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

STATE OF FLORIDA,		:
Plaintiff,		:
		:
		:
<b>v.</b>		:
		:
		:
MARK DEAN SCHWAB,		:
Defendant.		:
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CASE NO.: CR 91-7249-CF-A

## CAPITAL CASE; WARRANT SIGNED EXECUTION SCHEDULED

## **MOTION FOR JUDICIAL NOTICE**

Defendant, **MARK DEAN SCHWAB**, by and through undersigned counsel, hereby submits this Motion for Judicial Notice of the record in *State v. Lightbourne*, Circuit Court Case No. 1981-170-CF-A-01, Marion County, and states:

1. On December 14, 2006, the day after the botched Diaz execution, the Capital Collateral Regional Counsel, Southern Region, filed a petition in the Florida Supreme Court seeking to invoke that Court's all writs jurisdiction on behalf of all of its clients, alleging that Florida's lethal injection procedure was unconstitutional in itself and as applied, as evidenced by the Diaz execution. The Court dismissed all of the petitioners' claims except for that of Ian Deco *Lightbourne* stating, "The dismissal is without prejudice to the petitioners filing any claim which they may have in the appropriate court for that individual petitioner." *Lightbourne*, SC06- 2391. The court relinquished jurisdiction to the Fifth Judicial Circuit Court in Marion County, where an evidentiary hearing continues to be conducted at the time the instant motion is being filed. State v. *Lightbourne*, Circuit Court Case No. 1981-170-CF-A-01, Marion County. Since then, any death row defendant who has filed an individual challenge to lethal injection and requested

an evidentiary hearing has been met with an answer by the State to the effect that the *Lightbourne* hearing is the lead case on the issue.

On July 18, 2007, the Governor signed a warrant for the execution of Mark Schwab. The warrant and attachments scheduled the execution for the week of November 12, which is notably longer than has been the case in the past. The same morning, the Florida Supreme Court issued an order establishing a trial court litigation deadline and appellate briefing schedule in *Lightbourne*, with oral argument set for October 11. The next day, the Court issued a similar schedule in this case, with oral argument set at the same time as in *Lightbourne*. That there is a connection between the two cases is obvious.

2. A motion challenging Florida's lethal injection method of execution will be filed in this case. All of the record in the *Lightbourne* case will be relevant to the lethal injection issue in this case.

3. This request falls under the discretionary judicial notice provisions F.S. §90.202.

4. As a practical matter, the transcripts of the *Lightbourne* hearing are easily available and in fact are posted on various sites on the internet. Easily reproducible exhibits can also be easily provided. Access to physical exhibits will require further consideration by the Court.

Wherefore, the Defendant moves that the Court take judicial notice of the file in *Lightbourne v. State*.

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Motion for Judicial Notice has

been furnished by E-mail, Fax and United States Mail, first class postage prepaid, to all counsel

of record on August 13, 2007.

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The Honorable Thomas D. Hall Clerk, Supreme Court of Florida ATTN: Tangy Hardy Supreme Court Building 500 S. Duval Street Tallahassee, FL 32399-1927