

No. 25-7255

**IN THE
SUPREME COURT OF THE UNITED STATES**

JAMES ERNEST HITCHCOCK,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

**BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR APRIL 30, 2026, AT 6:00 P.M.**

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CAPITAL CASE
QUESTION PRESENTED

In 1976, James Hitchcock, recently released from an Arkansas prison and with nowhere else to live, moved in with his brother's family in Florida. Less than four weeks later, Hitchcock raped his brother's 13 year old step-daughter and when she yelled and threatened to complain to her mother, he choked and beat her until she died. Hitchcock confessed to the rape and murder; he was convicted and sentenced to death.

On March 30, 2026, Florida Governor Ron DeSantis signed a death warrant in Hitchcock's case, and his execution is scheduled for April 30, 2026, at 6:00 p.m. In his post-warrant state court proceedings, Hitchcock raised an Eighth Amendment method-of-execution challenge based on Florida's alleged failure to follow its lethal injection protocol in prior executions which included a speculative demand for additional public records as well as an actual innocence claim. The Florida courts rejected Hitchcock's claims, finding the public records demand speculative and untethered to any colorable postconviction claim, while also rejecting his actual innocence claim as procedurally barred and lacking merit. Hitchcock now seeks certiorari review; his request asks this Court to review the following questions:

One: Whether Florida's rejection of Hitchcock's public records demand violates Due Process and Equal Protection

Two: Whether Hitchcock's execution would violate the Fifth, Eighth, and Fourteenth Amendments where Hitchcock claims to be innocent of the offense he previously confessed to committing

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OPINION BELOW

The decision of the Florida Supreme Court is reported at *Hitchcock v. State*, Nos. SC2026-0574 2026 WL 1101539 (Fla. Apr. 23, 2026).

JURISDICTION

This Court has jurisdiction over Hitchcock's questions. *See* 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The State accepts Petitioner's statement of the constitutional provisions.

STATEMENT OF THE CASE AND FACTS

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 741 (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). In later federal habeas corpus proceedings, however, this 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). On remand, Hitchcock was again sentenced to death, which was affirmed on appeal. *See Hitchcock v. State*, 578 So. 2d 685 (Fla. 1990). But this 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 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 sentenced to death for a third time.

The Florida Supreme Court struck Hitchcock’s third death sentence because

evidence portraying Hitchcock as a pedophile was erroneously made a feature of the proceeding. *Hitchcock v. State*, 673 So. 2d 859 (Fla. 1996). Hitchcock was sentenced to death 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 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 affirmed the denial of relief as to all claims as well as 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 ineffective assistance of appellate counsel for failing to argue that Hitchcock was unconstitutionally deprived of notice that he could be convicted under a felony murder theory 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 claimed that Florida's sentencing scheme is unconstitutional pursuant to *Ring*¹ and *Apprendi*.² He also advanced a claim that he may be incompetent by the time of his execution. Florida's high 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.

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

¹ *Ring v. Arizona*, 536 U.S. 584 (2002).

² *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

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).

REASONS FOR DENYING THE PETITION

The petition does not warrant review. The decision below rests on independent and adequate state law grounds, is consistent with settled federal law, and creates no conflict warranting this Court's intervention. The state court decision arises from a case-specific discovery dispute involving public records requests untethered to a colorable claim for postconviction relief, which is exclusively a matter of state law. Hitchcock's petition seeks to constitutionalize a right to discovery in search of a postconviction claim, a proposition this Court's precedent forecloses. Further review is unwarranted.

I. The Decision Rests on Adequate and Independent State Grounds.

This Court lacks jurisdiction because the Florida Supreme Court's decision rests on adequate and independent state law grounds. It is a "fundamental principle" that "our Constitution establishes a system of dual sovereignty between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). This Court is the highest authority on the interpretation of federal law, however, "[t]he highest court of each State . . . remains 'the final arbiter of what is state law.'"

Montana v. Wyoming, 563 U.S. 368, 377 n.5 (2011) (quoting *West v. Am. Telephone & Telegraph Co.*, 311 U.S. 223, 236 (1940)). Consequently, “the views of the state’s highest court with respect to state law are binding on the federal courts.” *Wainwright v. Goode*, 464 U.S. 78, 84 (1983); see also *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 44 (2018); *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975).

Although Hitchcock invokes due process and equal protection, the decision below turns on the Florida courts’ application of their settled, claim-driven framework for capital postconviction public records demands. Under Florida Rule of Criminal Procedure 3.852, a capital defendant is not entitled to free-ranging access to public records. Instead, the rule conditions any additional records production on a series of threshold showings: the defendant must identify specific materials not already available in the central records repository, demonstrate that the requested records are relevant to a postconviction proceeding under Rule 3.851 or reasonably calculated to lead to admissible evidence, and ensure that the request is narrowly tailored and not unduly burdensome. Fla. R. Crim. P. 3.852(i)(2)(A)-(D). This framework reflects Florida’s settled precedent that postconviction additional public record requests serve to support existing claims, not a search for new ones.

