FSC No. SC2025-0590

EXECUTION SCHEDULED FOR MAY 1, 2025 at 6:00 P.M.

IN THE

Supreme Court of Florida

JEFFREY HUTCHINSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR BRADFORD COUNTY, FLORIDA
Lower Tribunal No. 2025-CA-163

INITIAL BRIEF OF APPELLANT

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REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests oral argument pursuant to Florida Rule of Appellate Procedure 9.320. The resolution of the issues involved in this action will determine whether Appellant lives or dies. This Court has not hesitated to allow argument in other capital cases in a similar procedural posture. *See Asay v. State*, 224 So. 3d 695, 699 (Fla. 2017) (where this Court stayed Asay's execution after holding an oral argument). A full opportunity to air the issues through oral argument is appropriate in this case because of the seriousness of the claims at issue and the ultimate penalty that the State seeks to impose on Appellant.

CITATIONS TO THE RECORD

Citations shall be as follows: The abbreviation "R/" refers to the first eighteen (18) volumes of the record on direct appeal to the Florida Supreme Court (SC01-0500). "T." refers to the separately paginated trial transcript in volumes nineteen through thirty-two of the record on appeal. "PCR1/" refers to the record on appeal from the initial state postconviction appeal to the Florida Supreme Court (SC08-0099). "PCR2/" refers to the record on appeal from the successive state postconviction appeal to the Florida Supreme Court

(SC17-1229). "PCR3/" refers to the record on appeal from the successive state postconviction appeal to the Florida Supreme Court (SC21-0018). "PCR4/" refers to the record on appeal from the successive state postconviction appeal to the Florida Supreme Court (SC25-0497). "PCR5/" refers to the record on appeal from the successive state postconviction appeal to the Florida Supreme Court (SC25-0517). "PCR6/" refers to the current record on appeal. "T/" refers to the transcript of the 3.811 motion hearing held on April 25, 2025. All other references will be self-explanatory or otherwise explained herein.

INTRODUCTION

Jeffrey Hutchinson's mental health, specifically his delusional beliefs about a government conspiracy to silence him, has been a recurrent theme throughout his military service, return home from deployment, and his criminal case. Upon his honorable return from active deployment, family and friends noted personality changes, paranoia, and hypervigilance. Appellant believed he was being followed and surveilled by government agents. He frequently drove in circles trying to make sure he was not being followed. He refused to return home for days at a time because he believed government

agents were taking photographs of his home. He told family members he knew government secrets and the names of agents who sold biological weapons.

Appellant told law enforcement that two masked intruders broke into his home and he tried to fight them off. During his capital trial, he refused to let trial counsel present an insanity defense because he was "innocent." In the decades since his conviction, he has adamantly refused to let his defense team present mitigation related evidence, pushing instead for counsel to investigate the government coverup and conspiracy which led to his wrongful conviction.

Appellant's delusional ramblings were also set out in letters and pleadings he filed in state and federal courts. His delusional belief system has led him to allege a far-reaching conspiracy among his attorneys, various government agencies, and the prosecutors, judges, and mental health experts who have worked on his case.

As the evidence presented at the evidentiary hearing establishes, Mr. Hutchinson has long been plagued with mental health issues, and his present fixed delusional belief system prevents him from having a rational understanding of the reason for his

imminent execution. The Eighth Amendment cannot countenance the execution of Jeffrey Hutchinson and this Court's intervention is needed at this time.

PROCEDURAL HISTORY

Appellant Jeffrey Hutchinson was indicted on four counts of first-degree murder on October 5, 1998, for the death of Renee Flaherty and her three children. R/24-27. In 2001, a jury found Appellant guilty on four counts of first-degree murder. R/2296-99. Following the advice of counsel, Appellant waived his right to a jury trial during penalty phase and presented mitigation evidence directly to the trial judge. R/2307-16. The trial court sentenced Appellant to life for one of the murders and death for the remaining three. R/2632-33. This Court affirmed on direct appeal. *Hutchinson v. State*, 882 So. 2d 943 (Fla. 2004). No certiorari was filed in the United States Supreme Court.

In 2005, Appellant filed a motion for state postconviction relief. PCR1/1-71. After learning that his attorneys had missed his federal habeas deadline by not filing the state motion within one year, Appellant requested to proceed pro se and filed several pleadings which were stricken by the circuit court. PCR1/256-335, 344-427,

430-574. In 2007, the circuit court granted defense counsel's motion to withdraw and appointed new registry counsel. PCR1/672-74. Defense counsel filed an amended postconviction motion, which was denied after an evidentiary hearing. PCR1/677-750, 1077-1105.[1] This Court affirmed the denial of relief. *Hutchinson v. State*, 17 So. 3d 696 (Fla. 2009).

In 2009, Appellant filed a pro se petition for federal habeas relief. *Hutchinson v. State of Florida*, 5:09-cv-00253-MCR-EMT. The district court appointed federal habeas counsel who filed an amended petition, but ultimately dismissed the petition as untimely. *Hutchinson v. Florida*, 677 F.3d 1097 (11th Cir. 2012), *cert denied Hutchinson v. Florida*, 568 U.S. 947 (2012).

In 2011, Appellant filed a pro se motion for postconviction relief related to DNA testing. *See Hutchinson v. State*, SC11-2301. The circuit court denied the motion and this Court dismissed Appellant's appeal due to it being an unauthorized impermissible pro se filing. *Hutchinson v. State*, 2012 WL 521209 (Fla. 2012).

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[1] Appellant raised the following claims in his postconviction motion: (1) IAC at guilt phase; (2) IAC at the penalty phase; (3) cumulative error; and (4) shackling error.

In 2013, Appellant filed a pro se successive postconviction motion, which was dismissed by the circuit court.[2] *Hutchinson v. State*, SC13-1005. This Court struck his pro se notice of appeal and dismissed. *Hutchinson v. State*, 133 So. 3d 526 (2014). Also in 2013, Appellant filed a pro se successive petition for a writ of habeas corpus in federal district court relying on *Martinez v. Ryan*, 566 U.S. 1 (2012). *Hutchinson v. Cannon*, 3:13-cv-00128-MW. The federal district court dismissed the petition without prejudice for lack of jurisdiction. *Id.*

In 2017, Appellant filed a successive motion based on *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). PCR2/46-66. The circuit court summarily denied the motion. PCR2/158-74. This Court affirmed the denial of relief. *Hutchinson v. State*, 2018 WL 1975448 (Fla. April 26, 2018), *cert denied, Hutchinson v. Florida*, 586 U.S. 897 (2018).

In 2020, Appellant filed a second successive motion asserting

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[2] Appellant raised three claims: (1) his murder convictions are unreliable due to IAC; (2) the state failed to disclose certain evidence in its possession or control that was material and exculpatory in nature, and knowingly elicited certain false testimony and made certain arguments based on that false testimony at trial; and (3) shackling error.

the State violated *Brady v. Maryland,* 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (2012). PCR3/58-85. The circuit court denied the motion (PCR3/305-714), and this Court affirmed. *Hutchinson v. State*, 343 So. 3d 50 (Fla. 2022), *cert. denied*, *Hutchinson v. Florida*, 143 S. Ct. 601 (2022).

On January 15, 2025, Appellant filed a third successive motion based on newly discovered evidence related to his brain damage and mental health which would have resulted in an acquittal of first-degree murder and/or a life sentence. PCR4/152-309. The State filed an answer on January 21, 2025. PCR4/313-36. The circuit court held a case management conference on March 6, 2025. PCR4/832-56. The successive motion was denied on April 4, 2025. PCR4/1080-1116. Appellant filed a motion for rehearing on April 5, 2025, and the State filed a response the same day. PCR4/1164-79. The circuit court denied Appellant's motion for rehearing on April 8, 2025. PCR4/1185-91. This Court affirmed the denial of relief. *Hutchinson v. State*, --- So.3d ----2025 WL 1155717 (Fla. 2025).

On March 31, 2025, Governor Ron DeSantis signed a death warrant for Appellant. PCR4/671-96. His execution is scheduled for May 1, 2025. On April 7, 2025, Appellant filed a fourth successive

motion, raising four claims. PCR5/57-170. The State filed an answer on April 8, 2025. PCR5/171-97. The circuit court held a case management conference on April 9, 2025 (PCR5/199-231) and on the same day denied Appellant's request for an evidentiary hearing (PCR5/229-31). On April 11, 2025, the circuit court denied Appellant's successive motion. PCR5/241-55. This Court affirmed the denial of relief. *Hutchinson v. State*, --- So.3d ----2025 WL 119803 (Fla. 2025).

