

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

MIKAL D. MAHDI,
Petitioner,

v.

BRYAN P. STIRLING, Commissioner,
South Carolina Department of Corrections,
Respondent.

Case No. 2025-000491

STATUS REPORT AND NOTICE OF BOTCHED EXECUTION

The undersigned respectfully alert this Court that the execution of our client, Mikal D. Mahdi, was botched.

As this Court has noted, SCDC’s firing squad protocol calls for a condemned prisoner “to be shot in the heart by [three] members of the firing squad using ammunition calculated to do maximum damage to—and thereby immediately stop—the heart.” *Owens v. Stirling*, 443 S.C. 246, 284, 904 S.E.2d 580, 600 (2024), reh’g denied (Aug. 16, 2024). When Mr. Mahdi faced the firing squad on April 11, 2025, it appears he was shot with only two bullets, not three. Both entered just above his abdomen, shattering into metal splinters that destroyed his liver and pancreas, but that largely missed his heart. Mr. Mahdi remained conscious while his heart pumped blood from his wounds into his chest cavity. These facts, drawn from the autopsy commissioned by the South Carolina Department of Corrections (SCDC), explain why witnesses

RECEIVED

May 08 2025

S.C. SUPREME COURT

to Mr. Mahdi’s execution heard him scream and groan both when he was shot and nearly a minute afterward.¹

In assessing whether SCDC’s firing squad posed a “risk of unnecessary and conscious pain,” this Court ultimately determined that “though an inmate executed via the firing squad is likely to feel pain, perhaps excruciating pain...the pain will last only ten to fifteen seconds unless there is a massive botch of the execution in which each member of the firing squad simply misses the inmate’s heart.” *Owens*, 443 S.C. at 284, 904 S.E.2d at 600.

A massive botch is exactly what happened to Mikal Mahdi. Counsel have attached the report from Mr. Mahdi’s autopsy (Exhibit A),² a photograph taken by the autopsy pathologist depicting the two entrance wounds to Mr. Mahdi’s chest (Exhibit B), a photograph taken of a small container with bullet fragments collected during the autopsy (Exhibit C), and an analysis by Dr. Jonathan Arden, a forensic pathologist (Exhibit D).³ The autopsy documents only two entrance wounds on Mr. Mahdi’s chest—a fact that so alarmed the autopsy pathologist that he took the picture of the wounds and sent it to SCDC.⁴ The two half-inch wounds are quite low on

¹ Jeffrey Collins, *South Carolina executes second man by firing squad in 5 weeks*, ASSOCIATED PRESS (April 11, 2025) Available at: <https://apnews.com/article/firing-squad-execution-south-carolina-mikal-mahdi-25466963350812080385524ccc3a9298> (last visited: May 5, 2025).

² Mr. Mahdi and his next of kin authorized an autopsy and, in his final will, Mr. Mahdi authorized the undersigned counsel to publish his autopsy in any manner deemed appropriate by counsel.

³ In *Owens*, this Court credited Dr. Arden’s testimony as “establishing that the outer limit of the period of time in which an inmate will suffer pain” barring a massive botch “is hardly more than fifteen seconds. *Owens*, 443 S.C. at 284, 904 S.E.2d at 600.

⁴ SCDC evidently posited to the autopsy pathologist that two bullets might have gone into a single wound—a contention that the autopsy pathologist considered “remote,” and that Dr. Arden dismisses as “extraordinarily uncommon” and belied by both the entrance wounds, which do not have the “larger and more irregular...configuration” that two bullets would create, and the fact that there are “two internal wound trajectories, not three.” Arden at 4-5. Dr. Arden

Mr. Mahdi's torso and "just above the border with the abdomen, which is not an area largely overlying the heart." Arden at 5.

The autopsy also documents two distinct wound paths that traveled "downward and to the right" inside Mr. Mahdi's torso, "macerat[ing] the left lobe of the liver and the pancreas" and "the left lower lung lobe" before crashing into his spine and ribs. Autopsy at 2. Along the way, bullet fragments made "two perforations of the right ventricle of [Mr. Mahdi's] heart, comprising two holes in the front, and two holes in the back," leaving it otherwise intact. Arden at 5.

