

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

3 CASE NO.: 42-1981-CF-170

4

5 STATE OF FLORIDA

6 vs.

7 IAN DECO LIGHTBOURNE,

8 Defendant.

9

10 E X C E R P T

11

12 PROCEEDINGS: Continued Evidentiary Hearing
13 Concerning lethal Injection
(Diaz Issue)

13

14 BEFORE: Honorable Carven D. Angel
15 Circuit Judge
Fifth Judicial Circuit
In and For Marion County, Florida

16 REPORTED BY: Noelani J. Fehr
17 Stenographic Court Reporter
Notary Public
18 State of Florida at Large

19 DATE AND TIME: July 22, 2007; Sunday, afternoon session

19

PLACE: Courtroom 3A

20 Marion County Judicial Center
21 Ocala, Florida

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1 E X C E R P T

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3 THE COURT: Can I give you some help? I'm
4 prepared to make a ruling. I don't think we need
5 to go any further. I think what we need to do is
6 pretty clear, but if you want to go ahead and get
7 some more testimony from this witness and cross
8 examine now for the purpose of review by the
9 Supreme Court, that's fine; or do you want me to
10 just go ahead and tell you what the order is going
11 to be?

12 MS. KEFFER: Your Honor, my inclination is
13 probably not to ask any further questions, so I --

14 THE COURT: That's fine. I think we need to
15 go ahead. All right. The State -- I appreciate
16 the response from the State and the Department of
17 Corrections, and as counsel for the Department. I
18 seems to me like everybody has been making a
19 yeoman's effort in regard to reporting the

20 situation.

21 I think also the -- upon review of the

22 testimony of the Secretary and counsel for

23 Department it's pretty clear what we need to do.

24 And so at this point I think I will need to -- we

25 can go ahead and help the Supreme Court out and go

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1 ahead and give them an order next week if you want
2 to, or the following week, or if we -- when we get
3 the transcript done so they can have that for
4 review.

5 But I think at this point the Court needs to
6 enter a temporary stay of the execution process
7 for Mr. Lightbourne. I think that seems to be
8 pretty clear.

9 And lest I forget it before -- in the process
10 of making some comments and, of course, the
11 reporter could type up my comments to provide to
12 counsel to assist the Court in -- in getting an
13 appropriate order.

14 But before I -- in case I get through and
15 forget it, one thing that sort of has come out to
16 me in the process here is that I don't think that
17 any eighteen-year-old executioner with the
18 pressure of a governor's warrant behind him to
19 carry out an execution, and with the pressure of

20 the whole world, the press and the whole world, in
21 front of him and looking at him is going to have
22 enough experience and competence to stop an
23 execution when it needs to be stopped. I just
24 don't think that's going to happen.

25 And it seems to be pretty clear that what

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1 happened in the Diaz case is that is exactly what
2 happened, that we experienced a circumstance that
3 is one of those one hundred and one circumstances
4 that couldn't have been anticipated. And we need
5 to have experienced, qualified and trained people
6 in -- in the process to make the necessary
7 judgments as they happen, because there's always
8 going to be that one hundred and one contingency
9 that nobody expected. We need to have people with
10 competence and experience to respond to those
11 situations.

12 Specifically, when we've started the process
13 of injecting the chemicals, and we've got an
14 eighteen-year-old doing that process, and then we
15 encounter -- with the Governor behind you and the
16 press and the world in front of you, what in the
17 world am I going to do?

18 And then we encounter an IV site with
19 problems. Am I going to continue with the -- am I

20 going to continue with the injection of these
21 chemicals, or am I going to switch over to the
22 other line, whether it's 1, or A, or B, am I going
23 to switch over to that and am I going to start
24 injecting chemicals into another arm, and where am
25 I going to do it, and what -- what chemicals am I

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1 going to start?

2 It seems to be pretty clear that the
3 executioner need to have authority to stop the
4 process right then. He's got to have the
5 authority just like you would in a -- in a -- this
6 not being a medical context, but in view of a
7 medical context somebody needs to stop the
8 process.