STATEMENT OF FACTS RELEVANT TO THIS APPEAL

A. Evidence of Longstanding Delusional Beliefs.

As noted above, Appellant's beliefs about a government conspiracy to silence him due to his advocacy surrounding Gulf War Illness[3] have been a persistent part of his delusional thought processes, spanning many years. Alison Brown, Appellant's first wife, described a stark contrast between his pre- and post-war mental state. Brown stated that "[b]efore the war, [Appellant] had been a calm and mellow guy." PCR6/942. Once he returned from the war,

[3] The term "Gulf War Syndrome" was used at trial while the current medical term is "Gulf War Illness." This pleading uses the abbreviation "GWI" for the sake of consistency.

"he had mood swings, and his behavior was driven by his extreme paranoia." *Id.* Appellant did not sleep due to nightmares, was irritable, and did not trust people. *Id.*

Unable to cope with his paranoia, Appellant's irrational thinking started to affect his civilian life. Brown described features of his distorted reality as "men . . . [from] Quantico [who] were 'after him' because of what he knew." PCR6/942-43. Brown recalled that on one occasion, Appellant "ordered [her] and [their] son into the car because he said that the men from Quantico had found [them]. [Appellant] got his shotgun . . . He jumped in and [they] sped away 'so [he] could lose their trail.'" PCR6/943. Appellant believed that caution was necessary, given "what he knew about the Gulf War—exposure to chemicals or gulf war syndrome"—was causing the government to persecute him. *Id.* Because Appellant's paranoia was so extreme, Brown "went along with him, even if [she] knew it was not anything to be concerned about because he was so certain about what was happening and why." *Id.*

Jennifer Shorts, Appellant's sister, reiterated that his behavior was driven by paranoia. PCR6/940. Appellant thought someone was trying to break into his house, and he would take different routes in

public to elude the person following him. *Id*. Appellant believed the government was behind his surveillance, as it was concerned about what he knew about the war and the possibility he would expose it all. *Id*.

Appellant's delusions were prevalent throughout his relationship with Renee Flaherty. He became increasingly fearful of GWI. R/797. He was afraid that Renee and the children were getting symptoms, and he was infecting them. R/797-98. Determined to spread awareness, Appellant posted flyers to promote his 1-800 line. PCR4/201.[4] He continuously received hang-up calls, which triggered his government conspiracy suspicions. PCR4/211. Appellant's paranoia heightened the week before September 11, 1998, when he saw a black van with tinted windows driving by his house. PCR4/211. He suspected that he and his family's movement was being surveilled. PCR4/211.

After his arrest, Appellant told investigators that government operatives may have been dispatched from Quantico to commit the murders. R/2. Appellant wrote a number of letters while awaiting

[4] Appellant created a 1-800 line for sick veterans to call and posted flyers around his community. PCR4/201; PCR6/918.

trial addressed to "whom it may concern," seeking to share the truth of the government's attempts at trying to silence him and murder his family. PCR6/639, 641, 643. In one letter, Appellant stated his belief that he was being railroaded for something he did not do. PCR6/639; *see also* PCR6/647.

Once in jail, Appellant continued his fixation on GWI, and how it affected him and others. Appellant wrote about how he and his military team were sick and dying. PCR6/639. He believed that GWI was transferrable and other inmates in the jail exposed to him were getting sick. PCR6/639;[5] PCR1/1003. Appellant created leaflets to distribute within the jail. PCR6/657. He explained that he tried to tell other inmates the truth, but Okaloosa County retaliated against him and silenced him. PCR6/639. Appellant noted, "I don't honestly believe that I will not be swept under the rug by Okaloosa County—but I do believe that they are willing to do anything so they won't have to defend me (A.K.A. fight the feds). I don't think that I will get a 'fair' trial unless someone important catches this germ . . ." PCR6/659.

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[5] Appellant believed that members of the Public Defender's Office were given special health insurance coverage in case they got sick as a result of exposure to the illness. PCR6/643.

Appellant believed the conspiracy included not only the government, but his attorneys and the court, as well. On multiple occasions, Appellant stated his attorneys were working "hand-in-hand" with the prosecution. PCR6/641, 662, 665; R/554. Appellant claimed his subsequent trial counsel, Stephen Cobb, deliberately withheld exculpatory DNA evidence "to allow the prosecution to mislead the jury with disinformation and an implausible theory of how the crime occurred." PCR1/313. He believed his attorneys, the prosecutor, and the judge all knew the DNA evidence cleared him. PCR6/669. Appellant stated, "They knew they had no evidence, no witness, no motive and that I would walk if they didn't 'bend' the rules a little." PCR6/669. Years later, after learning of his trial judge's suicide in December 2008, Appellant stated, "I expected a full investigation of my case and several others but the suicide note has either been legally sealed (by the State) or swept under the proverbial rug." PCR6/737.

In a document written to his father in 2000, Appellant touched on many facets of his delusional belief, stating the judge was taking bribes; the judge cut a deal with crooked cops in exchange for their testimony; the judge, prosecutor, and defense counsel conspired

against him to interfere with court ordered medical tests; witnesses were being coerced; and tapes and other evidence were being tampered with. PCR6/656.

Appellant compiled a list of those who needed to be informed of the systematic genocide that was happening "as a result of the Gulf War disease and subsequent cover-up by the authorities that were originally developed to protect our great country and the people who live here." PCR6/658. Appellant's list included Ross Perot, the World Health Organization, Amnesty International, King Abdul Aziz, the government of Kuwait, Pope John Paul II, Judge Sid White, the Reverend Jesse Jackson, and England's Prime Minister John Major. PCR6/658.[6]

As a result of Appellant's behavior, his trial counsel asked the court for a competency determination on December 13, 2000. Counsel observed multiple specific behaviors by Appellant "which suggest Defendant is possibly delusional and incompetent,"

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[6] In a letter to his trial counsel, Appellant also wanted to have the former Speaker of the House of Representatives, Tom Foley, listed as a witness. PCR6/676. Appellant stated that Foley ordered a congressional investigation, and Appellant was being retaliated against as a result of said investigation. *Id.*

including: (1) his continuing refusal to speak with his attorney; (2) his "unabated paranoia" regarding the defense team; (3) his paranoia of the court; (4) his "apparently delusional statements, behavior, and actions prior to the incident at 410 John King Road in Crestview, Florida, and afterward, which resulted in the filing of these charges, to wit; belief in a government conspiracy against him, belief in a government cover-up regarding his medical status and the status of other Gulf War veterans, posting of flyers concerning such a conspiracy, conversations with others regarding such conspiracies, statements to each defense team and in the media regarding such conspiracies, Defendant's statements to law enforcement regarding the events of September 11, 1998, as being part of a government conspiracy, irrational behavior regarding self representation, reckless, inconsistent and self-damaging statements, actions and behaviors with regard to his legal position." R/1793. In a subsequent filing, counsel stated that Appellant had "hallucinations or delusions which caused [him] to honestly believe things to be facts which were not true or real." R/1826.

In a January 4, 2001 report, Dr. Dillon stated that Appellant did not have the capacity to disclose to his attorney pertinent facts

surrounding the offense, specifically that Appellant "has changed defense counsel a number of times[;] this seems to stem from paranoia and grandiosity"; he did not have the capacity to manifest appropriate courtroom behavior, specifically, he "took issue with the present judge because of perceived bias and a possible conspiracy"; and he did not have the capacity to testify relevantly, because "grandiosity, paranoia, and delusions severely hinder this." R/2317-18.

During a January 5, 2001, competency hearing, Dr. Dillon testified that in "my interview with [Appellant], I asked him about certain parts about what had happened that got him into jail, and one answer that I got pretty consistent is that there is a conspiracy. Someone had done this. He did not do this." R/3143. When asked at the penalty phase if Dr. Dillon believed Appellant's story that two other men killed Renee and the children, Dr. Dillon testified, "I believe that's what he believes." T.2395.

Appellant's delusions continued throughout his postconviction proceedings as well. In a July 6, 2008 letter, Appellant stated, "[P]ut yourself in my position, wrongfully charged for a terrible crime I did not commit, then wrongfully convicted for it and sent to Death Row

to be executed, and all along the way being represented by lawyer[]s who are paid by the State, and are actively helping the State to perpetuate an absolute lie, so they can execute me." PCR6/687 (emphasis in original). In a July 23, 2008 letter, Appellant complained that his lawyers were trying to get him killed. PCR6/691. Appellant stated, "They are the State's hit team, and they are experts at hiding evidence of innocence." PCR6/691.

In a July 30, 2009 letter, Appellant stated, "I really wish people would listen to me, I've been saying all along that he [postconviction counsel Clyde Taylor] was working with Bobby [the prosecutor]." PCR6/700 (emphasis in original). In a September 2009 letter, Appellant stated the only thing his former postconviction attorneys, Baya Harrison and Clyde Taylor, did was assist the prosecutor in continuing to railroad him for a crime they knew he did not commit. PCR6/705; PCR6/647-48 (Appellant stated that postconviction counsel orchestrated a deficient evidentiary hearing with the prosecutor and trial counsel). And, in a September 26, 2011 letter, Appellant claimed to "have evidence on Clyde Taylor, Baya Harrison, [postconviction counsel] D. Todd Doss and several others—that will prove fraud at the very least, and it could show these same lawyer[]s

deliberately withheld evidence and manipulated evidence too." PCR6/711.