The implications of this botch are horrifying. As Dr. Arden explains, Mr. Mahdi's "ventricles were not disrupted, so he did continue to have some (albeit compromised) circulation after he was shot, permitting him to remain conscious for more than 15 seconds" and as long as 60. Arden at 7. Dr. Arden also noted the press observers' descriptions of Mr. Mahdi's series of vocalizations—first when he was shot, then 45 seconds later, and then again about a minute and a quarter after the shots—and concluded that "Mr. Mahdi's groaning at about 45 seconds after he was shot is consistent with representing his waning moments of consciousness." *Id.*

The causes of this botch are unknown. Among the questions that remain: Did one member of the execution team miss Mr. Mahdi entirely? Did they not fire at all? How did the two who did shoot Mr. Mahdi miss his heart? As the state expert posited in *Owens*, did they flinch or miss because of inadequate training?⁵ Or was the target on Mr. Mahdi's chest misplaced? The current record provides no answers.⁶

accordingly concluded that "the evidence indicates that [Mr. Mahdi] was struck by only two bullets, not the prescribed three." Arden at 7-8.

⁵ Testimony of Dr. D'Michelle DuPre, R. p. 1485, line 23-p. 1486, line 13.

⁶ The autopsy pathologist took only two photographs: one photo of the two bullet holes in Mr. Mahdi's chest, and another of an opaque jar in which he sealed some of the bullet fragments. He

This Court has held that “[t]he inescapable reality that an execution by any method may not go as planned—that it will be ‘botched’—does not render the method ‘cruel’ under the constitution.” *Owens*, 443 S.C. at 280, 904 S.E.2d at 598. But this Court predicated that conclusion on the Supreme Court’s observation that “[a]ccidents happen for which no man is to blame.” *Id.*, citing *State of La. ex rel. Francis v. Resweber*, 329 U.S. 459, 462, 67 S. Ct. 374, 375 (1947). All evidence suggests that this is not such an occasion. There were errors here that can—and must—be identified and corrected.

Nor is this merely a question of whether SCDC’s firing squad protocol is, in fact, unconstitutionally “cruel.” The purpose of South Carolina’s choice provisions is to guarantee “that a condemned inmate in South Carolina will never 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. An understanding of how this botch occurred is essential for that choice to have any meaning at all.

It is too late to provide Mikal Mahdi with that choice, or to protect him from the suffering he experienced. As his advocates, and as officers of the Court, we feel obliged to share this information with you, and with other condemned prisoners who will face this same dilemma. Mr. Mahdi elected the firing squad, and this Court sanctioned it, based on the assumption that SCDC

took no x-rays. He did not examine Mr. Mahdi’s clothing, which could have helped identify any problem with the placement of the target. As Dr. Arden notes, “[t]he lack of adequate photographic and radiographic documentation of the gunshot wounds and of the body in general, as well as the lack of examination and documentation of the clothing, are in direct contrast to the autopsy of Mr. Sigmon, the prior person executed by firing squad in South Carolina. The autopsy of Mr. Sigmon, which was performed by a pathologist in the same pathology practice that conducted the autopsy of Mr. Mahdi, included adequate photography, radiologic examination, and a report of at least a cursory examination of the clothing.” Arden at 6-7. With permission of Mr. Sigmon’s counsel, the autopsy report of Mr. Sigmon is attached (Exhibit E), along with a photograph taken by the autopsy pathologist depicting the three distinct entrance wounds to Mr. Sigmon’s chest (Exhibit F).

could be entrusted to carry out its straightforward steps: locating the heart; placing a target over it; and hitting that target. That confidence was clearly misplaced.

As this Court held, “[t]he ten-to fifteen-second period in which the firing squad might cause an inmate pain comes as close to a ‘painless death’—not guaranteed by the constitution—as any method of execution is likely to come.” *Owens*, 443 S.C. at 285, 904 S.E.2d at 580. But what happened to Mikal Mahdi was far from painless, and far from humane.

Respectfully submitted,

/s/ Teresa L. Norris

Teresa L. Norris

Teresa_Norris@fd.org

David C. Weiss

David_C_Weiss@fd.org

Assistant Federal Public Defenders
Capital Habeas Unit for the Fourth Circuit
129 West Trade Street, Suite 300
Charlotte, NC 28202
(980) 378-5105

John G. Baker
Federal Public Defender
Western District of North Carolina
(704) 374-0720
John_Baker@fd.org

Gerald W. King, Jr.
Chief, Capital Habeas Unit for the Fourth Circuit
(980) 378-5105
Gerald_King@fd.org

E. Charles Grose, Jr.
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
charles@groselawfirm.com

John LaFitte Warren, III
Law Office of Bill Nettles
2008 Lincoln Street
Columbia, SC 29201
(803) 592-9097
jw@billnettleslaw.com

COUNSEL FOR MIKAL D. MAHDI