

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND
(SOUTHERN DIVISION)

FILED
U.S. DISTRICT COURT
2011 JUN 14 PM 10:45

STEVEN HOWARD OKEN,

Plaintiff,

v.

FRANK C. SIZER, JR., Commissioner
Maryland Division of Correction

WILLIAM WILLIAMS, Warden
Maryland Correctional Adjustment Center
Baltimore, Maryland

GARY HORNBAKER, Warden
Metropolitan Transition Center

and

UNKNOWN EXECUTIONERS,

Defendants.

CLERK'S OFFICE
U.S. DISTRICT COURT
BALTIMORE, MARYLAND

No. **PJM 04 CV 1830**

**DEATH WARRANT
SIGNED**

**EXECUTION
IMMINENT**

**EXECUTION
SCHEDULED FOR
THE WEEK OF JUNE
14**

COMPLAINT

I.
Nature of Action

1. This action is brought pursuant to 42 U.S.C. § 1983 for violations and threatened violations of the right of plaintiff to be free from cruel and usual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. Plaintiff seeks equitable and injunctive relief.

II.
Plaintiff

2. Steven Howard Oken is a United States citizen and a resident of the State of Maryland. He is currently a death-sentenced inmate under the supervision of the Maryland Division of Correction, inmate number 212-612. He is held at the Maryland Correctional Adjustment Center and may soon be transferred to the Metropolitan Transition Center.

III.
Defendants

3. Defendant Frank Sizer, Jr. is the Commissioner, Maryland Division of Correction. Defendant William Williams is the Warden of the Maryland Correctional Adjustment Center where death row inmates are housed. Gary Hornbaker is the Warden of the Metropolitan Transition Center where the execution will occur. Defendants, Unknown Executioners, are employed or contracted by the Maryland Department of Corrections to make preparations for, and carry out, the scheduled execution of Plaintiff. They include, but are not limited to correctional officers, nursing assistants, and “executioners.” Plaintiff does not yet know their identities and it is Plaintiff’s understanding that Defendants will not reveal the identities of these persons.

IV.
Jurisdiction and Venue

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights violations), 2201 (declaratory relief), 2202 (further relief). This action arises under the Eighth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. § 1983.

5. Venue in this Court is proper under 28 U.S.C. § 1391.

V.
Facts

6. Plaintiff Steven Howard Oken is scheduled to be put to death by lethal injection some day during the week of June 14-18, 2004. Defendants are responsible for carrying out this execution.

7. The State of Maryland intends to execute Plaintiff by poisoning him with a lethal combination of three chemical substances:

The designated Executioners will begin the rapid flow of lethal chemicals in the following order:

- a. Pentothal (Thiopental)
- b. Pavulon (Pancurium Bromide)
- c. Potassium Chloride

In between each injection, the line will be flushed with normal saline solution. The defendants intend to follow this procedure even though Maryland law specifies the use of a "continuous intravenous administration of a lethal quantity of an ultrashort-acting barbiturate or other similar drug in combination with a chemical paralytic agent until a licensed physician pronounces death according to accepted standards of medical practice." Md. Code. Ann. Corr. Serv. § 3-905.

8. Sodium pentothal (thiopental) is an ultrashort-acting barbiturate that beings to wear off almost immediately.

9. Pavulon (pancurium bromide) is a curare-derived agent which paralyzes all skeletal or voluntary muscles, but which has no effect whatsoever on awareness, cognition or sensation.

10. Potassium chloride is an extraordinarily painful chemical which activates the nerve fibers lining the inmate's veins and which can interfere with the rhythmic contractions of the heart and cause cardiac arrest.

11. This particular combination of chemicals as administered by the Defendants will cause Plaintiff to consciously suffer an excruciatingly painful and protracted death.

12. Sodium pentothal is a short-acting barbiturate which is ordinarily used to render a surgical patient unconscious for mere minutes, only in the induction phase of anesthesia, specifically so that the patient may re-awaken and breathe on their own power if any complications arise in inserting a breathing tube pre-surgery.

