

**FSC No. SC2025-0590**

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

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IN THE  
**Supreme Court of Florida**

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JEFFREY HUTCHINSON,  
Appellant,

v.

STATE OF FLORIDA,  
Appellee.

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

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**REPLY BRIEF OF APPELLANT**

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## **PRELIMINARY STATEMENT**

This proceeding involves the appeal of the circuit court's denial of Appellant's Motion for Competency to Be Executed Filed Pursuant to Rule 3.811. The State has filed its answer brief to Appellant's initial brief and this reply follows. This reply will address only the most salient points argued by the State. Appellant relies upon his initial brief in reply to any argument or authority argued by the State that is not specifically addressed in this reply.

## **CORRECTIONS TO STATEMENT OF FACTS AND PROCEDURAL HISTORY**

In its Answer Brief ("AB"), the State made several misstatements of fact, but due to warrant briefing time constraints, Appellant will only address the most misleading errors here. Additional incorrect or misconstrued statements also appear in the Argument portion of the Answer Brief and may be referred to in Appellant's reply to the argument.

The State is wholly inaccurate in its statement that Dr. Myers is board certified in forensic psychiatry. AB at 10-11. Dr. Myers testified to being board certified and the certification is listed on his CV (which was supposedly revised in 2024). T/271, 285; PCR6/852-

53. However, at the hearing, Dr. Myers was impeached with the fact that his forensic psychiatry board certification had lapsed in 2019. T/284-86. A copy of the printout from the American Board of Psychiatry and Neurology was entered as Defense Exhibit 13. PCR6/907; *see also ABPN-verifyCERT*, Myers, Wade C, <https://apps.abpn.org/verifycert/?lastName=myers&firstName=wade> (last visited Apr. 29, 2025). Likewise, on the subject of board certification, Appellant would like to clarify that although the State only mentioned Dr. Crown's board certification, Dr. Agharkar is a board certified forensic psychiatrist. AB at 10; T/173-74.

Footnote 4 contains multiple inaccuracies regarding the dates and length of time that lay witnesses had interacted with Appellant. AB at 9. The State insinuates that the witnesses have known Appellant for substantially less time than they actually have and testified to. First, Daniel Ashton has known Appellant for approximately twenty years, including directly working on his case in 2005-2006, 2015-2017, and 2024-2025. T/25-26, 38-40, 43-45. Second, Nels Roderwald started working on Appellant's case in 2017, but he is still currently working on Appellant's case approximately seven years later. T/58-60. Finally, Terri Backhus began her

representation of Appellant in 2015. T/108. Her representation of Appellant *concluded* in 2021/2022. T/112.

The State's depiction of the Commission's discussion with Appellant as being "in-depth" is also an exaggeration. AB at 7. The Commission only met with Appellant for 90 minutes. PCR6/19; R/303. The defense experts spent substantially more time with Appellant. Dr. Crown met with Appellant on two separate occasions for a total of approximately five and a half hours. R/132, 135, 139-40. Dr. Agharkar also spent almost four hours with the Appellant. R/182-83.

Not only did the Commission spend less time with Appellant, but even if it was the same amount of time, it would not carry any weight because most of the topics discussed during the Commission's examination were irrelevant. T/252, 303-04 (Commission discussed numerous extraneous topics such as his dietary habits, motorcycles, and fiancée). And, the fact that the interview was jointly conducted would have also negatively impacted the trust, rapport, and opportunity to obtain information from Appellant. Further, both defense experts testified that it was necessary to keep redirecting Appellant back to the main issues.

R/143-44, 187-88. The State insinuates that because Ms. Macready witnessed Appellant answering questions at the Commission's examination, that he was not "thought disorganized" or "difficult to keep him on task." AB at 9-10. Based on the litany of irrelevant topics discussed, the Commission's questions did not redirect Appellant back to the relevant topic of his rational understanding (or lack thereof) of the link between the crime and punishment. *See also* T/218 (Dr. Werner testified that the discussion of the crimes was not until about halfway into the notes from the examination).