9 And I doubt that any eighteen-year-old that
10 I've ever known would have the guts to go up to
11 the warden and say; warden, we've got to stop,
12 we've got a problem here, we've got to assess the
13 problem and fix it.

14 I just don't think that's going to happen.
15 So -- so, again, so we're not going to expect any
16 eighteen-year-old to say that. I don't see why we
17 should fret over having an eighteen-year-old as an
18 executioner because the Secretary knows, and I
19 know, that he ain't never going to hire no

20 eighteen-year-old to do that.

21 So why don't we just go ahead and change
22 that, and as counsel was saying, to point out --
23 to point out in the process of these protocols to
24 define exactly what -- what it is that we are
25 doing.

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1 I think that it -- it's helpful to me to --
2 to look at this thing from the point of view of
3 the Governor, and by extension from the point of
4 view of any judge considering this -- imposing a
5 death sentence, and certainly for any judge
6 reviewing the process of carrying out a death
7 sentence.

8 When a governor sits down in considering --
9 and I don't know. I was going to look at a
10 warrant, but I think somebody mentioned -- and
11 I've never seen one of these warrants -- that the
12 warrant -- someone said, here is an execution
13 warrant, carry it out within thirty days.

14 But -- but in any event, when -- when a
15 governor sits down to consider whether he's going
16 to sign an execution, a warrant for execution, he
17 needs to have the confidence of knowing a few
18 things. And as I said, by extension, any judge in
19 the state would have the confidence of knowing a

20 few things.

21 He needs to know that the process that he is

22 about to start the State into, or down the road

23 down which, that this process is going to be a

24 process that is -- is compatible with evolving

25 standards of decency. And that this process is

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1 going to be compatible with standards that mark
2 the progress of a maturing society.

3 And -- and he needs to know that the process
4 is going to be consistent with evolving standards
5 and notions of the dignity of man, and that this
6 process is not likely with -- to the extent that
7 it is humanly possible, it is not likely to result
8 in an unnecessary or -- or a wanton infliction of
9 pain or a necessary -- or an unnecessary or a
10 wanton, lingering death.

11 Well, how can the Governor know that, and
12 when he's considering whether or not he ought to
13 sign a warrant? I would think that the Governor
14 would need a -- a certification from the
15 Department of Corrections.

16 And he might not want to sign a warrant --
17 I -- I don't -- see, I'm not familiar with a
18 warrant -- with the Governor's procedures, but he
19 might not want to sign a warrant unless he has on

20 his desk a certificate from the Department of

21 Corrections.

22 And I would say that it should be a current

23 certificate. Now, what is current? Well, it's

24 something that is signed -- whatever it's defined

25 to be, but it might be something signed within the

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1 last year, or within the last five years, or

2 whatever is current.

3 He just needs to know from -- from the
4 Secretary that with the current certification that
5 the -- that the Department has all the necessary
6 equipment and facilities to carry out a death
7 warrant.

8 In other words, they've got a building that's
9 capable of doing it. He's got heart monitors in
10 place. He's got TV monitors in place. He's --
11 he's got all the facilities necessary to carry --
12 to carry this out.

13 And that would, of course, include as we have
14 already seen here, that would -- that certificate
15 would contemplate that these facilities have been
16 properly maintained, that they're -- they're in
17 proper working order. And that they have been
18 properly evaluated for improvements, and
19 architectural and building improvements, or

20 whatever has been made.

21 So the Governor should be able to know from a
22 recent certificate from the Department that they
23 have all the facilities in plan -- in place, that
24 they have been properly maintained, and they have
25 been properly modified, so that normal procedures

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1 can be carried out.

2 And the Governor -- the Governor would want
3 to know that the Department has all the necessary
4 procedures in place, these protocols that we have
5 been discussing, he's got the necessary procedures
6 in place that would carry the process out, that
7 he's got the necessary personnel in place, that
8 all of these personnel have the necessary and
9 minimum qualifications to do their job, the
10 necessary minimum experience to do their job,
11 and -- and they also have the necessary training,
12 ongoing and continuous training, to do -- to do
13 their job.

