

Alabama calls off execution after failing to access veins for lethal injection

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26 September 2022

Alabama prison officials abandoned efforts to execute Alan Eugene Miller on Thursday after the execution team failed to successfully access his veins. The lethal injection came two months after the state spent three hours executing another death row prisoner, Joe Nathan James, mangling his body in the process.

Such executions are frequently referred to as “botched,” which is defined as a task that is “carried out badly or carelessly.” This seems an inadequate choice of term for a procedure that subjects a human being to “cruel and unusual punishment”—which is banned by the Eighth Amendment—in the course of putting him or her to death.

Miller was convicted and sentenced to death in 2002 for the killing of three people—Michael Holdbrooks, Terry Lee Jarvis and Christopher Scott Yancey—in a 1999 workplace rampage. Prison authorities called off his execution after the process had begun, as it became clear that they would not be able to carry out the state killing before his death warrant expired at midnight.

Miller had requested that he be executed by nitrogen hypoxia instead of lethal injection. Alabama has approved the method but has yet to develop a protocol for its use. Four years ago, the state opened a 30-day window for condemned inmates to select nitrogen hypoxia for their executions. Miller claimed he left the form indicating his preference in a slot between the bars in his prison cell during the allotted time, but state authorities contend they did not receive it.

Miller went to federal court to block the lethal injection, and on September 19, US District Judge R. Austin Huffaker Jr. granted his request, barring the state from using any method of execution except nitrogen hypoxia. The judge said it was “substantially likely” that Miller submitted the paperwork on time.

On Wednesday, September 21, the state of Alabama

went to the US Court of Appeals for the 11th Circuit, asking that court to lift Huffaker’s order. The Court of Appeals turned down the state’s plea.

Alabama then turned to the US Supreme Court. In an unsigned 5-4 ruling, the country’s highest court lifted the federal judge’s order, allowing the execution to proceed by lethal injection. Justices Sonia Sotomayor, Elena Kagan, Amy Coney Barrett and Ketanji Brown Jackson dissented, indicating that they would have kept the lower court’s order in place, requiring the state to use nitrogen hypoxia.

John Hamm, Alabama corrections commissioner, told reporters that “accessing the veins was taking a little bit longer than we anticipated.” Commenting on the called-off execution, Hamm said, “Due to time constraints resulting from the lateness of the court proceedings, the execution was called off once it was determined the condemned inmate’s veins could not be accessed in accordance with our protocol before the expiration of the death warrant.”

At the request of Miller’s attorneys, a federal judge on Friday ordered Alabama state prison officials to preserve records and medical supplies associated with the attempted execution of their client.

An independent autopsy, commissioned and funded by Reprieve US, of Joe Nathan James, the Alabama prisoner executed on July 28, revealed patches of mottled, discolored skin on his hands, wrists and feet. It also found a deep, jagged vertical incision intersected in an obtuse angle with a diagonal incision on the inside of his elbow.

Dr. Joel Zivot, an Emory University anesthesiology instructor who conducted the autopsy, said the incision was likely the result of an attempted “cutdown,” an outdated procedure where a deep cut is made to access a vein. The doctor also found puncture wounds in

James' muscles that suggested either incompetence or an attempt to sedate the prisoner before his execution.

Witnesses reported that the only response from James was his eyelids fluttering soon after the lethal injections began. Jim Ransom, James' last defense attorney, told the *Atlantic* that this lack of response and his client's failure to make a final statement "didn't ring true."

"Joe always had something to say," Ransom said, describing James as a self-advocate who "wanted to fight 'em to the very last minute."

Alabama abandoned another execution in February 2018. Prisoner Doyle Lee Hamm lay for two hours as corrections staff punctured his hands, arms, feet and groin in an effort to find a usable vein for lethal injection before giving up. Hamm's attorneys had argued that their client's lymphatic cancer and venous access issues would make for a torturous execution, and they were not mistaken. Hamm died in prison of cancer-related complications in November 2021 at age 64.

Nitrogen hypoxia is now authorized for use in executions in Alabama, Mississippi and Oklahoma, but has yet to be utilized. This is not due to any concern by state authorities over finding a more humane method of execution. Rather, it is because numerous problems have arisen using lethal injection over the past decade, resulting in extreme suffering and torture of death row prisoners condemned to death. The public outrage over repeated gruesome executions has prompted authorities to look for alternative methods to keep their state killing machines in operation.

Lethal injection has been the method of choice for executions in the US since the 1990s. The original three-drug protocol developed by an Oklahoma state medical examiner included the anesthetic sodium thiopental, the paralytic drug pancuronium bromide, and potassium chloride to induce cardiac arrest.

The sole US manufacturer of sodium thiopental stopped producing it in 2011. In 2012, a ruling by the US District Court for the District of Columbia essentially barred the US Food and Drug Administration from allowing the drug to be imported for use in executions.

States responded by scrambling for alternative drugs. Some began using a single drug, the barbiturate pentobarbital, which is commonly used in veterinary and human euthanasia. Other states replaced sodium thiopental with midazolam, a benzodiazepine. Neither

pentobarbital nor midazolam are anesthetics or pain relievers.

There is strong evidence that the use of pancuronium bromide is not used to limit suffering during a lethal injection, but to conceal from witnesses any appearance of suffering by the prisoner during an execution. The Death Penalty Information Center (DPIC) says that of the 1,054 lethal injection procedures carried out since the US Supreme Court reinstated the death penalty in 1976, 75 of them—more than 7 percent—have been "botched." DPIC lists them here.

Alabama Governor Kay Ivey, a Republican, lamented the failure to succeed in putting Miller to death. "In Alabama, we are committed to law and order and upholding justice," she said in an official press release. "Despite the circumstances that led to the cancellation of this execution, nothing will change the fact that a jury heard the evidence of this case and made a decision."

Cynically referencing Miller's preferred method of execution, Ivey said of murder victims, "We all know full well that Michael Holdbrooks, Terry Lee Jarvis and Christopher Scott Yancey did not choose to die by bullets to the chest."

Alabama has yet to schedule a new execution date for Miller but has indicated that it will seek to make another attempt to put him to death, again using lethal injection, as upheld by the US Supreme Court's ruling.



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