THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA,
Respondent,

v.

FREDDIE EUGENE OWENS,
Appellant.

Appellate Case No. 1999-011364

REPLY IN SUPPORT OF OBJECTION TO CERTIFICATION

Arguing this Court should not concern itself with "specific provisions for the proper storage of the execution drugs," Respondent invokes a case that should serve as a cautionary tale: Kelly Gissendaner. In the decision Respondent cites, the Eleventh Circuit affirmed the denial of Ms. Gissendaner's challenge to Georgia's lethal injection procedures, clearing the way for her execution—then scheduled for March 2, 2015—to go forward. *Gissendaner v. Comm'r, Georgia Dep't of Corr.*, 779 F.3d 1275, 1277 (11th Cir. 2015). It did not. As the above picture documents,

the compounded lethal injection drugs obtained by the Georgia Department of Corrections congealed into crystals on the night of Ms. Gissendaner's scheduled execution.[1] Georgia officials were forced to "indefinitely suspend[] executions…until they figured out what happened with the drugs"; they later concluded that the drugs "had precipitated, probably because they were transported and stored in cold conditions."[2]

Respondent thus fails to engage with the central concern of Mr. Owens's objection: that Director Stirling's affidavit presents none of the "basic facts about the…creation, quality, and reliability"[3] of the department's lethal injection drugs that are needed to ensure that nothing similar—or worse—happens on September 20. Instead, Respondent repeats the unsupported assertions in the director's affidavit.

"The results of SLED's test confirm" the drugs' sufficiency, Respondent claims, but provides no details about that "test" or its results. Resp. at 2. That is an assurance without evidence, not a fact. Asking for the testing date and Beyond Use Date of the drugs is an insult to the director's honesty, Respondent complains. Resp. at 2. It is not; it is a request for basic facts about whether the drugs will work as intended on September 20. Respondent suggests that providing these basic facts would open the door for "Owens (or any other inmate)…[to] demand testing of the drugs up to the day before (or even the day of) his execution," Resp. at 2. This ignores Mr. Owens's acknowledgment that basic facts about the storage and monitoring of the drugs would address

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[1] *Georgia DOC releases video of "cloudy" Gissendaner execution drugs*, GWINNETT DAILY POST (available at: https://www.youtube.com/watch?v=8qGhzZbbLT4 (last visited September 5, 2024).

[2] Mark Berman, *After execution hiatus, Georgia says its lethal injection drugs were kept too cold*, WASHINGTON POST (April 16, 2015) (available at: https://www.washingtonpost.com/news/post-nation/wp/2015/04/16/after-execution-hiatus-georgia-says-its-lethal-injection-drugs-were-kept-too-cold/

[3] *Owens et al. v. Stirling*, No. 2022-001280 (S.C. July 31, 2024) ("Op.") at 50.

concerns about the drugs degrading between the date of testing and the date of the execution. But, as noted above, Respondent objects to providing those basic facts as well.

Respondent raises unsupported concerns that the information Mr. Owens seeks "is a puzzle piece that someone may put them together to identify an individual or entity protected by the Shield Statute." Resp. at 4 (cleaned up). The director himself has provided the identity of the testing agency; Mr. Owens has stated that the names of the analysts should be redacted. The actual analytical reports from the testing of the drugs will reveal nothing except the actual properties of the drugs and the testing used to discern them—all "basic facts" that South Carolina law and due process require.[4]

Respectfully submitted,

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[4] If it so desired, this Court could direct the disclosure of the reports and other information Mr. Owens has identified subject to a protective order.