14 And in the process of -- of knowing or -- or
15 having confidence that these procedures are
16 consistent with the evolving notions and concepts
17 of the dignity of man, and they -- that they are
18 in process with keeping with evolving standards of
19 decency with a maturing society, that these

20 protocols are -- are themselves being reviewed.

21 And we can go back to the Secretary's very

22 own description of what he did here for -- for a

23 good standard to go by. We can kind of formalize

24 the process that -- that the Secretary went

25 through himself in redoing these standards.

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1 Well, what did he do? He reviewed legal
2 literature. He reviewed jurisprudence. He
3 reviewed medical -- medical literature, and the
4 pro and con on -- on this issue to understand.

5 So he reviewed what goes on in other
6 jurisdictions. He reviewed protocols from other
7 jurisdictions, and the experiences of other
8 jurisdictions.

9 So -- so -- so that I would think that these
10 protocols might include, or somewhere in the
11 procedure or process would include a review of the
12 protocols from these various perspectives.

13 And just as the Governor's Commission did,
14 they reported the things that they reviewed. And
15 so in the process of reviewing -- and defense
16 counsel has been questioning these things. I
17 think that in the process of reviewing these
18 protocols somebody could -- could keep a -- could
19 set down what it is we reviewed since the last

20 time we reviewed this.

21 And this would, of course, include -- would
22 include medical science. And medical science is
23 going to include psychological science and
24 sociological science and all these things that
25 would be pertinent, and these things could be --

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1 could be included in that.

2 I also think that it would be appropriate to
3 include in the process of reviewing these
4 protocols some public input. Now, we don't want
5 to degenerate into a town hall meeting for
6 heaven's sake and never get anything done, but it
7 would certainly be how -- how often are we going
8 to review these things? Well, I don't know. We
9 could review it every year, or every two years, or
10 every five years or something.

11 And it could include -- it could well include
12 some process for public input into these review
13 processes. Now, it doesn't have to degenerate
14 into a town hall meeting.

15 It could be something as, look, we're going
16 to commence the -- we're going to commence the
17 process of review say on September 1st. And it
18 won't take us from the -- from the Secretary's own
19 testimony I think it took him three or four months

20 to -- you know, to do what he did. So let's just
21 say it might take three or four months for the
22 Department and Department's counsel and staff
23 to -- to review these things, and take a three or
24 four month process.

25 And we are going to start on September 1st,

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1 so we can just let the whole world know that
2 that's what we're doing. And -- and if there's
3 anything you want me to review in terms of
4 modifications, and jurisprudence, or medical
5 science, you'd better get it to me by September
6 1st because that's when I am going to start
7 reviewing it.

8 And so -- so the -- so the Governor, when
9 he's sitting down to -- to consider one of these
10 warrants he knows that the procedure he is about
11 to commence are subject to periodic review.
12 They're subject to input from the appropriate --
13 from the public.

14 And the Department also can certify to the
15 Governor that they -- they are -- they are
16 continuously reviewing their procedures. And at
17 least as of a certain date, whatever it is, we
18 completed our review and that these are -- these
19 are our present protocols based upon that.

20 Now, I appreciate your concern that we don't
21 want to create a process or procedure that is
22 going to make it so cumbersome that we can't ever
23 get anything done.

24 And, you know, I appreciate your remarks that
25 we're not -- and I appreciate the Department's

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1 response to this. And I don't get too concerned
2 about this, but we're obviously not creating
3 something that is going to be a process where --
4 for -- for defense counsel just to litigate over
5 something. We're not creating a litigation
6 process.

7 And I don't think the Department considers it
8 from that point of view. They're just trying to
9 make apparent exactly what has been going on. But
10 I think it would be helpful to let -- it is
11 helpful to let everyone know in the process what
12 is going on without creating something that is --
13 that's totally unworkable.

