

IN THE SUPREME COURT OF FLORIDA

MARK DEAN SCHWAB
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Case No. SC80289
91-7249CFA
DEATH WARRANT


NOTICE OF FILING

COMES NOW the State of Florida, and files the following:

1. *State v. Lightbourne*, Marion County Circuit Court Order dated July 31, 2007

Respectfully submitted,


BILL MCCOLLUM
ATTORNEY GENERAL



KENNETH S. NUNNELLEY
Senior Assistant Attorney General
Florida Bar #998818
444 Seabreeze Blvd., 5th Floor
Daytona Beach, FL 32118
(386) 238-4990
FAX (386) 226-0457

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by Fax and U.S. Mail to: Mark Gruber, Assistant CCRC-Middle, Daphne Gaylord, Assistant CCRC-Middle, 3801 Corporex Park Drive, Suite 210, Tampa, FL 33619 and R. Wayne Holmes, Assistant State Attorney, 2725 Judge Fran Jamieson Way, Building D, Viera FL 32940 on this 1st day of August, 2007.



Of Counsel

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT,
IN AND FOR MARION COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

Case No. 81-170-CF-A-01

IAN DECO LIGHTBOURNE,
Defendant.

ORDER

THIS CAUSE came before this Court pursuant to the Florida Supreme Court's remand order which was issued following the filing of Lightbourne's "All Writs Petition" in that Court. The issues before this Court, pursuant to the remand order, are limited to the events surrounding the December 13, 2006, execution of Angel Diaz and the response of the Florida Department of Corrections to those events. This Court conducted an evidentiary hearing on May 18, May 21, June 18, June 19, and July 17-22, 2007.

During the evidentiary hearing, this Court heard testimony from eyewitnesses to the December 13, 2006, execution of Angel Diaz which was carried out pursuant to procedures issued by the Florida Department of Corrections issues on August 16, 2006. The Court heard and considered evidence concerning the autopsy of Diaz (including the photographs) as well as the findings that resulted from subsequent investigations into that execution. Those findings were produced by an inter-agency task force established by the

Department of Corrections, and by the Governor's Commission on the Administration of Lethal Injection which was established by then-Governor Jeb Bush. The Court heard testimony from Department of Corrections personnel who were involved in the Diaz execution, as well as from personnel who may participate in future executions. This Court also heard testimony from experts in forensic pathology, general medicine, anesthesiology, and lethal injection procedures. The testimony included evidence that the intravenous catheter penetrated Diaz's veins in both arms resulting in the drugs being administered into the subcutaneous tissue of the arms.

This Court also heard testimony that the Department of Corrections modified on May 9, 2007, execution procedures, which incorporate the changes recommended by the Governor's Commission on the Administration of Lethal Injection. The Court heard testimony from the warden designated to be in charge of the execution team at future executions, as well as from Department of Corrections personnel regarding the training and qualifications of personnel expected to be involved in future executions. The Court also heard testimony from assistant general counsel to the Governor, and from the Department of Corrections assistant general counsel responsible for drafting the May 9, 2007, procedures. Based on the testimony and evidence presented, this Court has concerns, as expressed in open court on July 22, 2007, that the Department of Corrections lethal injection procedures, as currently written, do not

adequately address the events that took place during the Diaz execution and that additional information should be provided in the department's procedures for lethal injection.

Florida's lethal injection procedures must be compatible with evolving standards of decency and compatible with standards that mark the progress of a maturing society. The process must be consistent with the notions of the dignity of man and, to that end, the State must establish a procedure that is not likely to result in the unnecessary or wanton infliction of pain. Counsel for the Department of Corrections identified various anticipated modifications to be made to the May 9 procedures. The Court finds that those identified modifications will be beneficial to the process, and further directs the Department of Corrections modify the procedures to comport with the Court's oral statements, including stating with particularity the qualifications, training, licensure, and credentials for each member of the execution team that is necessary to perform the various technical functions, such as starting intravenous lines, that are part of the lethal injection procedure; setting out the training that shall be required for each of the designated executioners, and specifically training for contingencies that might arise; creating checklists for the each function performed by execution and technical team members; correcting scribes's errors; setting time frames and providing for periodic review of the procedures by the Department;

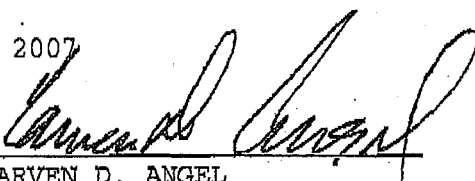
providing for certification of the readiness of the Department to carry out an execution; and clearly setting forth in plain language that any observed problems or deviations from the procedures should be brought immediately to the attention of the warden in charge of the execution team.

THEREFORE, IT IS HEREBY ORDERED:

A temporary stay is ordered and the State of Florida shall not schedule a date for the execution of Lightbourne's sentence of death until further order of this Court.

The State shall submit the modified procedures to the Court for review and a final hearing on the modified procedures will be scheduled no sooner than five (5) weeks following submission of the modified procedures.

DONE AND ORDERED in Chambers in Ocala, Marion County, Florida, this 31st day of July, 2007


 CARVEN D. ANGEL
 Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been provided by US mail and facsimile this 31 day of July, 2007, to the following:

Suzanne Myers Keffer Assistant CCRC
 Anna-Liisa Joseloff, Staff Attorney
 Office of Capital Collateral Regional Counsel - South
 101 NE 3rd Avenue, Suite 400
 Fort Lauderdale, FL 33301
 Fax: 954-713-1299

Rock Hooker
Assistant State Attorney **3365**
(via interoffice mail and fax @ 620-3655)

Kenneth S. Nunnelley, Assistant Attorney General
444 Seabreeze Blvd., 5th Floor
Daytona Beach, FL 32118
Fax: 386-226-0457

Department of Corrections, Legal Bureau, Maximillion Changus, 2601
Blair Stone Road, Tallahassee, FL 32399-6563 (by mail only)



Judicial Assistant