

Customer P.O.	Terms: Due Date	Account Manager:	Ship VIA	Customer Number:
[redacted]	Net 30: 10/18/2025	[redacted]	GROUND	[redacted]

NDC#	Ordered	Shipped	Remaining	Price Each	Amount
[redacted]	50.00	50.00	0.00	69.00	3,450.00

ETOMIDATE 20MG SDV 10X10ML

[redacted]

Expiration date: 4/30/2027 — Lot Qty: 48.00

Expiration date: 4/30/2027 — Lot Qty: 2.00

[redacted]

[redacted]

Net Invoice:	3,450.00
Less Discount:	0.00
Freight:	36.49
Sales Tax:	0.00
Invoice Total:	3,486.49