14 So in that regard, then, in -- in drafting
15 these things I think it might be possible to draft
16 some -- some -- we know that life is a process and
17 life is not a statement, and things are always
18 going on, but I think it might be possible to
19 build into this some changes that might happen

20 quickly. And I know that -- that without --
21 without going into the formality of it, it might
22 be involved in an annual process, for example.
23 I think probably during my lifetime I don't
24 know that there were -- I don't know if we had
25 such things as paramedics and EMTs a few years

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1 ago. Medical science changes. The description
2 of -- job descriptions change some. So it could
3 be -- it could be possible to build in changes
4 like that, but that -- that the Secretary could
5 implement as part of the protocols without having
6 to change the protocols themselves.

7 So -- so in looking at -- in looking down at
8 the Secretary giving the Governor a certificate
9 that the building is in place, his equipment is in
10 place, it's been maintained, it's been reviewed
11 for modifications and those have been made,
12 that's -- that's in place.

13 In looking at the protocols, that we have
14 those developed or staff has been trained. Then
15 looking at -- looking at the protocols themselves,
16 the purpose, for example. I'm -- I'm not
17 suggesting what has to be here, these are just
18 things to consider.

19 You might want to -- you might want to

20 consider in stating that the purposes is -- and I
21 realize that these protocols are sort of in
22 some -- in one sense it's -- it's a job specific
23 thing without telling people what to do, but --
24 but it may be a little bit more than that because
25 protocols -- well, you'll see what I mean in just

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1 a moment. But it might -- I mean, we don't want
2 to expand this protocol thing to the point where
3 it becomes an encyclopedia.

4 But the purposes might include in it the fact
5 of what I just said earlier taken from the
6 Governor's Commission here, we're trying to
7 establish procedures that are consistent with
8 the -- that are in accord with the evolving
9 concepts of the dignity of man. And they're --
10 they're -- they're also -- that are compatible
11 with the evolving standards of decency that mark
12 the progress of a maturing society. And that
13 might be something that might be put into -- into
14 that -- into that purpose section.

15 But the -- the definitions, let's say the --
16 next going to definition of execution team, and
17 the execution, and warden. Just some general
18 comments that occurred to me about the protocols.

19 I'm a little bit concerned in the protocols

20 that we're putting too much of the burden upon the
21 warden. And I think we need to give the warden a
22 little help. That probably, as counsel might
23 have -- might have eluded to that in his remarks,
24 but I don't think we should put the burden on the
25 warden of -- of knowing who is qualified to do

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1 all -- to do all these jobs.

2 So I think we -- we could give the warden a
3 little help there, and say when you're selecting
4 people to do this you need to tell him what these
5 people -- what the minimum qualifications,
6 training and experience are for these people.

7 That could be done in something like a
8 procedure of telling the warden that you can
9 select somebody from a list to be certified by
10 the -- by the secretary.

11 And that's one of those -- that's one of
12 those areas where you can build into it the
13 changes in progress and the advance of medical
14 science.

15 This year you can only include doctors. Next
16 year the list can -- can include paramedics and
17 EMTs. Things like that. Well, after that we may
18 have people that we don't -- we don't even
19 presently -- have presently identified in science.

20 So the warden can include -- can pick somebody
21 from a list to be certified by the Secretary, who
22 would be appropriate to do these jobs.

23 And I don't think we should put the burden
24 upon the warden to go and investigate the Florida
25 statutes to define who is qualified to do these

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1 things. I don't think we should put the burden on
2 the warden -- on the warden to go find out whether
3 or not he's got to pick an EMT, a nurse, a doctor,
4 or somebody else who is qualified to do an IV, or
5 who is qualified to be -- to push these chemicals,
6 or who is qualified to do a cut down, or a femoral
7 access, or a central access. I don't think the
8 warden is qualified to -- to make those decisions.
9 I think we need to give the warden a little help
10 there and tell him who he can pick.

11 So far as -- as the -- well, I don't know.

12 You can think about this. Selection of the
13 execution team. We've got security team members
14 and technical team members.

15 The warden has identified several people that
16 are going to be in the death chamber. One of them
17 is going to be somebody who is pulling curtains.

