

Alabama man raises arms, grimaces as state puts him to death by lethal injection

Shelley Connor
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On Thursday, October 19, 40-year-old Torrey Twayne McNabb was murdered by the State of Alabama after his final stay of execution was vacated by the United States Supreme Court.

McNabb addressed his last words to his family members and to the State of Alabama; “Mom, sis, look at my eyes. I’m unafraid... To the state of Alabama, I hate you motherf***ers. I hate you. I hate you.” As corrections officers prepared for his killing, he lifted both middle fingers to his executioners.

McNabb had been held on death row at Alabama’s Holman Correctional Facility in Atmore for 18 years on two counts of capital murder in the shooting death of a Montgomery police officer. One count was for killing an on-duty officer; the other for killing the officer as he sat in his patrol car.

On Monday, US District Judge Keith Watkins granted a stay of execution in response to an emergency motion filed by McNabb’s attorney, John Anthony Palombi, on October 11. McNabb’s defense claimed that the method of execution presented “a substantial risk of serious harm” and that less painful alternatives existed.

A three-member panel on the Eleventh Circuit Court of Appeals upheld the stay on Wednesday. Alabama’s Attorney General, Steve Marshall, appealed to the Supreme Court of the United States, asking the court to vacate the injunction against the execution.

In the Attorney General’s appeal to the Supreme Court, he stated, “Alabama has already carried out four executions using this protocol. Three of those executed inmates were co-plaintiffs in this case, and their stay requests were denied by both this Court and the Eleventh Circuit.”

Just after 4:00 PM on Thursday, the Supreme Court vacated the injunction, saying that the All Writs Act,

the law cited by the appellate court in its injunction against the state, did not permit the court to grant a stay of execution for McNabb. McNabb’s defense, the Court stated, had not established that McNabb might successfully win a stay based upon the merits of his case, and that inmates “seeking time to challenge the manner in which the State plans to execute them must satisfy all of the requirements for a stay, including a showing of a significant possibility of success on the merits.”

McNabb’s attorneys hastily appealed for a “traditional” stay of execution from the Eleventh Circuit Court of Appeals, which was denied. Immediately thereafter, they requested a temporary stay from Supreme Court Justice Clarence Thomas. Thomas granted the temporary stay just minutes before McNabb’s scheduled execution at 6:00 pm.

Had the stay held until midnight, Alabama would have had to request another execution date, and McNabb’s attorneys would have had time to strategize another method of securing a stay. However, the Supreme Court lifted the stay around 8:00 pm. Alabama wasted no time; by 8:25 McNabb was ushered into the execution chamber and by 8:30 the process had begun.

About 20 minutes prior to his death, McNabb raised his right arm and grimaced. This happened immediately after the second round of consciousness checks—which include a guard pinching McNabb and lifting his eyelids—was conducted by corrections officers. McNabb’s family and attorneys voiced concerns that he was not unconscious as the lethal drugs stopped his heart.

In a press conference following McNabb’s death, Alabama Department of Corrections Commissioner Jeff Dunn dismissed concerns raised by McNabb’s

movements.

“Yes, I’m confident he was more than unconscious at that point,” Dunn—who is not a medical professional—told reporters. “I’ve witnessed several of these executions, and involuntary movements are not uncommon. We did perform two consciousness checks... We don’t talk specifically about the protocol. But as I said, we err on the side of safety, and we want to be sure we follow the protocol as it is written.”

Dunn’s dismissals, however, do not hold up against well-documented instances where executions using midazolam have been botched. According to Alabama, as well as several other states that have defended their lethal injection protocols, the prisoners are rendered unconscious by their first injection with the sedative midazolam. Yet the makers of the substance have roundly objected to the use of the drug for execution, and several have banned states from using it for those purposes.

The drug, which is frequently sold under the trade name Versed, is a relatively mild sedative used for patients undergoing dental procedures and colonoscopies. Prior to 2013, sodium thiopental, a much stronger sedative that put the accused into a coma-like state, had been used as the first drug in a three-drug protocol. However, the drug’s sole US manufacturer, Hospira, stopped producing it in 2010. As state supplies of the sedative expired or ran out, states turned to the less expensive-- but less effective--midazolam.

Some pharmacologists have suggested that as many as one in four executions where midazolam is used are botched. One inmate regained consciousness during his execution and cried out, “My body is on fire.” While the Supreme Court ruled in 2015 that Oklahoma’s use of midazolam as a sedative was not cruel and unusual, Justice Sonia Sotomayor dissented—she was not convinced, she stated, that midazolam rendered prisoners unconscious, and compared such executions to “being burned at the stake.”

Just a month before McNabb was put to death, his attorneys successfully argued for a stay of execution on behalf of death row inmate Jeffrey Lee Borden, arguing that they could demonstrate that Alabama’s three-drug protocol violates Eighth Amendment protections against cruel and unusual punishment. Borden had, they stated, “evidence to show that there is a substantial risk that midazolam will not anesthetize him, and he will be

paralyzed, suffocating, and unable to alert anyone before he is burned alive from the inside by potassium chloride.”

In McNabb’s case, the courts argued that procedural differences did not afford him the same protection that was extended to Borden. According to the Supreme Court, the appellate courts that had issued the stay had done so without regard to whether McNabb’s case had a chance of succeeding on its own merits. However, in so doing, they colluded with a state that, for years, obtained sodium thiopental illegally, a state that has made every effort to execute as many of its death row inmates as possible before midazolam disappears from execution chambers.

Alabama’s government has no interest in whether McNabb suffered as he was put to death. The state has proven, time and again, a singular devotion to the death penalty, even in the face of exonerating evidence and constitutional impediments such as intellectual disability. That the Supreme Court could discuss this as a matter of correct procedure and merit would be risible were it not so criminal.



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