In a 2010 letter to his brother, Appellant stated, "[I]f you do not hear from me on or before January 15th 2011, you will know that something has happened to me, you must contact the following []." PCR6/737. The list of people Appellant wanted contacted included Tom Foley, the Inspector General, the Governor's office, Kevin Kline, Nancy Reagan's office, Command Sergeant Major Jeff Meadows, and attorney Mark Olive. PCR6/738.

After being appointed federal counsel, Appellant stated in a March 5, 2015 letter, "Finally, after 16 years of wrongfully being incarcerated, I now have lawyer[]s who are not controlled or manipulated by the state; who are actually fighting <u>for</u> me." PCR6/719 (emphasis in original). Yet, Appellant's delusional beliefs persisted, complaining in 2020 that a secret hearing about his case was being held in the state court. PCR6/722. Appellant believed one of his federally appointed attorneys along with state court counsel was undermining everything at the state level. PCR6/704.

Appellant was also consumed by the notion that bank robbers were involved in the plot, and the government capitalized on their

actions. He blamed the FBI for withholding evidence about the bank robberies. PCR6/722 ("THE FBI WITH[H]ELD THIS EVIDENCE FOR OVER 20 YEARS, SO THEY ARE JUST AS CULPABLE AS THE STATE…AND THEY KNEW IT WOULD EXONERATE ME."). In a 2017 letter, Appellant stated that his attorney indicated that the Adams were involved from the beginning and the prosecutor "brought them in" to target him. PCR6/741; *see also* PCR6/744 (Appellant stating in a 2017 letter, "Now that we know, their 1st (attempted) bank robbery was before September 11th, 1998, then its very likely Bobby Elmore put the Adams into position to develop a connection to me very early on." (emphasis in original).

B. Procedural History & Relevant Facts.

On Thursday, April 10, 2025, and Friday, April 11, 2025, Appellant was evaluated by two mental health professionals. PCR6/605, 620. Those experts determined that Appellant's capacity to rationally understand the nature and effect of the death penalty and reasons for its imposition on him has been impeded by a Delusional Disorder. PCR6/617, 624-25. Thus, he is not competent to be executed. *Id.*

Appellant was first evaluated by a psychiatrist, Dr. Agharkar,

on April 10th. PCR6/920. Based on his interview and evaluation of Appellant, and review of records related to Appellant, Dr. Agharkar concluded that Appellant lacks the mental capacity to rationally understand the fact of the pending execution and the reason for it. PCR6/932. Dr. Agharkar stated in his April 12, 2025 report: "Mr. Hutchinson does not have the ability to rationally understand why the government is seeking to execute him, nor the causal relationship between the crime and punishment to be imposed." PCR6/616-17. Dr. Agharkar further explained:

> Appellant lacks a rational understanding of the reason for his impending execution as the direct result of a combination of damage to his brain caused by Gulf War Illness (which is caused by chemical exposures that targets the limbic system and prefrontal cortex); multiple traumatic brain injuries; Post-traumatic Stress Disorder as a result of his military service; and Mild Neurocognitive Impairment (including impairments in executive functioning and memory deficits). As shown by neuropsychological testing, Mr. Hutchinson has frontal lobe impairments which affect his ability to consider, weigh and deliberate, worsen his paranoia, but also impair his ability to inhibit and adapt.
>
> These conditions are combined with, and may be the underlying cause of, psychotic thinking, hallucinations and a delusional belief system related to a conspiracy perpetrated by the government to silence him. The conspiracy which, in his view, explains why the murders happened and demonstrate his innocence. This is a fixed false belief whose origins pre-exist the offense, but which

incorporated the murders in their aftermath.

PCR6/617.

Dr. Agharkar found that Appellant is completely focused on his fixed delusions and irrational thinking. PCR6/932. Dr. Agharkar noted that Appellant's delusions regarding a government conspiracy to silence him due to his advocacy surrounding GWI is embedded and has been a persistent part of Appellant's delusional thought processes. *Id.* Appellant firmly believes the government is seeking to execute him to silence him and continue to hide the truth about chemical weapons and exposure to neurotoxins. PCR6/617.

Dr. Agharkar confirmed that Appellant is not malingering, faking, or exaggerating because of Appellant's many years long of documentation, the collateral sources which observed and confirmed the symptoms, the consistency of the delusional content which existed prior to the offense, and his attempts to present himself as healthier than he actually is. PCR6/616.

The following day, on April 11, 2025, Dr. Crown evaluated Appellant. PCR6/620. Dr. Crown had previously evaluated Appellant on September 12, 2024, for a neuropsychological evaluation. PCR6/627-31.

In September 2024, Dr. Crown found that Appellant:

> suffers from a group of neurocognitive impairments that affect multiple functional areas. These include problems with memory, concentration, construction, language (including language-based critical thinking), reasoning and judgment. There is also a complex Post-Traumatic Stress Disorder. This constellation of findings is consistent with Gulf War Syndrome.
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> ***
>
> Mr. Hutchinson has a neuropsychological impairment (brain damage) that impacts reasoning, judgment, language-based critical thinking, and memory functions.

PCR6/627, 630.

In April 2025, Dr. Crown performed a battery of neuropsychological testing on Appellant different from those administered in 2024. PCR6/621. Consistent with his findings in 2024, Dr. Crown found that Appellant's results showed significant impairment, "indicative of a neuropsychological disturbance—organic brain damage. The impairments are consistent with primarily bilateral frontal-temporal impairment and further consistent with earlier findings of Gulf War Syndrome." PCR6/623. In sum, Dr. Crown again found that Appellant has functionally-based organic brain damage and notable cognitive impairments, PCR6/623, specifically in the areas of: "reasoning, judgment, language-based critical thinking, and memory functions." PCR6/624.

Dr. Crown found Appellant was not malingering and passed the malingering performance validity testing. PCR6/623. He further opined:

> Mr. Hutchinson also suffers from a Delusional Disorder which is a psychotic disorder. His fixed delusionary system revolves around a conspiracy to execute him to protect various attorneys, police, investigators and the actual perpetrators of the killings that led to his conviction and sentence. Mr. Hutchinson believes he is being executed in an effort to silence him from exposing government secrets, including the truth about who the actual killers were. A Delusional Disorder is characterized by persistent false beliefs that are not bizarre. These delusions are firmly held despite evidence to the contrary.

PCR6/624.

Dr. Crown found Appellant does not rationally understand the nature and effect of the death penalty and the reason he is to be executed. PCR6/624. He concluded that Appellant is not competent to be executed. PCR6/625.

Pursuant to Section 922.071(1), Florida Statutes, on Monday, April 14, 2025, Appellant's counsel sent a letter to the Governor at 8:21 a.m. informing him that Appellant is insane and not competent to be executed. PCR6/542-45. That same day, undersigned counsel received a "read receipt" that counsel for the Governor had read their email at 9:31 a.m. PCR6/547.

On April 15, 2025, Appellant's counsel sent a follow up email to the Governor's Office and left a voicemail for his counsel inquiring how the Governor's Office would like to proceed. PCR6/549. That same day, the Governor's counsel responded back confirming receipt of undersigned's email and letter, and stated that undersigned counsel "will be contacted directly" with any further updates. PCR6/551.

On April 17, 2025, Governor DeSantis issued Executive Order 25-83. PCR6/553-55. In the Order, Governor DeSantis appointed three psychiatrists (Drs. Wade Myers, Tonia Werner, and Emily Lazarou) as a "Commission to Determine the Mental Competency of Jeffrey Glenn Hutchinson." *Id.* Governor DeSantis directed the Commission to jointly examine Appellant four days later on April 21, 2025, "to determine whether he understands the nature and effect of the death penalty and why it is to be imposed upon him." *Id.* Governor DeSantis ordered that while counsel for Appellant and the State may be present at the examination, counsel may not participate in it. *Id.* Governor DeSantis imposed an April 22, 2025, deadline for the Commission's report of findings. *Id.*

Appellant's counsel received no further communication until

the end of the day on April 23, 2025, when the Governor issued Executive Order 25-92. PCR6/17-18. Only upon subsequent request was counsel provided with the Commission's report, which consisted of a less-than-two-page letter. PCR6/19-20.

On April 24, 2025, the circuit court held a status conference to schedule the Rule 3.812 hearing. Over Appellant's objection, the circuit court set the evidentiary hearing for the following day, April 25, 2025, giving the parties less than 24 hours' notice to prepare. That same day, Appellant filed a motion pursuant to Florida Rule of Criminal Procedure 3.811(d), motion for stay, motion for continuance, and motion to compel discovery. PCR6/567-786.