18 Another -- he's going to be there. The FDLE agent
19 is going to be there.

20 I think that he said there's going to be
21 another person there, somebody there's some
22 conflict -- or not conflict, there's a difference
23 in the opinion of whether there's going to be four
24 or five or six people there.
25 But I don't know if the security team

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1 members -- well, that may be sufficient. But --
2 but I don't know, you might want to take a look at
3 the job descriptions of some of the people
4 involved in the process.

5 I think we're putting too much of a burden to
6 say the technical team members -- the warden will
7 select personnel to perform the technical
8 procedures. I think that's too much of a burden
9 to put on the warden to say, well, pick who is
10 going to do a cut down procedure, or who is going
11 to do a central or femoral access. I think that
12 is putting too much of a burden on the warden. I
13 think we need to help him and give him a list of
14 people to pick from.

15 I think -- job descriptions, I think we've
16 mentioned that. I think -- I think maybe some
17 people even said they were working on job
18 descriptions. That -- that could be looked at.
19 But I think we need to also help the warden, or --

20 or include in these protocols the minimum
21 qualifications for people performing various jobs,
22 the minimum experience in doing these jobs, and
23 the ongoing training in doing these jobs.

24 Now, this might be getting too far down into
25 the details, but when the warden is assigned the

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1 duty of carrying out a warrant and he's selecting
2 personnel to do these jobs I think somebody will
3 need to provide the warden a list of personnel
4 that are -- that are -- that meet these criteria.

5 I don't know how the Department goes about
6 doing that. I don't know. If they can provide
7 the warden a list of personnel and the warden can
8 go down the list and make his own selection from
9 these people. Obviously, confidentiality is going
10 to be maintained throughout the process.

11 But just so I don't forget -- forget it, the
12 Secretary -- this is another point the Secretary
13 brought out in his testimony.

14 He questioned the execution -- the
15 executioner, one of the executioners; well, do you
16 think you're trained to do this job and are you
17 ready to go?

18 And he said, yes, sir.

19 Well, two hours later he told the public that

20 he was not. That's a little bit distressing.

21 So I would think that the -- at some point in

22 the process the warden would need a -- a -- I

23 guess after he's -- or in the process of selecting

24 people he might want to have in his folder a

25 certificate, or just a statement from the people

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1 that he is -- he is selecting, "yes, sir, warden,
2 I meet the minimum qualifications, I have had the
3 necessary training, and I am confident and --
4 confident that I have the ability to carry out my
5 assigned responsibilities and I'm willing to carry
6 those assigned responsibilities out".

7 Because that could change. I mean, I don't
8 know, something can happen in a person's life and
9 he might now feel "I'm not quite suited to do that
10 job right now, warden, you'd better pass me over".

11 So -- so that -- that, of course, would
12 involve looking at what are the qual -- minimum
13 qualifications for each person doing each assigned
14 responsibility on the execution team and looking
15 at the training, the minimum training for these
16 folks, and minimum experience for these folks.

17 Well, I think we've also -- it might have
18 come out that we're in the process of having just
19 competed a developing checklist that are going to

20 be used.

21 I would think that -- in other words, one

22 other thing, before lifting the stay of

23 Mr. Lightbourne's case I, myself, would like to

24 know that the Department has completed the process

25 that Mr. Changus says that they're -- they will be

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1 undertaking. They've completed the amendments to
2 the protocols. They have completed any job
3 descriptions of people involved in the execution
4 team.

5 And when I say the execution team, you might
6 want to include or consider identifying the
7 minimum number of people who are going to be
8 involved. The guy who is going to be pulling the
9 curtains. The guy who is -- or the person who is
10 going to be inside viewing these -- the monitors.
11 The minimum number of people. Again, obviously,
12 flexibility there for the warden to decide whoever
13 else might be necessary.

14 But you might want the complete job
15 descriptions. You might want complete checklists.
16 You might want to specify the training, the
17 minimum training, that would -- that we would want
18 to have in place.

