

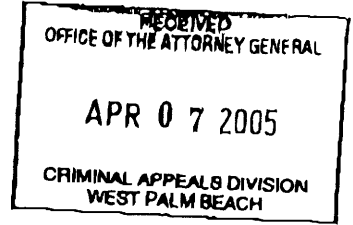
IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY,  
FLORIDA

STATE OF FLORIDA,  
Plaintiff,

CASE NO. 95-5175 CF A02

v.

RONALD KNIGHT,  
Defendant.



RESPONSE TO STATE'S MOTION FOR REHEARING

RONALD KNIGHT, by and through undersigned counsel, hereby responds to the State's motion for rehearing served on undersigned counsel on March 29, 2005 as follows:

1. This Court's oral grant of an evidentiary hearing on all the claims contained in Mr. Knight's June 2, 2005 Fla. R.Crim. P. 3.850 motion was well within the powers of the Court:

If the motion has not been denied at a previous stage in the proceedings, the judge, after the answer is filed, shall determine whether an evidentiary hearing is required. If an evidentiary hearing is not required, the judge shall make the appropriate disposition of the motion. If an evidentiary hearing is required, the court shall grant a prompt hearing thereon and shall cause notice thereof to be served on the state attorney, determine the issues, and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the movant as to render the judgment vulnerable to collateral attack, the court shall vacate and set aside the judgment and shall discharge or resent the movant, grant a new trial, or correct the sentence as may appear appropriate.

Fla. R. Crim. P. 3.850 (d). As of today's date undersigned counsel has not received a written memorialization of the order entered by this court at the hearing on March 24, 2005.

2. It is also inappropriate for the State to file a motion for rehearing in these circumstances. The oral order entered on March 24, 2005 was not a final order on the Rulc 3.850

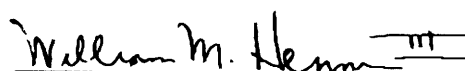
motion filed by Mr. Knight. Rule 3.850 (g) anticipates that motions for rehearing are appropriate only after the entry of orders denying the postconviction motion (“The movant may file a motion for rehearing of any order denying a motion under this rule within 15 days of the date of service of the order”).

3. The State’s motion for rehearing includes further argument concerning the claims that were before this court at the Huff hearing on March 24, 2005. The State had ample opportunity to make any and all factual and legal arguments before the conclusion of said hearing. The lethal injection litigation in the cases cited by the State, Sims v. Moore, 754 So. 2d 657 (Fla. 2000) and Provenzano v. State, 761 So. 2d 1097, 1099 (Fla. 2000), now dates back almost five years. As noted at the Huff hearing, considerable legal and scientific information that calls into grave question the constitutionality of the practice pursuant to In re Kemmler, 136 U.S. 436, 443 (1890) (holding that execution method must result in instantaneous death to satisfy constitutional standard); Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 474 (1947)(same), will be presented at an evidentiary hearing. See Deborah W. Denno, *When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocution and Lethal Injection and What It Says About Us*, 63 Ohio State Law Journal 63 (2002).

WHEREFORE, the Defendant respectfully requests that this Court enter a written order memorializing the oral ruling entered at the March 24, 2005 hearing, and further, that the State’s motion for rehearing be denied.

I HEREBY CERTIFY that a true copy of the foregoing response has been furnished via first-class United States mail on this 5<sup>th</sup> day of April, 2005 to: Judge Edward Garrison, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, FL 33401; Debra Rescigno, Office of the Attorney General, 1515 N. Flagler Dr., West Palm Beach, FL 33401; Andrew Slater, Office of the State Attorney, 15th Judicial Circuit, 401 North Dixie Highway, West Palm Beach, FL 33401

Respectfully submitted,



WILLIAM M. HENNIS III

Litigation Director

Florida Bar No. 0066850

Law Office of the Capital Collateral  
Regional Counsel, Southern Region  
101 N.E. 3rd Avenue, 4th floor  
Fort Lauderdale, FL 33301  
Tele. (954)713-1284  
Fax (954) 713-1299

Counsel for Mr. Knight

Copies furnished to:

Judge Edward Garrison  
Palm Beach County Courthouse  
205 North Dixie Highway  
West Palm Beach, FL 33401

Debra Rescigno  
Office of the Attorney General  
1515 North Flagler Dr.  
West Palm Beach, FL 33401-3428

Andrew Slater  
The Office of the State Attorney  
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RECEIVED  
OFFICE OF THE ATTORNEY GENERAL

RONALD KNIGHT,  
Defendant.

