

Arkansas carries out first of five “assembly line” executions

US Supreme Court clears way after 5-4 ruling on lethal injection drug

By **Kate Randall**
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Arkansas carried out its first execution in nearly a dozen years late Thursday night. Ledell Lee, 51, was the first of eight prisoners Arkansas had planned to execute before the end of the month because the state’s supply of midazolam, one of the drugs used in its lethal injection protocol, was about to expire.

Lee’s execution prompted widespread revulsion, with Amnesty International writing in a statement: “Today is a shameful day for Arkansas, which is callously rushing the judicial process by treating human beings as though they have a sell-by date.”

Thursday’s execution took place under conditions in which increasing numbers of Americans are opposed to the barbaric practice, in part due to executions gone awry and the exoneration of significant numbers of death row inmates.

Prison authorities had planned to conduct a double-execution Thursday night at the Cummins Unit at the state prison in Grady. But the state dropped plans to execute Stacey Johnson after the Arkansas Supreme Court said it would not reconsider his stay, which was issued to allow Johnson to seek more DNA tests in an effort to prove his innocence.

The first three executions planned were canceled because of court decisions and legal rulings have put at least one other in doubt. The state plans to execute three more men next week. Arkansas Governor Asa Hutchinson and Attorney General Leslie Rutledge have vowed to fight any and all legal challenges by the remaining three condemned men.

The execution came after a flurry of legal challenges and rulings Thursday, which finally resulted in an 11:30 p.m. decision by the US Supreme Court, allowing the lethal injection procedure to begin just 14 minutes before Lee’s death warrant expired at midnight. He was initially set to be executed at 7 p.m. local time.

Lee was convicted and sentenced to death for the murder of Debra Reese more than 20 years ago in a Little Rock, Arkansas suburb. He was put to death despite his claims of innocence, his intellectual disability, his woefully incompetent counsel, and his claim that Arkansas’ three-drug execution protocol could subject him to “cruel and unusual punishment.”

Associated Press reporter Sean Murphy, who was one of three media witnesses at the Cummins Unit, described the final scene in the execution chamber. Lee was strapped to a gurney by his head and arms as the media and about a dozen other witnesses watched from a viewing room.

Lee declined to make a final statement. The lethal injection began around 11:45 p.m., according to Murphy’s account. Lee “appeared to lose consciousness very quickly,” he said. His eyes drooped and then closed “within a matter of minutes.”

A “consciousness check” was performed at 11:49 p.m. by a member of the execution team, which involved flicking Lee’s eyelids, shaking his head and rubbing his sternum, at which point the inmate did not appear to be conscious, the AP reporter said. Another check was made at 11:55 p.m., which also included listening for a heartbeat. The coroner pronounced him dead at 11:56 p.m., just 4 minutes before his execution warrant expired.

Lee’s state killing was carried out with a three-drug protocol, beginning with the sedative midazolam, followed by the paralytic vecuronium bromide, and ending with potassium chloride to induce cardiac arrest.

A number of executions in recent years using midazolam—in Alabama, Arizona, Ohio and Oklahoma—have resulted in inmates suffering excruciating deaths, gasping for breath and writhing on the execution gurney, appearing not to have been adequately sedated by midazolam.

However, despite such gruesome spectacles involving this

sedative, the US Supreme Court ruled in 2015 that such deaths involving midazolam did not constitute “cruel and unusual punishment,” which is banned by the Eighth Amendment to the US Constitution.

In Arkansas’ rush to execution before the end of April, the state has faced criticism from drug companies about the use of their products in executions. Two companies filed a brief last week asking a federal judge to block use of their drugs, including midazolam.

McKesson, the country’s largest drug distributor, sought to block Arkansas from using vecuronium bromide, accusing the state of obtaining it under false pretenses. After appeals by Attorney General Rutledge, the Arkansas Supreme Court sided with the state in these cases on Thursday.

Appeals filed Lee’s attorneys, including Nina Morrison of the Innocence Project, were rejected by the US Court of Appeals for the Eighth Circuit after the same court briefly stayed the execution.

The attorneys filed a volley of appeals at the US Supreme Court seeking a stay of execution, saying that DNA testing now exists that could prove his innocence and arguing that his intellectual disability should prevent his execution. The US Supreme Court issued temporary stays of execution while they considered these legal arguments.

Lee has persistently called on state authorities to let him take a DNA test and compare the results to evidence collected at the murder scene. He has also presented evidence that his trial attorney provided ineffective counsel and that the judge was having an undisclosed affair with the assistant prosecutor. Lee’s counsel on appeal was reportedly so drunk in court that he slurred his words.

The high court rejected Lee’s attorneys’ claims that he should be spared because he suffered from fetal alcohol syndrome resulting from his mother’s chronic drinking during pregnancy, and that he was of borderline intellectual ability and showed evidence of brain damage.

The high court’s final 5-4 ruling against Lee’s Eighth Amendment claim that he might not be rendered sufficiently unconscious by midazolam permitted his execution to go forward. Justice Neil Gorsuch, the recent Trump appointee to the court, cast the deciding vote assuring Lee’s death, it was Gorsuch’s first recorded vote cast as a justice of the court.

As these legal issues played out, Lee saw some four-and-a-half torturous hours pass between his originally scheduled 7 p.m. execution and the time he was marched into the execution chamber and strapped to the gurney.

An amici curiae brief filed with the Supreme Court by the Fair Punishment Project (FPP) of Harvard Law School on Lee’s behalf notes that his capital case is not dissimilar from

those of the nearly 3,000 inmates languishing on death rows across the US:

“There is,” they write, “not much daylight between the culpability of those with a serious mental illness such as paranoid schizophrenia, a person with traumatic brain injury or other intellectual impairment, a man suffering from the after-effects of a lifetime of abuse, and those with intellectual disabilities or who are seventeen. And yet there is good reason to conclude that the typical person sentenced to death or executed in America suffers from such crippling impairments.”

Arkansas plans to send thee men to their deaths next week, barring any last-minute reprieves:

Jack Jones, scheduled for execution on April 24, suffers from bipolar disorder and depression. His symptoms of mental illness date back to his childhood, where he experienced physical abuse by his father. Jones was convicted and sentenced to death in 1996 for the killing of Mary Phillips and the attempted murder of her daughter, Lucy Phillips.

Marcell Williams, also set to be executed April 24, was a victim of sexual abuse before the age of 10. According to FPP, by the time he was 12, Marcel’s “mother was routinely pimping him ... in exchange for food stamps, for food, for a place to stay.” She also routinely beat him savagely. He was sentenced to death in 1997 for the 1994 murder of Stacy Erickson, a 22-year-old woman. The jury never heard compelling mitigating evidence about his background of severe abuse.

Scheduled to be put to death April 27 is Kenneth Williams, who was convicted of murdering Cecil Boren in 1999. Williams suffers from intellectual disability and may have suffered brain damage. He also experienced trauma as he shuffled between six different foster homes as a child.

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