Applying those standards, the Florida Supreme Court concluded that Hitchcock failed to satisfy Rule 3.852’s threshold requirements because his requests were not tied to any colorable postconviction claim. See *Hitchcock*, 2026 WL 1101539 (Fla. April 23, 2026) at *6-7. Instead, as the court explained, Hitchcock sought discovery to determine whether such a claim might exist. *Id.* at *7. The Florida

Supreme Court’s determination is dispositive as a matter of state law and is sufficient to support the decision. *See Michigan v. Long*, 463 U.S. 1032, 1041-42 (1983).

Hitchcock’s effort to recast a state law ruling as a federal constitutional violation does not alter the jurisdictional analysis. This Court “correct[s] wrong judgments” only insofar as they “incorrectly adjudge federal rights,” not to revisit a state court’s interpretation of its own procedural rules. *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945). Because the judgment below rests on independent and adequate state grounds, this Court lacks authority to review it.

II. The Decision Below Correctly Applies Settled Federal Law.

Even if jurisdiction existed, the decision below is correct and presents no unsettled question of federal law. Hitchcock’s claims rest on a premise this Court has repeatedly rejected: that the Constitution entitles a litigant to obtain discovery to identify or develop a claim. It does not. The right of access to courts guarantees only the ability to bring claims, not to discover them, and due process has “little to say regarding the amount of discovery which the parties must be afforded.” *Lewis v. Casey*, 518 U.S. 343, 354-56 (1996); *Gray v. Netherland*, 518 U.S. 152, 168 (1996).

Consistent with those principles, lower courts have uniformly rejected assertions that capital defendants possess a constitutional right to obtain execution-related information. *See Wellons v. Comm’r, Ga. Dep’t of Corr.*, 754 F.3d 1260, 1267 (11th Cir. 2014) (rejecting claim that due process or the First Amendment entitles a capital defendant to disclosure of execution-drug information); *Zink v. Lombardi*, 783 F.3d 1089, 1108 (8th Cir. 2015) (en banc) (holding inmates have no constitutional

right to information about the source of execution drugs and rejecting access-to-courts and due process theories); *Williams v. Hobbs*, 658 F.3d 842, 851-52 (8th Cir. 2011) (rejecting claim that lack of information about execution procedures violates due process or the right of access to courts); *Phillips v. DeWine*, 841 F.3d 405, 419-20 (6th Cir. 2016) (rejecting access-to-courts challenge to limits on disclosure of execution procedures).

That settled framework forecloses Hitchcock's theories. He does not contend that he is unable to bring an Eighth Amendment claim; he asserts only that he is entitled to search for one. But the Constitution guarantees an opportunity to be heard, not a right to conduct open-ended discovery in search of a claim. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Williams*, 658 F.3d at 852. In any event, Hitchcock received all the process he was due, including notice, a hearing, and appellate review.

Nor do Hitchcock's remaining constitutional theories alter that conclusion. His equal protection claim fails because he is not similarly situated to members of the general public; he seeks records through a specialized, litigation-specific framework governing capital postconviction proceedings. Fla. R. Crim. P. 3.852; *In re Amends. to Fla. Rules of Crim. Proc.*, 683 So. 2d 475, 476 (Fla. 1996). And his Eighth Amendment claim rests on speculation, which cannot establish a substantial risk of severe pain. *See Baze v. Rees*, 553 U.S. 35, 53-55 (2008); *Glossip v. Gross*, 576 U.S. 863, 877 (2015). At most, Hitchcock hypothesizes that protocol deviations may have occurred, might recur, and could result in unconstitutional pain. That conjecture is insufficient,

particularly given the presumption that state officials follow established procedures absent concrete evidence to the contrary.³ *State of La. ex rel. Francis v. Resweber*, 329 U.S. 459, 462 (1947). Hitchcock also failed to identify any alternative execution method that would be “feasible, readily implemented, and in fact significantly reduce [] a substantial risk of severe pain,” a necessary element of any method-of-execution challenge. *Glossip*, 576 U.S. at 877 (quoting *Baze*, 553 U.S. at 52). Hitchcock contends that he does not need to identify an alternative method of execution because he is only asking to be executed pursuant to Florida’s already-established protocol. He speculates, without evidentiary support, that Florida will fail to follow its execution protocol. Hitchcock’s speculation fails to establish that Florida will not do so in his case.

III. The Petition Raises No Conflict and No Important Federal Question.

The petition identifies no conflict among state courts of last resort or federal courts of appeals, and no conflict between the Florida Supreme Court’s decision and any decision of this Court. On the contrary, the Florida Supreme Court’s decision is fully consistent with this Court’s precedent and with the uniform approach of lower courts rejecting materially indistinguishable claims. Nor does Hitchcock identify any authority supporting his proposed rule that the Constitution entitles him to discovery to identify or develop a claim. The absence of such authority confirms that this case does not present an important or unsettled question of federal law. Instead, it

³ Florida has a published detailed written protocol, specifying the amount, sequence, and drugs employed. The protocol also requires that execution team members ensure the drugs employed have not reached their expiration date.

involves a routine application of settled principles to a fact-specific discovery dispute. The absence of any supporting authority and the uniform rejection of Hitchcock’s theory confirm that this case does not warrant this Court’s review. Notably, this Court has recently rejected certiorari in three Florida cases presenting almost indistinguishable lethal injection records access claims. *King v. Florida*, 2026 WL 730666 (March 16, 2026); *Trotter v. Florida*, 146 S. Ct. 755 (2026); *Willacy v. Florida*, 2026 WL 107413 (April 21, 2026).