The State mischaracterizes that the "records provided to the Commission were also provided to postconviction counsel." AB at 6. The State goes on to cite to page 808, which specifically details that "jpays/emails" were provided to the Commission. PCR6/805-08. However, at that point the State was still relaying FDOC's incorrect assertions that counsel "could obtain Hutchinson's emails at any time" and that Appellant had access to his tablet, which he has been unable to access since the warrant was signed. PCR6/797-98, 805. After three witnesses had been called, the State corrected themselves and the circuit court granted Appellant access to the JPAY emails. T/54-56. When Appellant's counsel requested the circuit court grant

an extended break to review the emails, the court inquired how voluminous the emails were, even though counsel had not fully downloaded all of the files and had a mistaken belief there were only approximately fifty emails/videograms. T/64-66. Upon further review, after the files were fully downloaded, which did not occur until the recess for lunch, one of the files was a spreadsheet containing over 3700 emails. T/92. The lunch recess was not nearly enough time to comb through all of the emails or to allow the defense experts to have any meaningful review of them. However, unlike the defense experts, Dr. Werner and Dr. Myers each testified that they were able to review all of the JPAY emails and videograms prior to issuing the Commission's report. T/234, 316-17.

As will be discussed further below, Appellant's statement contained within the Commission's report, "I don't want to die", was taken out of context. AB at 7; PCR6/20; R/338-40. In addition, having a factual understanding that you will die, is much different than having a rational understanding. T/198. Even if Appellant made that statement alone, and not out of context, it does not indicate that Appellant has a rational understanding of the causal connection between the crime and its punishment. T/189, 198-99. As Dr. Crown

and Dr. Agharkar confirmed, Appellant does not. T/145-47, 157-158, 170-71, 189, 198-99.

Further, it is not entirely clear what the State is implying regarding its discussion of Mr. Ashton's playing "devil's advocate", but Appellant would point out to the Court those statements support the fact that Appellant has a longstanding fixed delusional belief. AB at 10. For example, Dr. Crown testified that an individual with a fixed delusion can only incorporate new information into that belief "to the extent that it will confirm what they already believe." T/145-48. Dr. Crown goes on to explain that a delusional individual "[c]an incorporate, but he's not going to go beyond the fixed belief. . . .it's not going to change his mind." T/147. Moreover, he reiterated that a delusional individual "won't incorporate information that's adverse to what they believe." T/170. Dr. Agharkar also explained that "the issue is that it's a fixed false belief that, despite confrontation or additional information or other things, it is unwavering." T/187.

## **ARGUMENTS IN REPLY TO ISSUE I**

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

The State argues that the circuit court used the correct legal standard and that there was competent substantial evidence to support its finding. AB at 18-19. These arguments misconstrue the record and applicable law.

#### *Legal Standard*

Appellant agrees that “[w]hat matters is whether a person has the ‘rational understanding’ of why the State seeks to execute him, ‘not whether he has any particular memory or any particular mental illness.’” AB at 19. Appellant’s argument is that the circuit court fundamentally misunderstands or misapplied this standard. Specifically, the circuit court found that “There is no credible evidence that Mr. Hutchinson does not understand what is taking place and why it is taking place.” PCR6/975. That is simply not true. While Appellant has a *factual* understanding of the nature and effect of the death penalty - that he will die by lethal injection (*i.e.* what is taking place) – he does not have a *rational* understanding of why it is being imposed upon him. Appellant genuinely believes he will be

executed as part of a government conspiracy to silence him because of his Gulf War Illness advocacy. That is not a rational understanding. While Appellant's *counsel* does not dispute the circuit court's finding that this belief is "demonstrably false," PCR6/975, *Appellant* truly believes this is true – and that is what matters. By definition a delusional belief is a "fixed false belief that's not based on reality." T/275.

The State incorrectly and repeatedly points to Appellant's factual understanding by relying on Dr. Crown and Ms. Macready's testimonies. AB at 21, 22. However, both testimonies speak to Appellant's factual understanding and does not support the conclusion that Appellant has a rational understanding<sup>1</sup>.