The circuit court heard testimony on April 25, 2025. The circuit court issued an order finding Appellant sane to be executed on April 27, 2025. PCR6/958-76. This appeal follows.

C. Relevant Facts from Rule 3.812 Evidentiary Hearing.

The circuit court heard testimony from the following ten lay witnesses and four expert witnesses:

Daniel Ashton

Daniel Ashton is a chief investigator with the Federal Public Defender's Office who has worked in the field for almost 25 years.

T/25. Ashton has interacted with Appellant numerous times off and on throughout the past twenty years. T/31-32. He first became involved in Appellant's case in 2005-2006. T/25-26. During that timeframe he had a least a half dozen lengthy interactions with Appellant in person. T/27. The interactions were always very similar, as if it was the same conversation over and over again. T/27-29. Appellant reported to him that he was being framed by the government for the murder of his family. T/27. Appellant told him that masked men entered the house and killed his family to frame him due to his advocacy for individuals suffering from GWI and the related information Appellant possessed. T/27-28. Appellant was paranoid that people were listening in on his legal calls and felt more comfortable speaking in person. T/40-41. His delusions also came out in his letters. T/41.

These delusions caused Appellant to fixate on various aspects of his case, but everything related back to the government conspiracy. T/29. For example, Appellant believed that the prosecutor was conspiring with witnesses and his attorneys in order to convict him and keep him in prison. T/29. Appellant did not believe his voice was on the 911 call and thought that the 911 tape

was altered. T/51-52. Appellant's belief of a conspiracy was furthered by the Creightons originally reporting to the police that it was not Appellant's voice on the 911 tape, and then later changing their story. T/51-52.

Appellant was laser-focused on his very rigid belief that the government was silencing him, and attributed any adverse events in his case to his overarching belief that he was framed by the U.S. government. T/30. When Appellant was denied additional funding to investigate his case, it became another instance of something legitimate happening in his case that was incorporated into Appellant's belief of a government conspiracy. T/34-36. When the judge committed suicide and a medical examiner lost his license, those incidents too became further proof to Appellant of the conspiracy and his delusional thought pattern that the government killed his family and incarcerated him to silence him. T/36-37.

At one point, Ashton told Appellant that if a reasonable person looked at his case, they may think it was a far-fetched theory that the government would eliminate his family to silence him, instead of just eliminating and silencing Appellant. T/32-33. In response, Appellant was stunned and it appeared to Ashton that Appellant had

never considered what others may think about the situation. T/33. It was as if Appellant took a moment to think about it and thought that would be a completely irrational thought. T/46. Appellant immediately went back to discussing the conspiracy and that he was being silenced for what he knew about the Gulf War and his related advocacy such as starting an 800 number. T/33. Appellant appeared to be dismissive because the thought did not make sense to him. T/46.

Approximately ten years later, in 2015, Ashton was assigned to Appellant's case once again. T/37-38. He had approximately six more lengthy interactions with Appellant in person. T/38. Nels Roderwald took over Appellant's case and had most of the contact with Appellant from 2017-2024. T/39. Ashton met with Appellant twice in 2024 and once in April, after the death warrant was signed. T/39-41. Throughout the twenty years that Ashton has interacted with Appellant, Appellant remains preoccupied by the same delusions and is vocal, passionate, forceful, and consistent regarding the government conspiracy which led to him being framed for the murder of his family. T/42-43.

Although the conspiracy did not seem rational to Ashton,

Appellant truly believed his delusions regarding the government conspiracy and it has been the basis of Appellant's reality for decades. T/31-33. Ashton testified that he believed with all his being that Appellant absolutely believed in the conspiracy and delusions. T/37, 44. It is his truth. T/42.

Jeff Hazen

Jeff Hazen was the lead attorney who represented Appellant for approximately four years between 2004 and 2008. T/95. He visited Appellant approximately twenty times and had numerous three-hour visits with Appellant. T/96. Hazen testified that Appellant believed he had been set up due to his knowledge regarding chemical weapons used in Desert Storm and GWI that the government did not want him to expose. T/97-99.

The delusion was continuous and caused Appellant to focus on irrelevant parts of his case. T/97-98. Hazen also testified that Appellant claimed that it was not him on the 911 call. T/98. Appellant believed that someone else had made the call, but law enforcement's actions were corrupt. T/98. Appellant was adamant and consistent about the delusions. T/99. Hazen testified that he thought Appellant genuinely believed the delusion that he was

framed by the government and Appellant genuinely believed he did not commit the crimes. T/99-100.

When Hazen tried to focus more on the mitigation side of the case and less on trying to find the individuals who Appellant believed framed him, it created tension in the relationship because Appellant thought that Hazen did not believe him. T/99-100, 102. Hazen tried to redirect Appellant from his delusional narrative numerous times, but not only was he unsuccessful, but it led Appellant to believe that Hazen and his law partner were working with the judge and the State. T/99-100.

Monica Jordan

Monica Jordan is a licensed private investigator and mitigation specialist with over thirty years of experience. T/7. She was involved in Appellant's case in 2007 and interacted with him in person for approximately three hours and also communicated via letters. T/10-13. Appellant was singularly focused on his concrete delusional belief that he was innocent because the government framed him for the murders of his girlfriend and her children. T/11-12. He was so entrenched in the delusion that it was difficult to work on his case because he could only focus on the innocence issue that appeared

not to be based in reality. T/12, 14. There was no doubt in her mind that Appellant truly believed he had been set up by the government in order to be sent to death row. T/12, 16.

Terri Backhus

Terri Backhus is the former Chief of the Capital Habeas Unit for the Federal Public Defender and represented Appellant from 2015-2022. T/105, 108, 112. The longer she spent with Appellant and more rapport she built, the more obvious it was that he was delusional. T/107-08. Backhus spoke with his family members and Appellant was also telling the same delusions about the government conspiracy to them. T/113. He was paranoid that the phone and mail were not secure. T/113. Throughout the time she represented him, his paranoia grew even worse. T/114.

Prior to the crime, Appellant felt that he was being watched and government agencies were coming after him because he created a 1-800 number to talk about GWI. T/110-11. Accordingly, he believed that there was a government conspiracy to frame him for the crime to punish and persecute him for his GWI advocacy. T/110-11.

Appellant's facts were irrational and not hooked to reality. T/124. His longstanding delusions were even present in his pro se

pleadings. T/111, 124. All of his actions and reasoning led back to the conspiracy. T/114-15, 124-25. For example, Backhus testified that Appellant's former friends had participated in a bank robbery, but walked free, so "he felt that was solid proof that they were involved with the government conspiracy to frame him." T/115.

Backhus testified that it was her impression that Appellant genuinely held these irrational beliefs. T/112, 115. Throughout the approximately seven years she represented Appellant, his irrational delusions were consistent and never wavered. R/112, 116.

Stacy Biggart

Stacy Biggart is a law professor who was contracted by CCRC-N to handle Appellant's appeal in 2021. T/18-20. Due to the pandemic, most of her interactions with Appellant were by telephone. T/21. She testified that Appellant told her government agents killed his family because he was raising alarms about GWI by starting a 1-800 line to create awareness after he returned from the Gulf War. T/21-22. Appellant was too close to government secrets, so the government killed his family to silence him. T/22. Biggart testified that Appellant actually believed this delusion and the belief never changed during her representation of him. T/22-23.

Nels Roderwald

Nels Roderwald is an investigator with the Federal Public Defender's office who has worked on Appellant's case since 2017. T/57-59. He has interacted with Appellant in person at least two dozen times and only over the phone occasionally since Appellant is always concerned that the phone calls were being monitored. T/59-60.

Roderwald testified that Appellant has always been focused on his belief that there was a government plot to conspire against him, frame him for the murders, and to keep him incarcerated to silence his efforts in helping military veterans. T/61-64. One example of Appellant's delusions, was that he thought the prosecutor was working with government agents to fabricate evidence to further the conspiracy and silence his voice. T/61. Appellant also believed that the funding for his defense was also cut off to silence him for his advocacy. T63/64. Roderwald believes that Appellant believes these delusions, which have been consistent throughout his representation. T/61-62.

Dr. Barry Crown

Dr. Barry Crown is a board-certified neuropsychologist. T/128. The difference between a neuropsychologist and a psychiatrist is a neuropsychologist specializes in the relationship between brain function and behavior. T/134. Neuropsychologists focus on how the brain works. T/134.

Dr. Crown testified he evaluated Appellant on two occasions – September 12, 2024 and April 11, 2025. T/132. In September 2024, Dr. Crown administered three tests to Appellant over approximately three hours, including a malingering test. T/136-38. Appellant passed the malingering test and was cooperative throughout the interview. T/138. They did not discuss details of Appellant's crime or case. T/138.

