

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

CASE NO. 91-7249-CF-A

STATE OF FLORIDA,

Plaintiff,

**CAPITAL CASE
EXECUTION SCHEDULED**

v.

MARK DEAN SCHWAB,

Defendant
_____ /

**MOTION FOR RECONSIDERATION OF DENIAL OF MOTION TO
COMPEL PRODUCTION OF RECORDS**

The Defendant, MARK DEAN SCHWAB, by and through the undersigned counsel, moves that the Court reconsider its decision to deny his previous motion to compel production of certain public records relating to the lethal injection execution procedure employed by the Department of Corrections. As grounds therefore the Defendant states:

1. He has retained a quality assurance auditor and she has furnished an affidavit (attached) explaining in detail why the records were requested. This should address the argument that the request was a “mere fishing expedition.”

2. Defendant’s Rule 3.851 motion containing a lethal injection claim will be filed the same day as this motion. The motion will make clear the reasons for requesting the records

3. In particular, the Defendant respectfully disagrees with the view that *Sims* is controlling authority with regard to lethal injection claims. The *Sims*

holdings regarding lethal injection were limited to the constitutionality of the statute and the protocols. The arguments made here go further to address the training and proficiency of the personnel who carry out the execution. Moreover, events since the Diaz execution, including the scheduling orders in this case and in Lightbourne, as well as the comment in the Dolan Darling case which is cited in the 3.851 motion, all indicate that Sims is no longer controlling.

WHEREFORE, the Defendant moves for reconsideration of the Court's earlier ruling concerning public records.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion for Reconsideration of Denial of Motion to Compel Production of Records has been furnished by fax, e-mail and U.S. Mail, first class postage, to all counsel of record on this 15th day of August, 2007.

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