

Feb 28 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Case No. 2025-000187

Brad Keith Sigmon,
Movant,
v.STATE OF SOUTH CAROLINA,
Respondent.

REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION
AND STAY OF EXECUTION

Respondent now concedes that the method of execution the South Carolina Department of Corrections (SCDC) has certified four times to this Court—“lethal injection via a single dose of pentobarbital”— does not exist. Respondent admits that “[a] second series” of pentobarbital injections “was administered according to SCDC’s protocol,” presumably in all three of the lethal injections South Carolina has conducted since September. Response at 3. Respondent attempts to minimize this revelation by asserting that the second dose is administered just because the protocol says so. *Id.* (“there is no discretion in the administration of the second series of pentobarbital”). Respondent’s disclosure invites obvious questions—including why the first dose was not sufficient, and why the three executed men were not declared dead until yet another ten minutes after the *second* dose.¹ To avoid answering, Respondent suggests that it is incumbent upon *Mr. Sigmon* to prove that “the second series was needed to bring about death.” *Id.* This burden-shifting is ironic; it is also misplaced.

¹ The timing of the second dose is documented in the autopsy of Richard Moore. Ex. at *.

In the first place, the law imposes a burden *on SCDC* to certify under oath to this Court how it determined that “the drugs are capable of carrying out the death sentence according to law” so that “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. SCDC has not met that burden. Instead, SCDC has repeatedly claimed that it possesses a “single dose of pentobarbital...of sufficient potency, purity, and stability to carry out an execution successfully using the Department’s lethal injection protocol,” only to admit today that this has not once been true. And information critical to determining whether the second series was needed to bring about death—the “basic facts about the [lethal injection] drug’s creation, quality, and reliability, or...the drugs’ potency, purity, and stability”, *Owens*, 443 S.C. at 292, 904 S.E.2d at 604—is precisely what Mr. Sigmon has been requesting again and again, and which this Court has permitted Respondent not to provide.

This matters. 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. He has made no such concession concerning lethal injection drugs that are so seemingly unreliable and ineffective that two doses and twenty minutes are required.

That is what rankles about Respondent’s suggestion that Mr. Sigmon “implies something about the previous executions [of Freddie Owens, Richard Moore, and Marion Bowman] that he knows is not true.” Resp. at 1. Here is what Mr. Sigmon now

knows is true, thanks to Respondent's confirmations today, about those executions: each man was given twice the single dose of pentobarbital SCDC swore was sufficient; each man was strapped to a gurney for twenty minutes before being declared dead; and Mr. Moore and Mr. Bowman died with their lungs swollen with blood and fluid. Here is what Mr. Sigmon knows is not true: SCDC's certifications.

Respondent suggests that Mr. Sigmon has waived this challenge because—based on a mistrust of SCDC's certifications that Respondent has now confirmed, and for fear of suffering the prolonged and torturous death that his three friends might have endured—he elected the firing squad. Respondent is wrong. If this Court grants a stay, Mr. Sigmon will be afforded another election—one that, if he prevails, will be informed by an accurate and complete certification from SCDC. Mr. Sigmon further notes that he could not have more promptly and conscientiously presented his concerns to this Court, as evidenced by the very filings Respondent cites to disparage him.

Finally, Respondent's contention that Marion Bowman's autopsy presents "nothing new" is indefensible—not merely in the context of Rule 59, but in what it reveals about Respondent's conception of its responsibilities when carrying out executions. Resp. at 2. An autopsy report released after Mr. Sigmon's motion was denied is new, and the facts that it contained—that Mr. Bowman's execution required two doses of pentobarbital and caused pulmonary edema—are not stale merely because they corroborated Mr. Sigmon's suspicions. Particularly when Respondent knew some of these facts all along but, when asked directly, refused to answer.² In sum, these facts

²12:51-13:12, 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 11, 2025). SCDC's spokesperson also states that "in

might be “nothing new” to Respondent, but they are new to Mr. Sigmon and this Court, and they are far from nothing. Respondent’s secrecy and disinterest in what Mr. Bowman’s autopsy proves is further evidence of the need for the expanded certification Mr. Sigmon has requested, and which state law and Due Process require.

Respectfully submitted, this, the 28th of February, 2025.

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our legal filings, we have said that our protocol mirrors the Federal Bureau of Prisons’s protocol.” But the federal protocol, which is publicly available, does not anticipate the need or make provisions for a second dose. <https://dpic-cdn.org/production/images/Federal-Execution-Protocol-Addendum.pdf>