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Feb 26 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Case No. 2025-000187

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Brad Keith Sigmon,  
*Movant,*  
v.

STATE OF SOUTH CAROLINA,  
*Respondent.*

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MOTION FOR RECONSIDERATION OF DENIAL OF OBJECTION TO AFFIDAVIT  
AND CERTIFICATION OF BRYAN P. STIRLING, DIRECTOR, SOUTH CAROLINA  
DEPARTMENT OF CORRECTIONS, AND STAY OF EXECUTION

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On Monday, February 24, 2025, the South Carolina Department of Corrections (SCDC) released the autopsy report for Marion Bowman, who was executed by lethal injection on January 31. “Per information provided by” SCDC, the report notes that Mr. Bowman, whose execution lasted for 23 minutes, was injected with a total of “10 grams of pentobarbital.” Ex. 8 at ¶¶ 2.<sup>1</sup> It also records that Mr. Bowman died with his lungs massively swollen with blood and fluid. *Id.* at 3.

Mr. Bowman’s autopsy is a grisly echo of Richard Moore’s. Both men died only after South Carolina injected them with twice the “single dose of pentobarbital” that

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<sup>1</sup> Mr. Sigmon has retained the numbering of the exhibits to his initial objection to this Court. Mr. Bowman’s autopsy is his only new exhibit; he has numbered it Ex. 8 and is filing a contemporaneous motion to file it under seal with this Court.

<sup>1</sup>When asked directly during the press conference following Mr. Bowman’s execution, an SCDC spokesperson said only, “we followed our protocol and that is not disclosed.” 12:51-13:06, ABC News 4, *Execution witnesses provide startling details on death of Marion Bowman Jr.* (available at: <https://www.youtube.com/watch?si=Gx7QpGRUONCRPemx&v=QYdswxKhbc4&feature=youtu.be>) (last visited February 25, 2025).

SCDC has sworn to this Court is “of sufficient potency, purity, and stability to carry out an execution successfully using the Department’s lethal injection protocol.” And both men died with pulmonary edema.

The evidence is clear. Contrary to the certifications SCDC has provided to this Court, lethal injection “via a single dose of pentobarbital” is not “available” in South Carolina. It is a fiction.

That fiction forced an impossible choice upon Brad Sigmon, who is scheduled for execution on March 7—nine days from now. Consistent with § 24-3-530, Mr. Sigmon was required on February 21 to elect between lethal injection and the firing squad or die in the electric chair. Per the same statute, on February 11, SCDC served Mr. Sigmon with an affidavit from its director, Bryan P. Stirling, certifying the availability and sufficiency of “lethal injection...via *a single dose of pentobarbital.*” Ex. 1 at ¶¶ 7, 10 (emphasis added).

On February 14, Mr. Sigmon objected to this certification and moved this Court to stay his execution. Mr. Sigmon noted that all three of the men South Carolina has executed since September 2024—Freddie Owens, Mr. Moore, and Mr. Bowman—were not declared dead for more than twenty minutes after receiving this purportedly sufficient single dose. He noted the alarming findings in Mr. Moore’s autopsy, which documented both his injections with a second dose of pentobarbital and recorded his bloated and heavy lungs. Ex. 6 at ¶¶ 2-3. Mr. Sigmon also cited the unavailability of Mr. Bowman’s autopsy report, and SCDC’s refusal to answer how many doses of

pentobarbital it had administered to him.<sup>2</sup> Mr. Sigmon then moved this Court to require SCDC to certify the beyond use or expiration date of its drugs, the type and results of the tests performed on them, and their storage conditions. Mr. Sigmon asserted that, especially in light of the three executions that had gone awry, that information fell within the “basic facts about the drug’s creation, quality, and reliability” that South Carolina law and the Due Process Clause require SCDC to disclose. *Owens v. Stirling*, 443 S.C. 246, 298–99, 904 S.E.2d 580, 608 (2024). Only with this information, Mr. Sigmon argued, could he meaningfully exercise his statutory right “never [to] be subjected to execution by a method he contends is more inhumane than another method that is available.” *Owens*, 443 S.C. at 298–99, 904 S.E.2d at 608.

This Court denied that motion and objection on February 19, 2025. Two days later, Mr. Sigmon was forced to make his election. Lacking the basic facts necessary to assess the risks reflected by these lethal injections gone wrong—much less to determine which of South Carolina’s methods is the more inhumane—he chose the firing squad.

Mr. Sigmon now moves this Court to reconsider its denial of his objection and his stay motion. Mr. Bowman’s autopsy adds to the growing body of evidence corroborating Mr. Sigmon’s concerns about the adequacy of SCDC’s certifications as to its lethal injection drugs. At the very least, two thirds of South Carolina’s lethal injections have required a second dose of lethal injection drugs and resulted in pulmonary edema. And it seems virtually certain that Mr. Owens’s execution, which also lasted twenty minutes,

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<sup>2</sup>When asked directly during the press conference following Mr. Bowman’s execution, an SCDC spokesperson said only, “we followed our protocol and that is not disclosed.” 12:51-13:06, ABC News 4, *Execution witnesses provide startling details on death of Marion Bowman Jr.* (available at: <https://www.youtube.com/watch?si=Gx7QpGRUONCRPemx&v=QYdswxKhbc4&feature=youtu.be>) (last visited February 25, 2025).

was the same. If SCDC's attestations as to the quality and reliability of its lethal injection drugs were dubious before Mr. Bowman's autopsy, they are now indefensible.