Based on the testing, his review of the records, and clinical evaluation of Appellant, Dr. Crown concluded that Appellant suffers from a group of neurocognitive impairments that affect multiple functional areas. T/137-39. These include problems with memory, concentration, construction, language (including language-based critical thinking), reasoning, and judgment. T/137. He also found complex Post-Traumatic Stress Disorder. T/138. Appellant's profile

was consistent with organic brain damage with bilateral frontal-temporal impairment which is consistent with earlier findings of GWI. T/139. Lastly, Dr. Crown concluded that Appellant was not malingering. T/139. He was not asked to make any diagnoses of Appellant at that time. T/135.

During the second evaluation on April 11, 2025, Dr. Crown administered additional neuropsychological tests which were different from the earlier tests he had administered. T/141. He also conducted a clinical interview and assessment with Appellant, and reviewed additional records. T/142. He spent about two hours with Appellant during this second evaluation. T/140. Dr. Crown testified that Appellant's test scores and performance was consistent with prior test results. T/141-42.

As a result, Dr. Crown concluded that Appellant has a neuropsychological impairment (brain damage) that impacts reasoning, judgment, language-based critical thinking, and memory functions. PCR6/624. He found, to a reasonable degree of psychological certainty, that Appellant suffers from Cognitive Disorder: Not Otherwise Specified ("NOS"). PCR6/624. He again found Appellant was not malingering. T/145.

Lastly, Dr. Crown opined Appellant suffers from a Delusional Disorder which is a psychotic disorder. T/145. A Delusional Disorder is characterized by persistent false beliefs. T/145. These delusions are firmly held despite evidence to the contrary. T/143. Dr. Crown testified that Appellant's fixed delusionary system revolves around a conspiracy to execute him to protect various attorneys, police, investigators, and the actual perpetrators of the killings that led to his conviction and sentence. T/147-48. Dr. Crown further explained that Appellant believes he is being executed in an effort to silence him from exposing government secrets, including the truth about who the actual killers were. T/171. Appellant denied committing the homicides. T/146.

Based on Dr. Crown's review of the records, he found that Appellant's delusional belief system was present prior to the crime. T/148. For example, Dr. Crown testified that Appellant's ex-wife and sister noted Appellant's paranoia and changed behavior upon his return from active deployment and prior to his move to Florida. T/148-52. They recalled Appellant fled his home because he was afraid people were after him. *Id.* There was also evidence in the record that Appellant was delusional in the weeks and days leading up to

the crime including: thinking he was being followed and surveilled, and posting flyers about a government conspiracy concerning GWI. T/152-53. Appellant also relayed his delusional beliefs to law enforcement upon arrest and to the mental health professional pre-trial. T/153.

Dr. Crown explained that people who suffer from delusional disorder can read and write. T/155. They often appear normal to lay people because they lack any sort of stereotypical bizarre or psychotic behavior. T/155-56. Dr. Crown noted that Appellant does not believe he is mentally ill thus Dr. Crown was not surprised Appellant refused all mental treatment while incarcerated. T/156.

As a result, Dr. Crown found Appellant does not have a rational understanding of the reasons for his execution and thus, is not competent to be executed. T/145, 157.

Dr. Bhushan Agharkar

Dr. Agharkar is a board-certified psychiatrist and professor at Emory University School of Medicine. T/173-74. He has previously been retained by the State, defense, and federal government. T/177. Dr. Agharkar was one of the testifying experts in federal court on Scott Panetti's case (the seminal case regarding competency-to-be-

executed). T/182. He has a private practice, and works on civil and criminal cases. T/175-76. Dr. Agharkar has previously treated patients with delusional disorder. T/178. He explained it is a notoriously difficult disease to treat because people who suffer from delusional disorder typically do not believe they are ill and thus do not seek treatment. T/178. Normally someone else reports their odd behavior. T/178.

Dr. Agharkar evaluated Appellant on April 10, 2025 for approximately 3.5 hours. T/181-83. They were alone. T/183. Dr. Agharkar observed Appellant was disorganized, rambled, and tangential. T/183-84. Appellant told Dr. Agharkar he was being executed as part of a government conspiracy related to GWI to silence him. T/184. Appellant adamantly denied committing the crime. T/185. Appellant believes that the government planted his trial attorneys and ensured they did a poor job representing him at trial. T/186-87. Dr. Agharkar explained that every aspect of Appellant's case was filtered through the lens of a government conspiracy – every court denial, decision, etc. was seen as part of the government conspiracy and coverup of his actual innocence. T/187-88. Appellant truly believed this conspiracy existed. T/185.

Dr. Agharkar testified that outside of his delusional belief, Appellant can function relatively normal in a structured prison environment. T/190. Someone can suffer from delusional disorder but be oriented to time, person, and place. T/197.

Dr. Agharkar explained that the prior experts' findings – Dr. He and Dr. Matto – revealed a brain-based reason as to why Appellant has a delusional disorder. T/194. Appellant is not able to weigh and deliberate. T/194. It also explains his thought disorganization and memory difficulties. T/194.

As a result, Dr. Agharkar opined Appellant suffers from a delusional disorder that is longstanding and not amenable to change. This belief interferes with Appellant's ability to have a rational understanding of the reason for his execution. T/189, 198. While Appellant may have a factual understanding of his conviction and sentence, he does not have a rational understanding of why the State is seeking to execute him. T/189, 199. Appellant's delusional beliefs interfere with a rational understanding of the casual connection between the crime and punishment. T/199.

State Witnesses

Dr. Tonia Werner was contacted by the Governor's office on April 14, 2025, and assigned to the Governor's commission along with Drs. Wade Myers and Emily Lazarou. T/214, 231. She testified she had been assigned to the commission between five to ten times and had never found anyone incompetent to be executed. T/232, 256-57. On April 21, 2025, the three doctors interviewed Appellant simultaneously at Florida State Prison. T/237. Dr. Werner testified that in addition to conducting an interview of Appellant, the commission reviewed records and interviewed three correctional officers. They did not conduct any tests, nor speak to any of Appellant's family members. T/235, 239.

Dr. Werner placed emphasis on Appellant's consistent S1 status in his DOC records, indicating he had no psychiatric issues. T/220. She also indicated there was no mention of psychiatric treatment or complaints in the DOC records. T/221. However, Dr. Werner later admitted it is common for people suffering from delusional disorder to refuse mental health treatment. T/247-48. Additionally, she agreed that someone suffering from a delusional disorder would still be able to function normally, depending on the individual and their

delusion. T/219-20, 242, 245-46. Dr. Werner indicated that it was not surprising that Appellant's delusions were not apparent in brief conversations because it depends on how long someone talks to him and what they speak to him about. T/240.

Dr. Werner testified she did not find that Appellant suffered from any mental illness, but he had narcissistic and antisocial personality traits. T/223. Dr. Werner testified that Appellant understands he was found guilty by a jury and sentenced to death. T/225. Dr. Werner further testified that intelligence does not have any correlation to delusions, meaning a person suffering from delusions could still be able to draft legal work. T/245. She indicated it is possible that Appellant's delusions may have been more prevalent to the Commission if they spent more time and built more rapport with him. T/245. Moreover, Dr. Werner testified people suffering from a delusional disorder cannot be talked out of their delusions. T/246.

Dr. Wade Myers has been appointed to the Governor's Commission ten times and also has never found any defendant incompetent to be executed. T/272, 293-94. He testified he believes if a defendant was truly incompetent to be executed their case would

not make it to an evaluation with the Commission because the defendant would have been vetted by so many experts prior to being evaluated by the Commission. T/294.

During the interview with the Commission, Appellant maintained his innocence, detailed how the government framed him for the murders of his family, and cut off the funding for his appeals. T/304, 309. Appellant stated the government had been covering up the crime for over twenty years, and the State was manipulating and controlling his lawyers. T/311-12. Dr. Myers testified that Appellant was not suffering from delusional disorder, but created an alibi. T/273. Dr. Myers based this opinion on Appellant having a good life prior to the crime. T/275. However, the Commission did not interview any of Appellant's family members, inmates familiar with Appellant, or any other lay witnesses who could have provided insight into Appellant's life prior to the crime. T/302.

Dr. Myers testified that people suffering from Delusional Disorder cannot be talked out of their beliefs and that their delusions will often leak out into their writings. T/316. Although he admitted Appellant had accused his prior attorneys of working with the prosecutor's office (T/318), Dr. Myers indicated he had reviewed

voluminous writings in Appellant's case and had not seen any evidence of delusions in the writings. T/316-17. Yet, he conceded he had not reviewed several letters and pro se filings where Appellant discussed government operatives coming after him to silence him, the trial judge taking bribes, his trial lawyer working hand in hand with the prosecution, witnesses being coerced, interrogation tapes being altered, and the state manipulating evidence to ensure he was convicted and sent to death row to be executed. T/319-24. Nor did he review Allison Brown's and Jennifer Shorts' affidavits which indicated when Appellant returned from the war, and prior to him moving to Florida, he believed government operatives were after him and surveilling him to kill him. T/325-26. Dr. Myers acknowledged to meet the criteria for Delusional Disorder in the DSM-5-TR a person only needs a fixed false belief for at least one month. T/332. Still, Dr. Myers indicated there were no prior signs of delusions and Appellant created an alibi since the murders. T/275, 325.