13. Because of its brief duration (usually about five to seven minutes), it is highly unlikely that sodium pentothal will provide a sedative effect throughout the entire execution process.

14. Due to the chemical combination used in the Maryland execution process, there is also a probability that the sedative effect of the sodium pentothal will be neutralized instantly by the second chemical, pavulon.

15. If Plaintiff is not adequately sedated, he will suffer an excruciatingly painful death by suffocation.

16. The second chemical involved in the lethal injection process, Pavulon, is a derivative of curare that acts as a neuromuscular blocking agent.

17. While Pavulon paralyzes skeletal muscles, including the diaphragm, it has no effect on consciousness or the perception of pain or suffering.

18. To the extent that the first chemical, sodium pentothal, is neutralized by the second, Pavulon, the paralytic chemical (Pavulon) will serve only to mask the excruciating pain of Plaintiffs.

19. The American Veterinary Medicine Association (AVMA) condemns the use of neuromuscular blocking agents such as Pavulon in the euthanasia of animals and a number of states have made the use of Pavulon on domestic animals illegal. Maryland is one of the majority of States to have banned its use. Md. Code Ann., Criminal Law, § 10-611 (2002);

20. The third chemical involved in the lethal injection process, potassium chloride is intended to cause cardiac arrest.

21. In practice, the administration of potassium chloride is extremely painful because, when administered intravenously, potassium chloride is inadequate to stop the heart and only arrests the pulmonary system. As a result, the prisoner simply suffocates due to lack of oxygen.

22. In addition, potassium chloride ravages the organs by causing an extremely painful burning sensation as it courses through the body.

23. The risk of inflicting severe and unnecessary pain and suffering upon Plaintiff in the lethal injection process is particularly grave in Maryland because members of the execution team believe that leakage from the IV during lethal injection is “normal.” Both the 1994 and 2004 execution protocols reveal nothing to show that the team is prepared to deal with leaks like those that occurred during the execution of the late Tyrone X. Gilliam. During Mr. Gilliam's execution, witnesses observed a quantity of IV fluids puddling on the floor from the IV tubes. The team did nothing to ensure that an adequate dose of drugs reached Gilliam so that he did not suffocate while conscious, but paralyzed.

24. This risk is also particularly grave in Maryland because the “Execution Procedures” designed by the Maryland Division Department of Correction:

- a) specify different quantities of chemicals and numbers of syringes in the “checklist” attached to the “Execution Procedures” that must be filled out prior to and during each execution than in the “Execution Procedures” itself.
- b) do not include safeguards regarding the manner in which the execution is to be carried out;
- c) do not establish the minimum qualifications and expertise required of the personnel performing the critical tasks in the lethal injection procedure;
- d) do not establish appropriate criteria and standards that these personnel must rely upon in exercising their discretion during the lethal injection procedures;
- e) use “volunteers” to carry out the execution rather than trained individuals with proper credentials;
- f) do not require the members of the execution team to have any specialized training in administering the chemicals utilized in lethal injections;
- g) do not require the Warden, Assistant Warden, Assistant Commissioner Field Services, Correctional Maintenance Team, Execution Commander, and Execution Team to have any specialized training in administering the chemicals utilized in lethal injections;

- h) permit the Assistant Warden, who has no specialized credentials pertaining to carrying out an execution by lethal injection or the administration of the chemicals utilized in a lethal injection, to train and prepare all individuals who are to participate in the actual carrying out of the death sentence;
- i) allow modifications to any and all of the procedures at any time, and without providing advance notice to any death-sentenced inmate; and,
- j) allegedly were modified on May 26, 2004, after Plaintiff expressed concerns about Maryland's Execution Procedures. Because Plaintiff's execution is scheduled for less than three weeks after these alleged modifications, insufficient time exists for properly training the execution team and consulting medical experts to determine whether potential problems exist; thereby, increasing the likelihood that Plaintiff's execution will be anything but a painless death.