IV. This Case Is an Exceptionally Poor Vehicle for Review.

This case would be a poor vehicle for addressing any federal question even if one were presented. The factual dispute about whether deviations occurred alone means there are far better potential vehicles (even if this Court were inclined to take up the question of whether there is a constitutional right to discovery in state-court postconviction proceedings). *See, e.g., Jordan v. Mississippi State Executioner*, No. 25-70013, 2025 WL 1752391, at *2-3 & n.2 (5th Cir. June 24, 2025) (noting prison officials admitted they “did not strictly follow the execution protocol” regarding consciousness checks in prior executions), *cert. denied*, 145 S. Ct. 2834 (2025); *Cooley v. Strickland*, 589 F.3d 210, 224 (6th Cir. 2009) (holding evidence of past medical negligence insufficient to establish an Eighth Amendment claim and noting the Eighth Circuit has held the same in a case alleging “a series of mistakes in administration of the protocol”). A case with uncontested deviations in prior executions provides a far better vehicle than this post-warrant case with a sharp disagreement about whether any deviations occurred at all.

Finally, granting Hitchcock the full relief he seeks from this Court would not assure him substantive relief on his Eighth Amendment claim. At most, he would receive a remand and, perhaps, evidentiary development. The only thing that would be assured is a prolonged delay before the State can set another execution date. *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019) (noting a capital defendant who filed a method-of-execution suit just days before his scheduled execution obtained a stay and litigated that suit for five years and through several other stays and delays). This Court should not use the extraordinary power of certiorari to intervene in an execution when it is doubtful the defendant would obtain substantive relief instead of mere delay. *See Sawyer v. Whitley*, 505 U.S. 333, 341 n.7 (1992) (“A court may resolve against” a last-minute capital litigant “doubts and uncertainties as to the sufficiency of his submission.”).

V. Hitchcock’s Actual Innocence Claim

Hitchcock presented no new evidence supporting an actual innocence claim; he simply reargued his previously rejected claims.⁴ The state circuit court rejected Hitchcock’s claim of innocence because it was procedurally barred. Indeed, Hitchcock conceded that the evidence he posited to support his claim was either known by

⁴ Florida provides defendants a means to obtain post-conviction relief on the basis of newly discovered evidence. Yet, for a defendant to obtain a new trial based on newly discovered evidence, under Florida law, he must meet two requirements. First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence.^[1] Second, “the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial.” *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998).

counsel at the time of trial or could have been learned by reasonable diligence. Florida law precludes a defendant from advancing so-called “newly discovered” evidence postconviction under the circumstances presented in Hitchcock’s case. *Hitchcock v. State*, 991 So. 2d 337, 350 (Fla. 2008).

Notwithstanding the clear bar to his claim, Hitchcock asserts that he is actually innocent of murder. He contends that testimony of several witnesses would support his claim that his brother Richard was the actual killer and that this Court should consider the testimony those witnesses presented during his 2003 postconviction hearing. This Court should not waste its time with Hitchcock’s meritless claim, except perhaps to note that the 2003 testimony was rejected by the postconviction court because the witnesses Hitchcock presented were unworthy of belief. *Hitchcock v. State*, 991 So. 2d 337, 350 (Fla. 2008). Similarly, Hitchcock’s vague assertion that DNA analysis of trace evidence collected at the crime scene would prove his innocence has been reviewed and rejected by Florida courts. Hitchcock admitted having sexual relations with the victim (although he contends it to have been consensual) and, as the Florida Courts who reviewed this meritless claim found, DNA analysis of the evidence would have proven nothing, given that the victim, Hitchcock, and Hitchcock’s brother all lived in the same house. The presence of the brother’s DNA would not exonerate Hitchcock or implicate anyone else. *Hitchcock v. State*, 866 So. 3d 23 (Fla. 2004).

Florida courts have addressed and rejected Hitchcock’s meritless claim of actual innocence. Hitchcock’s witnesses, the court found, lacked credibility because

none of them came forward during Hitchcock's trial or in any of the Hitchcock's three penalty phase trials, instead waiting until twenty years had passed and the alleged perpetrator (Hitchcock's brother Richard) was deceased. Hitchcock's claim of actual innocence has no basis in fact. He is not an innocent man, and there is no danger of any constitutional violation in Florida's decision to finally execute him. This Court should deny certiorari review.

CONCLUSION

The petition for a writ of certiorari should be denied. The decision below rests on independent and adequate state law grounds, is consistent with this Court's precedent, and presents no conflict or important question warranting review. This case arrives in a procedurally defective posture, involving only a fact-bound discovery ruling untethered to any colorable claim for postconviction relief. Hitchcock's attempt to recast that ruling as a constitutional violation provides no basis for this Court's intervention.

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