

# Ohio's second execution of the year: Condemned man writhed in pain as he was killed

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15 September 2017

On Wednesday, September 13, the state of Ohio put 45-year-old Gary Otte to death by lethal injection. Otte's attorney, Carol Wright, states that Otte appeared to be in pain during the procedure.

Wright said that moments after he was injected with midazolam, a sedative and the first of three drugs used in Ohio's lethal injection protocol, Otte appeared to be in pain. Wright said she saw Otte's stomach moving up and down abnormally. She also said he cried, although midazolam's role in lethal injection protocols is to render the condemned unconscious and unaware of pain when the subsequent drugs are administered.

Upon noting Otte's reactions to the midazolam, Wright attempted to leave the viewing area in order to call Judge Michael Merz, a Dayton federal magistrate presiding over litigation challenging Ohio's three-drug execution protocol. The corrections staff, however, refused to let her out immediately.

"They would not allow me to leave the room until several minutes passed," Wright told reporters; according to protocol, she should have been released immediately. "It was my hope to alert the court to what I believed was a constitutional violation," she stated.

By the time Wright was able to speak to Merz, corrections staff had already administered the second injection. Wright says that the stomach movements and tears stopped at that point; Merz refused to halt the execution.

Wright contends that Ohio's execution team failed to plan and carry out Otte's execution properly. Ohio Department of Rehabilitation and Correction spokeswoman JoEllen Smith defended the methods Ohio used to kill Otte.

In an email, Smith contested Wright's claims. She

stated that corrections employees had acted within "proper security protocol" by refusing to allow her to leave immediately.

Smith further dismissed Wright's claims that the execution team had not verified that Otte was adequately sedated. "The execution was carried out in compliance with the execution policy and without complication," she wrote in her email.

Ohio has intransigently persisted in its use of midazolam, despite numerous objections. In 2014, the state became the first in the United States to use the sedative in its lethal injection protocols; Dennis McGuire, convicted of murdering a pregnant woman, appeared to gasp several times during his grisly and haunting execution. Witnesses also recount that he made several loud snoring and snorting sounds. McGuire gasped and choked for 24 minutes before succumbing to the drugs, in one of the most protracted executions on record in Ohio.

In January, a federal appeals court responded to litigation by several death row inmates over the use of midazolam by halting executions in Ohio. The litigants and their legal advocates—Carol Wright among them—contended that midazolam's use violated Eighth Amendment protections against cruel and unusual punishment. The legal team cited many well-documented instances of botched executions involving the drug in Ohio, Arizona, Arkansas, Florida, and Alabama.

In his decision, Judge Merz stated that the "use of midazolam as the first drug in Ohio's present three-drug protocol will create a 'substantial risk of serious harm' or an 'objectively intolerable risk of harm.'"

The state appealed Merz's decision in the Sixth

Circuit Court, where the judges twisted legal definitions in defiance of both logic and humanity. At the heart of the issue, the court held, was not whether midazolam carried a “substantial risk of serious harm,” but whether it is “sure or very likely to cause serious pain.”

The state acknowledged that the plaintiffs “have shown some risk that Ohio’s execution protocol may cause some degree of pain, at least in some people,” but that the Constitution does not guarantee a painless execution. Such metrics put an unbearable onus onto the plaintiffs and their advocates; the fact that so many of the executions using midazolam were clearly botched falls short of establishing that everyone sedated and paralyzed by the drug will experience terrible pain as they die. Those botched executions might well have been cruel and unusual, but according to these judges, there is a margin of cruelty implicitly allowed by the Constitution.

Ohio is not the only state to go to great lengths to defend its ability to murder its citizens. In April, Arkansas put eight of its citizens to death between April 17 and April 27. The state executed two men, Jack Harold Jones and Marcel Wayne Williams, on the same night. Infirmary staff fumbled ineptly for 45 minutes to establish an injection site in Jones’ neck; they settled on placing the intravenous port elsewhere on his body.

Ledell Lee, another man put to death in Arkansas’ execution frenzy, had documented intellectual disabilities stemming from fetal alcohol syndrome, which by law should have exempted him from execution.

Moreover, Lee’s public defender was drunk during court proceedings, and the judge was having an affair with the prosecutor. Despite an abundance of DNA left at the crime scene, there was no physical evidence connecting Lee to the murder he was accused of.

Lee, Jones, and Williams were all victims of Arkansas’ intent to use up its stores of midazolam before the drugs expired. Two drug makers, Fresenius Kabi and West-Ward, threw their weight behind a lawsuit against Arkansas’ use of the drugs.

The use of midazolam has resulted in demonstrably torturous executions in every state that has used it. The resistance of pharmaceutical companies to the association of their drugs with execution, particularly

botched ones, simply led states like Arkansas and Alabama to acquire the drugs illegally through third parties.

Attorneys for Ohio’s remaining death row inmates are appealing the Sixth Circuit Court’s decision on the state’s use of midazolam. However, the Supreme Court has consistently failed to uphold the Eighth Amendment by allowing states to continue to use midazolam—even after the drug was procured illegally by those states.



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