Like Dr. Werner, Dr. Myers highlighted Appellant's DOC records did not indicate he was suffering from a mental illness, and that he had been a good prisoner, kept his cell clean, and filed numerous pro se motions. T/276-77, 279-80. Dr. Myers admitted Appellant

consistently denied mental health treatment over the years and testified Appellant was not malingering. T/288-89, 278. Moreover, he agreed people suffering from Delusional Disorder may appear normal when their delusional ideas are not being discussed or acted on. T/310.

The State also called three individuals from FDOC to testify: Sergeant James Hughes, Officer Patrick Hare, and Officer Scottie Pleasant. Hughes has been at FSP for one year and knew Appellant for a maximum of three weeks. T/68. During that time, Hughes "somewhat" conversed with Appellant during very brief conversations. T/68, 73. Hare has known Appellant nine years, T/75, and only had short conversations with him, T/80. Pleasant was present when the Warden read the death warrant to Appellant. T/82-83. None of the officers were licensed mental health professionals or able to make any mental health diagnoses; they were not trained to detect malingering, T/70, 77, 86.

SUMMARY OF THE ARGUMENT

ARGUMENT I: Under the Eighth Amendment, Appellant is not competent to be executed. The circuit court erred in using the incorrect legal standard and finding that the psychiatrists that only

briefly examined Appellant were more credible than the neuropsychologist and psychiatrist who spent significantly more time with Appellant and conducted interviews and testing. Appellant lacks a rational understanding of the connection between his crime and impending execution due to his fixed delusional beliefs.

ARGUMENT II: The circuit court erred in denying a continuance on the rule 3.812 evidentiary hearing.

ARGUMENT III: The circuit court erred in denying Appellant's discovery request and holding that he was already granted access to such materials.

This Court should vacate the circuit court's order and grant relief on Appellant's claims.

STANDARD OF REVIEW

"The proper standard of review of a trial court's order pursuant to rule 3.812 is whether the record contains competent, substantial evidence to support the trial court's finding." *Ferguson v. State*, 112 So. 3d 1154, 1156 (Fla. 2012). Further, this Court "review[s] the trial court's application of the law to the facts *de novo*." *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008).

ARGUMENT I

THE CIRCUIT COURT ERRED IN FINDING APPELLANT COMPETENT TO BE EXECUTED.

A. The Eighth Amendment Bars Appellant's Execution.

Appellant's insanity places him outside of the class of individuals eligible to be executed because the United States Supreme Court has held that the Eighth Amendment "prohibits the execution of a prisoner whose mental illness prevents him from 'rationally understanding' why the State seeks to impose that punishment." *Madison v. Alabama*, 586 U.S. 265, 267 (2019) (quoting *Panetti v. Quarterman*, 551 U.S. 930, 959 (2007)); *see also Ford v. Wainwright*, 477 U.S. 399, 410 (1986). Fla. R. Crim. P. 3.811(a) contains a similar prohibition: "A person under sentence of death shall not be executed while insane to be executed."

"Gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose." *Panetti*, 551 U.S. at 960. This Court has also made it clear that "[i]ndividuals who lack the mental capacity to

understand their pending execution and the reasons for it cannot be executed." *King v. State*, 211 So. 3d 866, 889 (Fla. 2017).

"What matters is whether a person has the 'rational understanding' *Panetti* requires—not whether he has any particular memory or any particular mental illness." *Madison*, 586 U.S. at 275. "[O]nce a prisoner makes the requisite preliminary showing that his current mental state would bar his execution, the Eighth Amendment, applicable to the States under the Due Process Clause of the Fourteenth Amendment, entitles him to an adjudication to determine his condition." *Panetti*, 551 U.S. 934-35; *see also Ford*, 477 U.S. 418. Appellant is in this protected class of persons.

There are a number of occasions where the circuit court has improperly interpreted the testimony and evidence. Due to the time constraints of the briefing schedule under warrant, Appellant will address the most substantial issues but submits that there are other instances of competent, substantial evidence that Appellant is insane to be executed.

B. The Lower Court Applied an Incorrect Legal Standard.

The circuit court found:

> there is no evidence that [] mental illness interferes in any way with his 'rational understanding' of the fact of his pending execution and the reason for it. Mr. Hutchinson is aware that the State is executing him for the murders that were committed and that he will physically die as a result of the execution.

PCR6/975. The circuit court fundamentally misunderstands or misapplied the controlling Eighth Amendment precedent. Under *Panetti*, the Eighth Amendment requires a condemned inmate to not only have a *factual* understanding of the death penalty and the reasons for it, but also a *rational* understanding of the purpose of the punishment unaffected by delusional beliefs. *Ferguson v. Sec'y Fla. Dep't of Corrections*, 716 F.3d 1315, 1318 (11th Cir. 2013) ("The Supreme Court has decided that a convicted murderer cannot be executed unless he has a rational understanding of the fact that he is going to be put to death and of the reason for his execution"); *see also Commonwealth v. Banks*, 29 A.3d 1129, 1145-46 (Pa. 2011) (applying *Panetti* and concluding that although the defendant "recognize[d] his responsibility for most of the murders," "underst[ood] that he was sentenced to death," and "appear[ed] to

understand what the execution entails and . . . that he would die as a result of it," the defendant "had a significant number of fixed delusions relating to his crime and punishment" that precluded any finding that he had a "rational understanding of the death penalty or the reasons for it").

Appellant can repeat that he was convicted of capital murder and, as a result, he is under a sentence of death. T/198. And, he understands that he will die. T/198. However, due to his delusional disorder, Appellant believes that the true reason he is being executed is because of a government conspiracy to silence him. T/198. He does not believe that he is simply wrongfully convicted and the government erred in convicting the wrong person. Instead, he believes the government intentionally framed him for a murder he did not commit in order to punish and silence him. As the Court explained in *Panetti*, the inquiry does not end at determining whether Appellant "can identify the stated reason for his execution", because a "prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it." *Id.* at 959.

Where, as here, the prisoner's mental state prevents "him from comprehending the meaning and purpose of the punishment to

which he has been sentenced", his execution cannot proceed. *Id.* at 960. This is because if a prisoner's awareness "of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole," *id.* at 958, then the punishment lacks any justification.

The experts agreed that Appellant does not believe he is mentally ill or has a mental health issue. T/156, 197, 221, 279. Appellant's prior attorneys and investigators all testified that Appellant truly believes the government conspired to kill his family and frame him for their deaths. PCR6/7-67, 94-100, 107-18. Dr. Dillon, when asked at the penalty phase if he believed Appellant's story that two masked men killed Renee and the children, testified, "I believe that's what he believes." T.2395. Dr. Agharkar and Dr. Crown similarly testified to the genuineness of Appellant's belief. PCR6/143, 185. As a result, Dr. Agharkar and Dr. Crown opined that while Appellant understands the State is saying that he is to be executed for killing the victims, Appellant actually believes in earnest that the stated reason is a sham and the State in truth wants to execute him to silence him for his prior GWI advocacy.

In support of its holding, the circuit court found that Dr. Werner testified there was "no evidence of disordered or delusional thinking." PCR6/969. Yet, she also testified that Appellant told evaluators that three masked individuals entered his home and committed the crime looking for blood diamonds. *Id*. She believed these statements were "an attempted defense to the murders…and not a delusion at all." PCR6/970. In conclusion, Dr. Werner found that Appellant "understands that he is going to be executed and even explained why that was, specifically because a jury had found him guilty of the murders and he had been sentenced to death." *Id*. Dr. Werner concluded that Appellant "fully understands the nature and effect of the death penalty and why it has been imposed on him." PCR6/971.

This testimony is not relevant to the question at issue – whether appellant has a rational understanding of why the State seeks to execute him. Appellant does not dispute that he has a factual understanding – as evidenced by Dr. Werner's testimony (and Dr. Crown and Dr. Agharkar). Nor is the test whether Appellant has a factual understanding of the crime. Thus, this evidence does not support the finding that Appellant has a rational understanding of the reasons for his execution.

Similarly, Dr. Myers testified that he does not believe Appellant has a delusional disorder and saw no evidence of such in his history. Dr. Myers admitted Appellant was not malingering and credited his statements instead to an artfully crafted alibi – not a delusion. The circuit court credited Dr. Myers' opinion that Appellant understands "exactly what he is facing regarding the death penalty and that he in [sic] understandably sad about that." PCR6/973. Again, Appellant does not contest that he understands he is facing execution and that he will die. However, the question is does he rationally understand why that is to happen. Like Dr. Werner's testimony, Dr. Myers' testimony is not relevant to the issue at hand.