As explained by Dr. Agharkar, Appellant says:

I know I was convicted. I know I was convicted of capital murder. I know the State wants to execute me for a capital murder. So that's a factual understanding. But the real reason I'm being executed is a government coverup. I was framed for these murders. I'm innocent. They want to kill me because of all the trouble I've caused them regarding the Gulf War Syndrome and illness and all this and because of what I know. And also chemical weapons I

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<sup>1</sup> Had Appellant been allowed to video record the commission's examination then this Court as well as the circuit court could have seen exactly what question was posed, what Appellant said, and how he said it.

think used in the Gulf War. He knows something about that. And so that's the real reason as to why this is happening. *That's the rational understanding, and that's where he fails.*

T/198 (emphasis added). “A prisoner’s awareness of the State’s rationale for an execution is not the same as a rational understanding of it.” *Panetti v. Quarterman*, 551 U.S. 930, 959 (2007). Appellant’s concrete understanding of his conviction and sentence does not equate to a rational understanding of it. Instead, Appellant’s delusional beliefs prevent “him from comprehending the meaning and purpose of the punishment to which he has been sentenced.” *Id.* He cannot and does not grasp the State’s rationale for his conviction and sentence.

#### *Competent Substantial Evidence*

There was no competent substantial evidence for the circuit court to find Appellant competent to be executed. The court found that Appellant did not suffer from a delusional disorder, but instead, was “presenting his story of a government conspiracy in order to avoid responsibility for the murders.” PCR6/975. This finding completely ignores the vast swaths of record evidence that Appellant’s delusions existed prior to his meeting the victims, prior

to his move to Florida, and prior to the crimes. PCR6/940-42. Neither the State nor the circuit court attempt to reconcile these facts.

Second, the circuit court's finding also ignores all of the neuropsychological testing and prior experts' findings. Dr. Crown testified to Appellant's neuropsychological test results which showed organic brain damage due to toxin exposure and traumatic brain injury. T/136-39, 141-45. He testified that Appellant passed the malingering tests and his scores were consistent within and across tests which would be impossible for "even skilled psychologists" to fake. T/139. The Commission members did no testing with Appellant. T/239.

Similarly, Dr. Agharkar testified that Appellant has damage to his frontal lobes which is a brain-based reason for his delusional behavior. T/194-95. And, Appellant's intelligence level is not relevant to, nor does it preclude, a delusional disorder. T/196.

Nor is Appellant's lack of mental health treatment or hospitalizations surprising or relevant. Dr. Werner testified that people with delusional disorder "present relatively normal on the outside." T/242; *see also* T/155 (Dr. Crown same); T/196 (Dr.

Agharkar same). Dr. Werner further testified that delusions “can be very encapsulated and not affect their total functioning.” T/219-20.

Finally, Dr. Myers and Dr. Werner’s competency findings were less credible because they had less material and spent less time with Appellant. Dr. Myers incorrectly testified that Appellant’s “entire life prior” to the crime was normal with no evidence of mental illness. T/275. That testimony is conclusively rebutted by the record. PCR6/393-510, 592-786. It also jaded his view of Appellant’s interview and his subsequent opinion, and was contradicted by all seven lay witnesses that Appellant presented at the hearing. Therefore, the circuit court erred in assigning Dr. Myers and Dr. Werner’s testimony more weight.

### *Conclusion*

Ultimately, the Commission, circuit court, and State focused on Appellant’s factual understanding – that he had been convicted by a jury and sentenced to death. T/224 (“he was well aware and expressed an understanding that, you know, a jury of his peers had found him guilty and he had been sentenced to death.”). Even when directly asked if Appellant rationally understood his execution, Dr. Werner again focused on the *facts* responding:

he fully understands that he was found guilty by a jury of his peers based on the evidence that was presented at trial for the murder or three murders and has three death sentences for these children and received a life sentence.

T/225. The Eighth Amendment requires more. *Ford v. Wainwright*, 477 U.S. 399, 422 (1986) (Powell, J. concurring); *see also Panetti*, 551 U.S. at 960.

The record, neuropsychological testing, and witnesses' testimonies supports the finding that Appellant does not have a rational understanding of the reasons for his execution. He is unable to appreciate the connection between the crime and his execution. Accordingly, Appellant, through his counsel, asks this Court to reverse the lower court's order and find that Appellant's execution would violate the Eighth Amendment.