JUL 14 2005

CRIMINAL DIVISION  
WEST PALM BEACH

**DEFENDANT'S RESPONSE TO ATTORNEY GENERAL'S OBJECTION TO DEMAND  
FOR ADDITIONAL PUBLIC RECORDS AND MOTION FOR RECONSIDERATION  
OF THE GRANTING OF AN EVIDENTIARY HEARING ON KNIGHT'S CLAIM THAT  
EXECUTION BY ELECTROCUTION OR LETHAL INJECTION IS  
UNCONSTITUTIONAL**

The Defendant, **RONALD KNIGHT**, by and through undersigned counsel, pursuant to Florida Rule of Criminal Procedure 3.852 (i), hereby files his Response to Attorney General's Objection to Demand for Additional Public Records and Motion for Reconsideration of the Granting of an Evidentiary Hearing on Knight's Claim that Execution by Electrocutation or Lethal Injection is Unconstitutional.

1. At a March 24, 2005 Huff hearing, this Court ruled that Mr. Knight was entitled to an evidentiary hearing for all of the claims raised in Mr. Knight's 3.850 motion, including the claim that execution by electrocution and/or lethal injection is cruel and unusual punishment and therefore unconstitutional.

2. On March 29, 2005, the Attorney General filed State's Motion for Rehearing on the Trial Court's March 24, 2005 Ruling Granting an Evidentiary Hearing on Defendant's Sixteen (16) Post-Conviction Claims.

3. On April 5, 2005, undersigned counsel filed Defendant's Response to State's Motion for Rehearing.

4. On April 5, 2005, this Court issued an Order Denying State's Motion for Rehearing.

5. On May 16, 2005, this Court issued an order scheduling an evidentiary hearing for November 7, 2005.

6. On June 10, 2005, Defendant filed a Motion for Production of Additional Public Records, pursuant to Rule 3.852(i), requesting the Attorney General to produce records related to Florida's lethal injection execution procedures.

7. On July 8<sup>th</sup>, 2005, the Attorney General filed an Objection to Demand for Additional Public Records and Motion for Reconsideration of the Granting of an Evidentiary Hearing on Knight's Claim that Execution by Electrocutation or Lethal Injection is Unconstitutional.

8. Contrary to the Attorney General's assertions, Mr. Knight's request for production of public records is not "overly broad and unduly burdensome." Obviously, the Attorney General's office is not expected to conduct "a search of every file in every office that would take thousands of hours and manpower....", as it claims in its objection. If the Attorney General is not in possession of the requested public records, it should state this in its objection.

9. Also contrary to the Attorney General's assertions, Mr. Knight has clearly established that the requested records are relevant to the subject matter of the evidentiary hearing and are reasonably calculated to lead to the discovery of admissible evidence.

10. This Court granted the November 7, 2005 hearing based on the representations by undersigned counsel that the science regarding lethal injection has evolved since Sims v. State, 754 So. 2d 657 (Fla. 2000) was decided. New research suggests that lethal injection may cause an

extremely painful and torturous death such as would violate the Eighth Amendment.

11. Since this research was developed in other jurisdictions, Mr. Knight's expert witnesses must review records related to Florida's lethal injection procedures in order to apply the new research to Florida's procedures. The requested records are necessary for Mr. Knight's experts to determine if Florida's lethal injection procedures pose a risk of causing an unnecessarily painful and torturous death.

12. Mr. Knight expects to elicit testimony from expert witnesses about the risk of torturous pain caused by lethal injection. In order for the expert witnesses to form an opinion regarding the risk of unnecessary pain, they must review the protocols for lethal injection in light of new scientific research. Thus the records are directly relevant to the subject matter of the hearing and are reasonably calculated to lead to the discovery of admissible evidence. Mr. Knight cannot prove that the Florida procedure is unconstitutional without access to the protocol. As stated in Mr. Knight's motion, "the records requested may reveal that the Department of Corrections' lethal injection procedures impose, or are likely to impose, physical and psychological torture without commensurate justification, even when the procedures are properly carried out."

13. The records requested, including the types and doses of drugs used, the order in which they are injected, and the method used to inject the drugs, are clearly relevant to whether lethal injection, as conducted under Florida's protocols, causes unnecessary pain. Undersigned counsel does not have any protocol, past or present. Furthermore, undersigned counsel is unaware whether or not these protocols have changed since Sims was decided.

