

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

CASE NO. 91-7249-CF-A

STATE OF FLORIDA,

**CAPITAL CASE
EXECUTION SCHEDULED**

Plaintiff,

v.

MARK DEAN SCHWAB,

Defendant

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**REPLY TO STATE'S RESPONSE TO MOTION TO VIEW EXECUTION
CHAMBER AND WITNESS "WALK THROUGH"**

Mark Dean Schwab by undersigned counsel files this Reply to State's Response to Motion to View Execution Chamber and Witness "Walk Through" and states:

1. The State relies entirely on a federal district court case, Smith v. Secretary, Florida Department of Corrections, Case No. 8:06-cv-01330-T-17MAP. The order referred to is a final order denying a petition for a federal writ of habeas corpus.
2. The case has no binding authority on this Court.
3. The case has no persuasive authority either. Federal habeas courts operate according to different procedural and substantive rules. They are considerably more restrictive, in part because the federal courts will defer to full and fair fact finding by the state court. The fact that a federal habeas court might deny relief in some later proceeding is a good reason for the state court to grant it.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply to State's Response to Motion to View Execution Chamber and Witness "Walk Through" has been furnished by E-mail, Fax and United States Mail, first class postage prepaid, to all counsel of record on August 14, 2007.

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