## **ARGUMENTS IN REPLY TO ISSUE II**

### **THE CIRCUIT COURT ERRED IN DENYING APPELLANT'S MOTION TO STAY AND/OR GRANT APPELLANT'S MOTION FOR CONTINUANCE.**

The State incorrectly argues Appellant was afforded a full and fair evidentiary hearing and was somehow at fault for any delay in the proceedings. AB at 24. The State's position is factually and legally incorrect.

The State argues Appellant “bears certain responsibility for any delay and was dilatory in pursuing his *Ford* claim.” AB at 26. The case law is clear that a competency to be executed claim cannot be raised until 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.”); *see also Hunter v. State*, 817 So. 2d 786, 799 (Fla. 2022) (finding that the defendant’s claim that his execution would be unconstitutional because he may be incompetent at the time of execution was premature, and the claim could not legally be raised until after a death warrant is issued).

Furthermore, arguments made by the State asserting Appellant is responsible for the delay because he was aware of the delusion for decades is improper. “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).

Although Appellant has had a fixed delusional belief regarding a government conspiracy for decades, competency to be executed is a different standard than competency to proceed to trial or competency to proceed in postconviction proceedings. *C.f.* Rule 3.851(g) and 3.812; *see also Panetti v. Quarterman*, 551 U.S. 930, 934 (2007) (holding prior findings of competency do not foreclose a prisoner from proving he is incompetent to be executed because of his present mental condition). Thus, immediately after learning of the death warrant, Appellant retained Dr. Crown and Dr. Agharkar to conduct a competency to be executed evaluation, before he raised such a claim to ensure he had a reasonable basis to invoke Section 922.07, Fla. Stat. *See Ford v. Wainwright*, 477 U.S. 399, 426 (1986) (explaining the competency determination depends substantially on expert analysis in a discipline fraught with “subtleties and nuances”).

Moreover, Appellant’s death warrant was signed by Governor DeSantis on March 31, 2025 (there are 31 days between the signing of the death warrant and the scheduled execution). However, the State and other non-parties were given at least 10-days advanced

notice, as evidenced by a Facebook comment from an apparent member of the victim's family, indicating that Appellant's death warrant would be signed next and that "absolutely nothing will stop it." PCR5/95. The State further asserts Appellant could have and should have invoked Fla. R. Crim. P. 3.811(b) immediately upon the notice of the death warrant. AB at 26. However, notice of the death warrant was further delayed as the Governor's office improperly served it on counsel at the Capital Collateral Regional Counsel Middle's Office, who has never represented Appellant. Upon receiving notice of the death warrant, Appellant immediately contacted mental health experts to conduct an evaluation to assist with warrant litigation; however, the earliest any mental health expert could evaluate Appellant was on April 7, 2025, which was further delayed due to an uncontrollable "supercharged" storm hitting the Florida panhandle forcing the expert to cancel his visit, PCR5/100-03, and due to Florida State Prison being on complete lockdown on April 8, 2025, due to Michael Tanzi's execution; thus, the earliest Dr. Crown and Dr. Agharkar could evaluate Appellant was on April 10th and 11th.

After receiving the doctors' reports, Appellant sent notice to the Governor's office the following business day on April 14, 2025, at 8:21 a.m. pursuant to Section 922.07(1), Fla. Stat. PCR6/542-45. The notice was received and read by the Governor's office the same day at 9:31 a.m. PCR6/547. Dr. Werner testified that the Governor's office contacted her on April 14th requesting her to serve on the Governor's Commission. T/231. However, on April 15, 2025, after not receiving a response from the Governor's office, Appellant's counsel diligently and proactively contacted the Governor's counsel requesting an update. PCR6/549. Governor's counsel responded back an hour later to say they would contact Appellant's counsel with any updates. PCR6/551.

Executive Order 25-83 was not issued until *two days later* on April 17, 2025. PCR6/526-28. The order stated the Governor's commission would conduct their evaluation of Appellant another *four days* later on April 21, 2025, which would be one full week after Appellant notified the Governor he was incompetent to be executed. PCR6/553-55. Further, although the Executive Order stated that the Commission's report was due on April 22, 2025, Appellant did not receive their report until the end of the day on April 23, 2025, after

the Governor issued Executive Order 25-92, wherein he found Appellant competent to be executed and lifted the temporary stay. PCR6/17-18. Thus, any argument by the State that it was Appellant who delayed – when in actuality it was dilatory actions by the Governor’s Office – is factually incorrect and belied by the record.