14. In order to fairly form an opinion on the lethal injection protocol, the experts must know the qualifications of the personnel involved in the execution. Lethal injection requires the

mixing of drugs, insertion of IV catheters, administration of drugs, and other tasks requiring medical training and skills. The use of unqualified and untrained personnel would make it more likely that errors will occur and that the designated drugs will not function as intended under the protocol, causing unnecessary suffering.

15. The experts must also review reports of observations of previous executions by lethal injection, including autopsies and toxicology reports and reports of complications, in order to form an opinion on the likelihood that condemned inmates in Florida have suffered painful and torturous deaths by lethal injection. As stated above, the new scientific research on lethal injection was based on executions in other jurisdictions and it is necessary for Mr. Knight's experts to apply this new research to reports from Florida executions in order to form an opinion on the risk that lethal injection, as practiced in Florida, causes unnecessary pain.

16. It is also necessary for the experts to review the documents related to the adoption of lethal injection as a means of execution in Florida in order to assess, among other issues, the criteria used for choosing the lethal injection protocols, whether the protocols were evaluated scientifically before being adopted, whether alternative protocols were considered, and whether there was an awareness of the risk of inflicting pain.

17. Only after reviewing these records can Mr. Knight's expert witnesses testify fully and fairly.

18. The Attorney General also moves for reconsideration of this court's granting of the evidentiary hearing on this claim. The Attorney General's citation to Sims, which was decided five years ago, and cases based on Sims, ignores recent scientific research, conducted since Sims was decided, showing that lethal injection may cause a painful and torturous death. This second motion

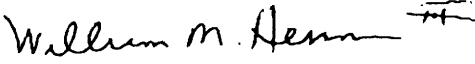
by the Attorney General adds nothing to the state's March 29, 2005 motion for rehearing, which also cited Sims, and which this Court denied.

19. Mr. Knight's request is most certainly not a "fishing expedition", as characterized by the Attorney General, as the request is clearly focused on obtaining evidence relevant to the issue of the constitutionality of lethal injection, and these materials are necessary for Mr. Knight's experts to form an opinion on the risk that lethal injection inflicts pain and torture.

20. Rule 3.852(i) is an appropriate discovery tool once the court has granted an evidentiary hearing. Mr. Knight's counsel properly filed an affidavit, sworn in good faith and notarized, and in compliance with the strictures of Rule 3.852(i).

WHEREFORE, the undersigned requests this Court to deny the Attorney General's objection and motion and to order the Attorney General to produce the records requested.

I HEREBY CERTIFY that the foregoing has been sent to all counsel of record via U.S. Mail  
this 12<sup>th</sup> day of July, 2005.

  
WILLIAM M. HENNIS, III  
Litigation Director  
Florida Bar No. 0066850  
Law Office of the Capital Collateral  
Regional Counsel - Southern Region  
101 NE Third Avenue  
Suite #400  
Ft. Lauderdale, FL 33301  
(954) 713-1284

Attorney for Mr. Knight

Copied to:

Judge Edward Garrison  
Palm Beach County Courthouse  
205 North Dixie Highway  
West Palm Beach, FL 33401

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Office of the Attorney General  
1515 N. Flagler Dr., 9th Floor  
West Palm Beach, FL 33401-3428

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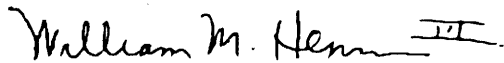
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**NOTICE OF FILING**

The Defendant, **RONALD KNIGHT**, by and through undersigned counsel, respectfully files in the court file of this case a copy of the following document:

Leonidas G. Koniaris et al., *Inadequate Anaesthesia in Lethal Injection for Execution*,  
LANCET 2005; 365:1412-14.

I HEREBY CERTIFY that the foregoing has been sent to all counsel of record via U.S. Mail or in person this 1st day of September, 2005.



WILLIAM M. HENNIS, III  
Litigation Director  
Florida Bar No. 0066850  
Law Office of the Capital Collateral  
Regional Counsel - Southern Region  
101 NE Third Avenue, Suite #400  
Ft. Lauderdale, FL 33301  
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West Palm Beach, FL 33401-3428

Andrew Slater  
The Office of the State Attorney  
15th Judicial Circuit  
401 North Dixie Highway  
West Palm Beach, FL 33401

Barbara Debelius  
Assistant General Counsel  
Department of Corrections  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2500