Mr. Sigmon previously "conceded...that execution by lethal injection using a single dose of pentobarbital is constitutional if properly administered using reliable and effective drugs"—a "limited concession" that this Court cited as rendering any further analysis of "the constitutionality of lethal injection...unnecessary." *Owens*, 443 S.C. at 282. But the certification outlined in *Owens* to ensure that SCDC's drugs fall within this concession—which allows SCDC to assert merely that the drugs have passed stability and purity testing by the South Carolina Law Enforcement Division (SLED)—has proven inadequate to ensure they are reliable and effective. *Id.* at 293, 605.

The only way to ensure that condemned prisoners have a choice meaningful enough to satisfy the statute and Due Process is to require more from SCDC. A starting point would be certifying the information Mr. Sigmon has requested. Were SCDC to disclose the beyond use or expiration date of its drugs, the type and results of the tests performed on them, and their storage conditions, any problems with the reliability and effectiveness of the drugs themselves would necessarily be revealed and could be remediated.

That, in turn, would afford Mr. Sigmon the opportunity to make a meaningful choice as to his method of execution. As detailed in his objection, his liberty interest, as created by Section 24-3-530's choice provisions, is protected by the Due Process Clause of the Fourteenth Amendment. *Prieto v. Clarke*, 780 F.3d 245, 248 (4th Cir. 2015) (citing *Meachum v. Fano*, 427 U.S. 215 (1976), and *Wolff v. McDonnell*, 418 U.S. 539 (1974)). State laws such as Section 24-3-530 "create enforceable liberty interests in the prison setting" when they create an "objective expectation... that an inmate could

reasonably expect to enforce them against the prison officials.” *Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 461, 465 (1989). This Court’s decision in *Owens* recognizes that expectation, noting “a Due Process Clause component to [its] analysis” of what SCDC’s certification must include; it also states that the purpose for requiring the certification to detail why SCDC concluded “the drugs are capable of carrying out the death sentence according to law” is so “a condemned inmate and his attorneys may understand whether there is a basis for challenging the constitutionality of the impending execution.” *Owens*, 443 S.C. at 293, 904 S.E.2d at 605. But this Court’s continued acceptance of SCDC’s certifications—which have parroted the example *Owens* provided—thwarts that purpose. Mr. Sigmon and his predecessors with execution dates have brought challenges in this Court. But even as one execution after another demonstrates the inadequacy of the certifications, this Court has set the bar too low for SCDC to fail. Mr. Sigmon is thus left with the ostensible right to “some basic facts about the [lethal injection] drug’s creation, quality, and reliability, or...the drugs’ potency, purity, and stability,” but with no means of enforcing that right against SCDC. *Owens*, 443 S.C. at 292, 904 S.E.2d at 604.

In *Owens*, this Court analogizes South Carolina’s choice provisions to lethal injection, identifying each “as innovation[s]” reflecting “the General Assembly’s sincere effort to make the death penalty less inhumane while enabling the State to carry out its laws.” *Owens*, 443 S.C. at 298, 904 S.E.2d at 608. But the choice provisions and lethal injection can only fulfill that purpose if they work as intended. Neither the General Assembly nor this Court could have intended for lethal injection to require twice the “single dose” anticipated, or to leave three prisoners strapped to a gurney for twenty minutes before declared dead, or drowning in blood and fluid from their own lungs. And

neither the General Assembly nor this Court could have intended a condemned prisoner to choose his method of execution not because he contends that the other options are more inhumane, but because he cannot trust the accuracy or honesty of SCDC's certification. A single, simple measure satisfies both purposes: a certification that actually provides the basic facts needed to assess, and identify problems with, the quality and reliability of SCDC's lethal injection drugs.

Mr. Sigmon will be executed in nine days by a method that he chose out of necessity, fear of a torturous death, and without the information needed to assess his alternatives. Accordingly, "there are exceptional circumstances warranting the issuance of [a] stay" of his execution until these critical questions can be resolved. *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996).

Mr. Sigmon accordingly asks this Court:

- 1) to stay Mr. Sigmon's execution;
- 2) to require Director Stirling to certify and provide, with any identifying information redacted:
  - a) the beyond use or expiration dates for SCDC's lethal injection drugs;
  - b) the testing reports for SCDC's lethal injection drugs, including the dates, results, method validation, and quality control procedures; and
  - c) the storage conditions for the drugs, including temperature and humidity.

Respectfully submitted, this, the 26<sup>th</sup> of February, 2025.

/s/ Joshua Snow Kendrick  
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