19 And that -- that training -- that training,

20 again, I think that could also relate back to the
21 purpose, the statement of purposes, that everyone
22 involved in the process will be trained, that
23 we're -- that our objective is to carry out a
24 process that is consistent with evolving notions
25 of the decency of man. It is not going to involve

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1 unnecessary lingering or unnecessary or wanton
2 infliction of pain or lingering death. It's going
3 to be consistent with the evolving standards of --
4 the progress of a maturing society, a decent and
5 maturing society, so I guess everyone involved in
6 the process will understand that.

7 And to some -- to whatever extent necessary
8 the people involved in the process need to know
9 that they have a right to report to the warden,
10 warden, we -- we have a problem, and we need to
11 address this problem before we go forward.

12 I've mentioned the executioners, or whatever
13 other medical personnel, they need to know that
14 they can report to the warden and request the
15 warden, we've got a problem with the IV, the first
16 chemical is not working properly, the second or
17 the third, or whatever -- whatever physical
18 problem develops.

19 Or the EK monitor is blink -- on the blink.

20 I can't monitor the situation. Whatever might
21 come up. To report to the warden and request
22 cessation or proper adjustment. They don't have
23 to be under the feeling that my sole job here is
24 to get this thing done and I better not open my
25 mouth because I don't want to cause problems. I

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1 mean I --

2 But in any case, so I -- I would feel
3 confident myself, as a judge in lifting a stay,
4 once I know that these personnel are in place,
5 they're trained, and that they -- they're
6 independent. They have a right to and the
7 responsibility to report things to -- that come
8 up.

9 I mean, the very essence of a contingency is
10 this has never happened to me yet. So -- but the
11 more that we do train the better off. We're
12 competent in responding to things that come up
13 that have never been anticipated before.

14 I think that about covers my concerns with
15 the protocols. The Department has already
16 indicated they're also sensitive to these things
17 that are being reviewing -- reviewing the process.

18 Of course, I -- I would -- I would be concerned,
19 as I'm sure the warden would be, and everybody

20 involved in the process would be, that any person
21 that might be called upon to do a cut down has the
22 proper qualifications, experience and training to
23 do that, or to do these IVs. So I think we've
24 already addressed the fact that they -- they have
25 the minimum qualifications, experience and

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1 training as specified.

2 All right. I don't think at this point that
3 we're -- I don't think at this point that we are
4 considering, although, maybe we are considering,
5 what is going on in the Federal court system, what
6 is going on in other jurisdictions. In the
7 process of reviewing the protocols that -- that
8 could -- that could occur even now.

9 But once we've -- once we have the definition
10 of who all is -- who -- who would be -- who would
11 be the minimum people on the execution team, the
12 minimum security people, the minimum technical
13 people, or other people, the job descriptions for
14 these people, we have job descriptions for these
15 people, these people are certified that they
16 meet -- they meet the minimum qualifications.

17 They meet the minimum experience. They have
18 all been trained and -- and they're certified to
19 the warden, therefore to the Secretary, and

20 therefore to the Court that they -- that they
21 are -- the people involved have done all of that,
22 and they're confident that they will be able to
23 carry out a warrant if it's issued in this -- in
24 the Lightbourne -- if it's ever issued in the
25 Lightbourne case.

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1 I think that's about all that we need to
2 address right now. If the court reporter could
3 transcribe -- could type up my comments and -- and
4 do, in fact, type those up and make those
5 available to counsel, then the -- this will kind
6 of take a little bit of pressure off of -- or at
7 least give us some guidance, and the Department --
8 and the time scheduling of things that the
9 Department's producing records that the Court's
10 requested to be produced.

11 So far as the counsel's requests for a --
12 testimony from the qualified people, as far as
13 counsel's motion to leave evidentiary hearing
14 open, I don't know that I would -- I haven't
15 reviewed that motion.

16 I don't know that all of that would be
17 pertinent now, but I think that motion should be
18 granted because if we're going to have a stay of
19 execution we're going to have to have some kind of

20 hearing to consider whether the execution stay

21 will be lifted.

22 So, obviously, I think we're going to have to

23 have some further evidentiary hearing. And I

24 didn't mean to cut you off earlier, but why go

25 ahead with the cross examination of this witness,

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1 or call another witness, when we know we're going
2 to have to have another evidentiary hearing to
3 consider whether the stay should be lifted? And
4 that's going to take us a little bit of time.

