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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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.

TABLE OF CONTENTS

Content(s) **Page(s)**

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitutional Provisions

Statutes

Rules

Other Authorities

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 appear in any Florida Statute. These illegitimate arguments and objections to disclosure prevent transparency and allows Florida agencies to conduct executions under a veil of secrecy, preventing any capital postconviction inmate in Florida, including Mr. Hitchcock, from being able to prove Eighth Amendment claims under the *Baze-Glossip* test. *Baze v. Rees*, 553 U.S. 35 (2008); *Glossip v. Gross*, 576 U.S. 863 (2015).

I. MR. HITCHCOCK IS A MEMBER OF THE PUBLIC AND FLORIDA LAW "PROVIDES ANY MEMBER OF THE PUBLIC ACCESS TO PUBLIC RECORDS"

a. Right to access public records under Florida law.

The Florida Constitution states that "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." Fla. Const. Art. I § 24(a). This fundamental right is noted by Fla. Stat. § 119.01(a), "General state policy on public records," which states that "[i]t is the policy of this state" that public records are "open for personal inspection and copying by any person." It is the "duty of each agency" to provide access to public records.

Mr. Hitchcock filed public records demands on April 1, 2026, which demanded the inspection and copying of records held by FDOC and FDLE in connection with the transaction of the official business of the agencies. Had any member of the Florida public requested these records, they would have been entitled to disclosure. However, since Florida statutes and rules require additional hoops for Mr. Hitchcock and other capital postconviction inmates to jump through, Mr. Hitchcock is being prevented from accessing the records. This

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

[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.

[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

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