The only experts who opined on whether appellant has a rational understanding were Dr. Crown and Dr. Agharkar. They affirmatively stated that Appellant does not. Further, Dr. Crown and Dr. Agharkar spent significantly more time with Appellant than the Commission members, and discussed topics pertinent to the competency standard. Both experts testified they had to frequently redirect Appellant back to the issue due to his tangential and disorganized thought processes. Conversely, the Commission spent less time with Appellant and discussed non-relevant topics such as

his diet and childhood. PCR6/303-04. Lastly, Dr. Crown and Dr. Agharkar had access to more voluminous materials, and had more time to review those materials, than the Commission. The Commission's review was limited to material from the record on appeal and did not include pertinent information such as: Appellant's military records (including medical records); Allison Brown's affidavit; Jennifer Shorts' affidavit; Appellant's pro se pleadings to the Florida Supreme Court; Dr. Crown's neuropsychological test results from 2025; and copies of Appellant's numerous letters to his legal team and family. The Commission was not aware of Appellant's documented delusional paranoid behavior prior to his move to Florida and arrest for this crime. The Commission was not aware of his very real behavioral and mental changes after returning home from active deployment, prior to the crime. All of this was relevant evidence of which they did not even attempt to make themselves aware of.

In sum, the circuit court erred in relying on the wrong standard in finding Appellant competent to be executed. Dr. Werner and Dr. Myers' testimonies were not instructive of the core issue – whether Appellant rationally understands why the State is seeking his

execution. The only experts who answered this question were Dr. Crown and Dr. Agharkar. Both affirmatively found Appellant does not have a rational understanding, and thus, is not competent to be executed.

C. Lack of Factual Support of Lower's Court's Findings.

Appellant has maintained a delusional belief for over twenty-five years that the government is conspiring against him to silence him because of his knowledge of government secrets. This belief predates his move to Florida. It predates his relationship with the victims. It is not an artfully crafted alibi, but a delusional disorder arising from brain damage sustained in service to his country.

The circuit court found "[t]here is no credible evidence that in his current mental state Mr. Hutchinson believes himself unable to die or that he is being executed for any reason other than the murders he was convicted of by a jury of his peers." PCR6/975. That holding is not supported by competent and substantial evidence.

First, the circuit court erred in finding the testimony of Dr. Myers and Dr. Werner more credible on this point. The court found that their opinions were "clearly and conclusively supported by the record" and the testimony of the prison employees. PCR6/975.

The records do not support a finding that Appellant is presenting a "story" of a government conspiracy in order to avoid responsibility for the murders, PCR6/975, or that Appellant does not genuinely believe this. There is unrefuted evidence that Appellant has believed the government was after him ***prior*** to him meeting the victims and moving to Florida. As evidenced by the affidavits of Allison Brown and Jennifer Shorts, Appellant returned from the Gulf War a changed man. He was paranoid. He believed someone was trying to kill him and the government was behind it all. He was convinced that government operatives were taking photos of his home. He would drive different routes in an attempt to elude government agents who were following him. After Appellant moved to Florida, he became convinced a black van was following him. He posted flyers about government conspiracies with a 1-800 hotline he started. Dr. Myers and Dr. Werner were not aware of Brown or Shorts' affidavits, or this evidence.

Similarly, the underlying record also supports the fact that Appellant genuinely has a fixed false belief. Dr. Dillon evaluated Appellant pre-trial. He found that Appellant suffered from delusions and was not competent to proceed. He also testified that it was his

opinion Appellant truly believed the delusion. Likewise, trial counsel filed a notice of intent to rely on insanity defense citing their belief that Appellant has delusions which cause him to "honestly believe things to be facts which [are] not true or real." R/790. Thus, the circuit court's finding is completely unsupported by the record.

Second, the circuit court's finding that Appellant's belief is not a delusion is similarly unsupported by the testimony. Monica Jordan and Jeff Hazen worked together on Appellant's initial state postconviction case. At that time, Appellant was "fixated on finding the people responsible for these murders and insisted that the killings were part of a government conspiracy to silence him." PCR6/963. Jordan testified that "there was no doubt" Appellant truly believed this. T/12. Similarly, Daniel Ashton also testified that Appellant truly believed "that the government had framed him for the murder of his family." PCR6/962; T/31-32, T/37 ("Oh, he absolutely believed it. I mean, I believe that with all my being. He believed that, for sure."). Ashton also testified about how Appellant refused to speak about his case over the phone because he thought the line was bugged and the government was listening. T/41; *see also* T/113.

In letter after letter to his family, Appellant expressed this same belief. In a letter to his father, he expressed conspiracy theories relating to the judge taking bribes to keep him incarcerated. T/319. Another time, Appellant stated that he was innocent and the government had "railroaded" him by manipulating his trial attorneys who were working with the prosecutor to ensure his conviction. T/321. He claimed the government conspiracy even went so far as to manipulate the physical evidence to ensure his conviction. T/321-22.

Appellant's successive postconviction attorneys Stacy Biggart and Terri Backhus testified that Appellant maintained his innocence and belief in a government conspiracy to kill his family in order to "shut him up." PCR6/962. They testified Appellant truly believes his delusion. PCR6/964; T/112; T/23. Backhus recalled Appellant was paranoid and suspicious of new people. T/112.

Appellant expressed this same fixed false belief – that he is innocent, that masked intruders broke into his home and committed the murders, and the government framed him for this crime in an attempt to silence or discredit him – to Dr. Crown, Dr. Agharkar, Dr. Werner, Dr. Lazarou, and Dr. Myers. Thus, there is no evidence to

support the circuit court's conclusion that no credible evidence exists that Appellant believes anything other than he is being executed for the murders he was convicted of. Appellant firmly believes – and has for over twenty-five years – that he is being executed because of a government conspiracy to silence him.

Lastly, the circuit court's reliance on the prison employees' testimony is not persuasive or relevant evidence. PCR6/975. None of these employees have any mental health background, they are not licensed professionals, and they cannot make any mental health diagnoses. Additionally, as Dr. Crown testified to, the third criteria under the DSM for delusional disorder is the requirement that the person's "functioning is not markedly impaired." T/162. Dr. Crown explained that, outside of their delusional belief, a person suffering from delusional disorder appears "normal." T/155. Similarly, Dr. Agharkar testified that, especially in a structured prison environment, Appellant will appear higher functioning and not draw attention to himself. T/190. People who suffer from delusional disorder are not going to appear "raving mad", "throwing feces', or "barking at the moon." T/190. Thus, this explains why Appellant appears normal to lay persons, like prison employees. The circuit

court's reliance on the testimony of the prison employees was not supported by competent substantial evidence.

In conclusion, the record, neuropsychological testing, and majority of the lay and expert witness testimony supports the finding that Appellant does not have a rational understanding of the reasons for his execution, based on a fixed false belief that the government has conspired to frame him for a murder he did not commit. Appellant truly believes this is the real motive behind his execution. As a result, he is unable to appreciate the connection between the crime and his execution.

D. Conclusion

The Eighth Amendment forbids the execution of a prisoner so mentally impaired that he cannot rationally perceive the connection between his crime and his punishment. *Ford*, 477 U.S. at 422 (Powell, J. concurring); *see also Panetti*, 551 U.S. at 960 (recognizing that "[g]ross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose"). To execute a brain damaged veteran like Jeffrey Hutchinson would disserve the penological purposes of the death

penalty and exact a uniquely cruel punishment at odds with the core value of the Eighth Amendment – human dignity. Accordingly, Appellant, through his counsel, asks this Court to reverse the lower court's order and find that Appellant's execution at this time would violate the Eighth Amendment.

ARGUMENT II

THE CIRCUIT COURT ERRED IN DENYING APPELLANT'S MOTION TO STAY EXECUTION AND/OR GRANT A CONTINUANCE SO A FULL AND FAIR HEARING COULD BE CONDUCTED WHICH COMPLIED WITH DUE PROCESS.

This Court promulgated a three-step process set forth in Rule 3.811 to be followed if a defendant alleges he is incompetent to be executed. First, an inmate must make a credible showing that there are "reasonable grounds to believe that the prisoner is insane to be executed." Rule 3.811(e). If that threshold showing has been made, then a mandatory second step kicks in: "the judge ***shall*** grant a stay of execution." *Id.* (emphasis added). The judge can then use the breathing room provided by that stay to conduct the third step set forth in Rule 3.811: It "may order further proceedings which may include a hearing pursuant to rule 3.812." *Id.*

Appellant requested, through his April 24th Motion for Sanity Determination (which could not have been filed prior because Executive Order 25-92 and the Commission's Report was just issued on April 23rd) a hearing pursuant to Rule 3.812, and raised reasonable grounds to believe that he is insane to be executed. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Thus, the circuit court should have stayed his execution.