5 And -- and so we didn't really need to
6 address time frames because, you know, we don't
7 need to establish those right now. We all will be
8 working as fast and as quickly as possible to
9 relief -- release the stay in the Lightbourne
10 case -- Mr. Lightbourne's case.

11 So the documents that are going to be
12 produced, that can be produced before the next
13 hearing. We can decide whether or not we need any
14 more testimony. If you do, I guess you can
15 proceed to take it or whatever else.

16 I think I would like to request that defense
17 counsel submit a proposed order incorporating my
18 remarks and whatever else you think might be
19 appropriate to include in a grant of temporary

20 relief.

21 MR. NUNNELLEY: Your Honor, I am going to

22 object to the defendant being given permission to

23 tell the Court whatever else they think is

24 appropriate in a grant of temporary relief.

25 I'm not sure what temporary relief the Court

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1 really can grant under the -- or is appropriate
2 for the Court to grant.

3 I think this Court has made its concerns
4 known. I think its concerns mirror those -- or
5 mirror the actions that the Department of
6 Corrections has said they're going to take.

7 But I must point out that there is no
8 execution order. There is no death warrant in
9 Mr. Lightbourne's case. There is no stay of --
10 there is no execution scheduled, and hence there
11 is nothing really to stay. There is nothing to
12 stay.

13 The Court -- I know -- I think we have at
14 this point even a greater importance on getting a
15 timeframe from Mr. Changus about what the
16 Department of Corrections thinks they can do,
17 despite counsel's objection to it, so we can
18 report to the Florida Supreme Court as to whether
19 or not we are going to be able to meet their time

20 deadlines that they have set -- have set that

21 still remain in place.

22 And at this point in time I'm not sure if

23 this is an appealable order. This is no order,

24 really, at this juncture. And what that does is

25 throw this case effectively into limbo with

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1 another hearing coming up, a death warrant
2 scheduled in another case, and an order of some
3 sort from this -- an order from this court that
4 may or may not -- quite honestly, and I mean no
5 disrespect, Judge, but a stay of execution when
6 there is no execution ordered, I'm not sure what
7 that does.

8 THE COURT: I'm not, either.

9 MR. NUNNELLEY: There is -- that does,
10 however, potentially impact the death warrant case
11 which is set on the same briefing track as this
12 case.

13 So what I guess I'm hearing is that we need
14 DOC to get their thing done as quickly as they can
15 so we can come back, argue the matter, whatever,
16 allow the Court to review the protocols.

17 I would think they can -- the Court can
18 review whatever changes DC makes to them without
19 the need for the presentation of further evidence,

20 because otherwise if we do that we are going to be

21 here another ten days.

22 And at that point in time this Court needs to

23 either rule or not -- needs to rule one way or the

24 other so this case can go on to the Florida

25 Supreme Court and go on the appeal track that it's

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1 scheduled for; otherwise, we're not going to meet
2 our deadlines.

3 THE COURT: Okay.

4 MS. KEFFER: May I brief -- may I respond,
5 there is one -- a couple of comments that I do
6 want to put on the record without belaboring the
7 points here.

8 But the fact that there is not currently a
9 death warrant in Mr. Lightbourne's case certainly
10 doesn't prevent the Governor from doing so
11 whenever he decides to do that.

12 So in terms of issuing a temporary stay in
13 that regard, you know, that's -- that's based on,
14 you know, your Honor's decision. So I do just
15 want to point that out.

16 In terms of I'm -- and maybe your Honor can
17 clarify this -- I am interpreting what you said
18 today as a final order on what you were remanded
19 to decide. And so whatever that means in terms of

20 what the State needs to do, then that's how I

21 think it should proceed.

22 THE COURT: Okay. I would consider it a

23 final order as to what they asked me to do.