Lastly, Appellant was not afforded a full and fair evidentiary hearing on his competency to be executed claim, nor did Appellant derive the full benefit from the adversarial process. The circuit court held a status conference on the morning of April 24, 2025, and scheduled the evidentiary hearing for the following day, over Appellant’s objection. Although Appellant filed a motion to stay execution and motion for continuance, the circuit court denied both motions. PCR6/570-574, 575-591, 790-793. Consequentially, Appellant had less than 24 hours to prepare for his evidentiary hearing. The truncated timeline did not afford Appellant’s counsel the opportunity to “make an adequate response to evidence solicited by the state court.” *Panetti*, 551 U.S. at 952. As Justice Powell stated in his concurrence, “[a]t least in the context of competency determinations prior to execution, this standard is no different from the protection afforded by procedural due process. It is clear that an

insane defendant's Eighth Amendment interest in forestalling his execution unless or until he recovers his sanity cannot be deprived without a "fair hearing." Indeed, fundamental fairness is the hallmark of the procedural protections afforded by the Due Process Clause." *Ford*, 477 U.S. at 424.

The circuit court's failure to grant a stay and instead schedule the evidentiary hearing with less than 24 hours' notice, meant that, the parties had to scramble to prepare and travel to the out-of-town evidentiary hearing. And, once at the hearing, counsel was not afforded the opportunity to adequately cross-examine Dr. Myers since his testimony was via Zoom. First, counsel could not adequately impeach his false testimony that he was board certified in forensic psychiatry, PCR6/907, by showing him documents. Nor could counsel impeach his false testimony that Appellant's family did not previously seek medical or mental health help for him. And, counsel was unable to question Dr. Lazarou or impeach her on her numerous biases due to the State being unable to secure her appearance at the hearing.

The record clearly shows that it was the State who delayed the competency to be executed proceedings by over a week resulting in

an expedited and truncated hearing, not Appellant. The State's arguments to the contrary are unavailing and not supported by the record.

**ARGUMENTS IN REPLY TO ISSUE III**

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

In denying Appellant's discovery request the circuit court held Appellant already had access to all material relied upon by the commission. Order at 1. The State incorrectly relies on this finding in asserting the discovery requests were properly denied. AB at 28. Appellant was not afforded a full and fair opportunity to review the JPAY emails relied upon by the Commission as they were not shared with Appellant until after the 3.812 hearing had commenced. During the hearing, the State's counsel admitted to the court that he had incorrectly stated in his discovery response that Appellant had access to his tablet and could send the emails to his counsel. T/54-55. Further, when Appellant's counsel finally gained full access to the emails, they only had one hour to review over 3,700 emails during the lunch break. Additionally, Appellant did not have meaningful access to Dr. Werner's notes that she relied upon while testifying.

During her testimony, Dr. Werner reviewed her notes that she took during the Commission's evaluation of the Appellant to aid in her testimony. T/216, 218.

Conversely, the State complains that it did not receive Appellant's experts' reports until the afternoon of April 24, 2025, AB at 27, however, the State was sent the reports as soon as it let Appellant's counsel know they did not have access to the reports. In contrast, although Appellant's counsel requested the JPAY emails on April 18, 2025, the JPAY emails which were significantly more voluminous (3,700 emails compared to twenty pages) were not received until *after* the hearing had already started. PCR6/806-08; T/54-55. The State also ignores that the underlying proceedings were moving at warp speed with counsel scrambling to prepare without any process for disclosing exhibit or witness lists. The due process violations were many and severe, and detrimental to Appellant.

## **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 30th day of April 2025.

/s/ CHELSEA SHIRLEY  
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**CERTIFICATION OF TYPE SIZE AND STYLE**

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Reply Brief of the Appellant has been produced in Bookman Old Style 14-point font. Pursuant to Fla. R. App. P. 9.210(a)(2)(B), this brief complies with the word count (3,852) as it does not exceed 4,000 words.

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