The logic of "shall grant a stay" makes sense given that an inmate's competency to be executed claim can only be brought ***after*** a death warrant is signed. *Gamble v. State*, 877 So. 2d 706, 720 (Fla. 2004) ("a claim of competency to be executed is not ripe for review until the governor signs a death warrant."). "Mental competency to be executed is measured at the time of execution, not years before then. A claim that a death row inmate is not mentally competent means nothing unless the time for execution is drawing nigh." *Tompkins v. Sec'y, Dept. of Corr.*, 557 F.3d 1257, 1260 (11th Cir. 2009) (citing *Panetti*, 551 U.S. at 946) (explaining that it is not possible to resolve a petitioner's *Ford* claim "before execution is imminent"). "It is not ripe years before the time of execution because

mental conditions of prisoners vary over time." *Id.* (citing *Panetti*, 551 U.S. at 943).

Panetti set the floor of minimum due-process requirements necessary in order for a competency-to-be-executed determination to be valid. A court drops beneath those constitutional baselines if it relies on procedures that are "'not adequate for reaching reasonably correct results'" or that "result[] in a process that appear[s] to be 'seriously inadequate for the ascertainment of the truth.'" *Panetti*, 551 U.S. at 954 (quoting *Ford*, 477 U.S. at 423-24 (Powell, J., concurring)). The circuit court's failure to grant a stay, instead scheduling the evidentiary hearing with less than 24 hours' notice, meant that, the parties had to scramble to perform scores of essential fact-gathering tasks, including, but not limited to: flying in expert witnesses; allowing those experts adequate time to review the commission's report; reviewing the voluminous mental-health history (which, in this case, weighs in at thousands of pages spanning more than 20 years); preparing for the witnesses' testimony; preparing to cross-examine the State's witnesses; reviewing and mastering the relevant medical and psychological treatises; and preparing for the hearing. This also does not mention the personal responsibilities

Appellant's counsel had to account for, including childcare arrangements. *Panetti* instructs that "[a]fter a prisoner has made the requisite threshold [incompetency] showing, *Ford* requires, at a minimum, that a court allow a prisoner's counsel the opportunity to make an adequate response to evidence solicited by the state court." *Panetti*, 551 U.S. at 952. Twenty-three hours' notice to prepare for and travel to a competency-for-execution hearing does not amount to "the opportunity to make an adequate response."

Granting a stay here was not only compelled by the rule, but also by the Constitution and this Court's decision in *Provenzano v. State*, 750 So. 2d 597 (Fla. 1999). The *Provenzano* court reversed the circuit court after it had refused to grant a stay that would have allowed the parties to assemble a more meaningful record. *Id.* at 601. And for good reason: "The critical focus of the trial court should be on determining the competency of the defendant, rather than on rushing to get the proceedings over in time for the scheduled execution to take place." *Id.* at 603 (Anstead, J., concurring).

The facts that mattered to the Court in *Provenzano* bear a striking similarity to the facts here. There, the "appellant's lawyers were not told that they would be allowed an evidentiary hearing on

the competency issue until August 26, 1999," with a pending execution date of September 14, 1999. *Id.* The rush that troubled the Florida Supreme Court in *Provenzano* concerned a 19-day period between the setting of a Rule 3.812 hearing and the pending execution date. As Justice Lewis emphasized, "it would have been difficult to proceed so rapidly" with such short notice. *Id.* at 605 (Lewis, J., concurring).

That rush was even faster here. In Appellant's case, there was only a 6-day period between the setting of the Rule 3.812 hearing on April 25, 2025, and the pending execution date of May 1, 2025. Therefore, the haste which concerned this Court in *Provenzano* is far more pronounced in Appellant's case and - even if Rule 3.811(e) did not already require it - warrants an immediate stay to ensure that this important process be robust, fair, and complete. That is critical. As Justice Anstead stressed in *Provenzano*, it is important "that the consideration and a determination of [the prisoner's competency] not only be thorough and fair, but also appear to be thorough and fair." *Id.* at 603 (Anstead, J., concurring). To do otherwise risks "encounter[ing] imposition of the ultimate penalty without the full measure of the deliberative process." *Id.* at 604 (Lewis, J.,

concurring).

The rush to an evidentiary hearing was done without anything close to "the full measure of the deliberative process." *Id.* As one of the concurring Justices in *Provenzano* emphasized in reversing the circuit court for doing just that, "[a] fundamental part of due process is that litigants, including capital defendants, be given reasonable time in which to secure and present evidence, including the testimony of live witnesses, at a trial or evidentiary hearing." *Provenzano*, 750 So. 2d at 603 (Anstead, J., concurring).

For example, the State called three prison employees to testify to their understanding of Appellant's mental state. The State failed to provide the names of those individuals until the afternoon of April 24, 2025. This afforded Appellant no time to depose or investigate these officers. The effect: trial by ambush. Appellant had no time to review records for these prison staff to evaluate bias, determine the extent of their exposure to Appellant, review their personnel files, and perform all the other basic due diligence that any lawyer in even the most pedestrian civil hearing would conduct before heading to a hearing.

Additionally, Appellant had attempted to secure copies of all

documents provided to the State's experts, but was not able to receive them prior to the evidentiary hearing. Prior to the evidentiary hearing, the State misrepresented the ability to obtain the e-mails from Appellant directly. However, it was not until the hearing was well underway that the State corrected that misrepresentation. Thus, though these documents were disclosed during the evidentiary hearing, that did not cure the problem as it was impossible for Appellant to review the over 3,700 emails during the one-hour long lunch break. The review that occurred *after* the hearing produced e-mails that would have countered Dr. Myers' opinion specifically and characterization about what had been communicated in the e-mails.

In addition, by permitting remote testimony, Appellant was deprived of adequately countering the State's cross-examination of Backhus and adequately cross-examining Dr. Myers because counsel was unable to show the witnesses documents and exhibits to refresh their recollection, and in Dr. Myers' case, his previous sworn testimony in other cases that was in direct conflict with his testimony in Appellant's case. For example, Dr. Myers dismissed Alison Brown's affidavit questioning counsel as to whether she had ever sought help for her ex-husband. But, of course, Appellant's family had. Dr.

Baumzweiger specifically mentioned that Appellant came to California seeking help with his physical, mental, and emotional symptoms in 1996—*before* the crime and contrary to Dr. Myers' testimony. Dr. Baumzweiger was a psychiatrist who treated Appellant. This was also noted in Dr. He's report.

Likewise, the truncated schedule caused counsel to be unable to secure the testimony of Dr. Emily Lazarou. The circuit court credited her opinion as a Commission member, but Appellant's attempts to impeach her credibility and show her extreme prosecutorial bias was cut-off.

Likewise, Dr. Tonia Werner's notes were relevant and necessary to adequately cross-examine her. Her notes contained discrepancies with her testimony and they should have been disclosed to counsel as Dr. Werner's credibility and candor was central to the issue before the circuit court. In addition, Appellant should have had the opportunity to probe the modifications that Dr. Lazarou made to the report. However, because her attendance could not be secured in less that twenty-four hours and the early drafts of the report were not disclosed, Appellant was unable to demonstrate the bias of the examiners and the process.

Finally, it is important not to lose sight of the immense burden this abbreviated schedule imposes on the Court. It is unrealistic for the lower court or this Court to process the torrent of evidence and records, and carefully craft an opinion evaluating that evidence in such a truncated time frame.

This Court should therefore remand this case to the circuit court for a hearing which complies with due process and ultimately an order that Appellant is incompetent to be executed per Rule 3.811(e).

ARGUMENT III

THE CIRCUIT COURT ERRED IN DENYING APPELLANT'S DISCOVERY REQUEST.

The circuit court erred in denying Appellant's discovery request and holding that Appellant was already granted access to such materials. *See* Order. Appellant never received a copy of all of the correspondence between the Commission members and the State and/or Governor's Office, all documents relied upon by the Commission members, or progress notes / other notes. Though the circuit court did grant Appellant's counsel access to his own emails (which were previously provided days earlier to the commission

members), Appellant's counsel had only the short lunch break to review over 3,700 emails. This was insufficient time to review the e-mails, let alone provide them to Appellant's experts or reasonably consult therewith.

The circuit court's failure to grant Appellant's request and/or to allow him adequate time to review the material it did order to be disclosed, violated basic notions of fairness and federal and state due process.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests that this Court reverse the lower court; grant a stay of execution; and/or grant any other relief it deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been furnished by electronic service to all counsel of record on this 29th day of April 2025.

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CERTIFICATION OF TYPE SIZE AND STYLE

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Initial Brief of the Appellant has been produced in Bookman Old Style 14-point font. Pursuant to Fla. R. App. P. 9.210(a)(2)(D), this brief complies with the word count (12,965) as it does not exceed 13,000 words.

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