24 MR. CHANGUS: Your Honor?

25 THE COURT: Yes, sir.

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1 MR. CHANGUS: May I -- may I step down and --

2 THE COURT: Sure.

3 MR. CHANGUS: -- make a couple of comments?

4 THE COURT: Sure.

5 MR. NUNNELLEY: Your Honor, if this is a

6 fine -- if this is a final order then I don't see

7 how it can be -- I don't see how we can have a

8 final order if we are going to come back for

9 further proceedings.

10 A final order by definition is an order that

11 completely concludes the proceedings before the

12 Court. The Court said we need to come back for

13 further proceedings once -- once the Department of

14 Corrections has done what they say they are going

15 to do. And I would suggest that that is not the

16 final order. I don't see how it can be construed

17 as a final order.

18 THE COURT: I'll let the Supreme Court figure

19 that one out.

20 MR. CHANGUS: Your Honor?

21 THE COURT: Yes, sir?

22 MR. CHANGUS: A couple of questions since --

23 and, of course, of what you were discussing, in

24 terms of the production of public records, I think

25 you said it can be done -- you know, and again,

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1 this is -- this is still very fluid, but I had
2 reported a long time ago, or it seems, Thursday, I
3 think, when we discussed it, or when your order
4 came out granting public records, that I would try
5 to get them by, you know, the middle of next week.

6 And then I think you indicated that, well,
7 that can done in the course of -- of whatever, you
8 know, but --

9 THE COURT: Uh-hmm.

10 MR. CHANGUS: -- I didn't know if you were
11 altering your timeframe.

12 And then as to the motion to interview the
13 primary executioner and the medical team member,
14 and again that were involved in Diaz, again, I
15 would raise the same concerns that I had before.

16 And I also want to make the point that the
17 Court's concern at this point -- you know, from
18 what it's expressed looks to be going forward, as
19 I would indicate that we probably need to do.

20 We've heard a lot of testimony on Diaz. We
21 have evidence into the record from -- from the
22 Governor's Commission hearings. We've had a lot
23 of time spent. We have brought in pretty much
24 just about everybody that was there for the Diaz
25 execution.

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1 Bringing these people again, I would submit,
2 you know, as far as -- to the extent that I think
3 you indicated that that might be done, you know,
4 again, I think the probative value versus the
5 prejudicial value, I think the prejudicial value
6 overwhelms it. And I would just make that point
7 for your Honor. And you may be considering it
8 down the line, but I just wanted to get that on
9 the record.

10 THE COURT: Okay.

11 MR. CHANGUS: Thank you, your Honor.

12 THE COURT: Thank you.

13 THE CLERK: I need that exhibit.

14 MR. CHANGUS: Yes, ma'am. Oh, I almost took
15 it.

16 THE COURT: Uhhh, I think I'll overrule the
17 State's objection and request defense counsel, if
18 you would submit a proposed order by -- this is
19 when? How long would it take the court reporter

20 to get those remarks, just mine here, getting it

21 typed up? Can do that Monday?

22 THE COURT REPORTER: By five o'clock Monday.

23 (End of Excerpt.)

24 - - -

25

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1 C E R T I F I C A T E

2 STATE OF FLORIDA

3 COUNTY OF MARION

4

5 I, Noelani J. Fehr, Stenographic Court Reporter

6 and Notary Public, State of Florida at Large, do

7 hereby certify that I was authorized to and did

8 stenographically report the foregoing proceedings

9 taken in the case of STATE OF FLORIDA VS. IAN

10 LIGHTBOURNE, CASE NUMBER 42-1981-CF-170, and that the

11 foregoing pages numbered 1 through 33 inclusive,

12 constitute a true and correct record of the

13 proceedings to the best of my ability.

14 I FURTHER CERTIFY that I am not a relative, or

15 employee, or attorney, or counsel of any of the

16 parties hereto, nor a relative, or employee of such

17 attorney or counsel, nor am I financially interested

18 in the action.

19 WITNESS MY HAND this 22nd day of July, 2007,

20 at Ocala, Marion County, Florida.

21

22

Noelani J. Fehr
Stenographic Court Reporter
Notary Public
State of Florida at Large

24

25

My Commission expires: 7-24-2010

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