VI.
Claim I

25. Plaintiff incorporates paragraphs 1-25 by reference.

26. Frank Sizer, William Williams, Gary Hornbaker, and Unknown Executioners are acting under color of Maryland law in administering to Plaintiff chemicals that will cause unnecessary pain in the execution of a sentence of death, thereby depriving Plaintiff his rights under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment, in violation of 42 U.S.C. § 1983.

27. Frank Sizer, William Williams, Gary Hornbaker and Unknown Executioners have been aware since 1994 that they conduct lethal injection executions in violation of the delegation of authority conferred upon them by the Maryland General Assembly by failing to continuously administer an ultra short acting barbiturate. Likewise, Defendants have been aware since 1994, that the failure to continuously administer an ultra short acting barbiturate during a lethal injection execution poses an excessive risk that the inmate will be conscious or regain consciousness during the administration of Pavulon and Potassium Chloride.

28. Frank Sizer, William Williams, Gary Hornbaker and Unknown Executioners have been aware since 1998 that their execution procedures and training of Unknown Executioners is inadequate in establishing an IV line capable of delivering the quantity of thiopental specified by the execution procedures, in detecting a leaking IV line during a lethal injection execution, and in devising and implementing procedures to be employed by Unknown Executioners when such a leak is detected during an execution and their unreasonable failure to provide such procedures and training creates a substantial risk Plaintiff will remain conscious during the subsequent administration of Pavulon and Potassium Chloride resulting in a death by suffocation and cardiac arrest that will be constitutionally unnecessarily cruel and unusual death.

29. Frank Sizer, William Williams, Gary Hornbaker and Unknown Executioners have been aware since 2002, that the American Veterinary Medical Association has banned the use of Pavulon in the euthanasia of animals and that the Maryland General Assembly has likewise prohibited the use of Pavulon in the euthanasia of animals and that the continued use of Pavulon creates a substantial risk that the Plaintiffs death by lethal injection will violates constitutional principles with respect to evolving standards of decency.

30. Frank Sizer, William Williams, Gary Hornbaker and Unknown Executioners are acting with deliberate indifference to the Plaintiff's serious medical needs and their failures contained in paragraphs 28, 29 and 30 represent a mutually enforcing effect that produces the deprivation of Plaintiff's right to be free of unnecessarily cruel and unusual punishment.

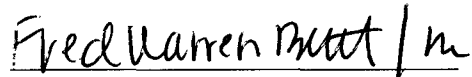
31. The use of these three chemicals rather than the two prescribed by statute, under a successive rather than continuous administration of drugs, as well as the State's refusal to provide reliable information regarding a) its protocol, b) the training of the execution team, and c) how to deal with problems that may arise during the execution procedure, are wholly unnecessary to the carrying out Plaintiff's execution and increase the risk that Plaintiff will suffer an unnecessarily painful execution.

VII. Prayer for Relief

32. Plaintiff requests that this Court grant a temporary restraining order and a preliminary injunction barring defendants from executing Plaintiff in the manner they currently intend.

33. Plaintiff requests that this Court grant reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and the laws of the United States, as well as for costs of suit and any further relief that this Court deems just and proper.

Respectfully submitted,



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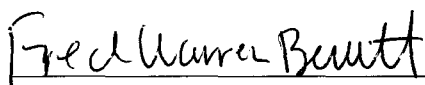
¹ Admitted in South Carolina.

VERIFICATION

State of Maryland

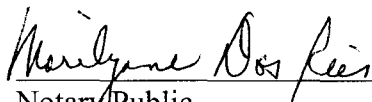
County of Prince George

I, Fred Warren Bennett, attorney for Plaintiff in the above-entitled action, being duly sworn, state that to the best of my knowledge and belief, the facts sets for in this Complaint are true and correct to the best of my knowledge.


Fred Warren Bennett

Subscribed and sworn to me this 14th day of June 2004.

MARILYNNE DOS REIS
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 15, 2005


Notary Public