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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

MARCEL WILLIAMS,  
Plaintiffs, No. 5:17CV00103-KGB

v.

ASA HUTCHINSON, Governor of the State of Arkansas, in his official capacity; and WENDY KELLEY, Director, Arkansas Department of Correction, in her official capacity,  
Monday, April 24, 2017  
Little Rock, Arkansas  
8:47 p.m.

Defendants.

**TRANSCRIPT OF HEARING ON EMERGENCY MOTION TO STAY EXECUTION  
(BY TELEPHONE)  
BEFORE THE HONORABLE KRISTINE G. BAKER,  
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

On Behalf of Plaintiff:

MR. JOHN CHARLES WILLIAMS, Assistant Federal Defender  
MS. JULIE VANDIVER, Assistant Federal Defender  
MS. APRIL GOLDEN, Research Attorney  
Federal Public Defenders Office  
1401 West Capitol Avenue, Suite 490  
Little Rock, Arkansas 72201

On Behalf of Defendants:

MR. LEE RUDOFKY, Solicitor General  
Arkansas Attorney General's Office  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201-2610

Proceedings reported by machine stenography; transcript prepared utilizing computer-aided transcription.

1 P R O C E E D I N G S

2 THE COURT: This is Judge Baker. For purposes of the  
3 record, we are in the case of Marcel Williams v. Wendy Kelley,  
4 5:17CV103.

5 Counsel for Mr. Williams, please state your name for the  
6 record.

7 MR. WILLIAMS: This is John Williams for Mr. Williams.

8 MS. VANDIVER: Julie Vandiver for Mr. Williams.

9 MS. GOLDEN: April Golden for Mr. Williams.

10 THE COURT: Counsel for defendants, please identify  
11 yourselves for the record, if there are no other counsel for Mr.  
12 Williams on the phone.

13 MR. RUDOFISKY: Your Honor, Lee Rudofsky for the ADC  
14 and Governor Hutchinson. And while he is not acting as counsel,  
15 I have with us Will Jones, who is the Deputy Attorney General of  
16 the Special Investigative Division and was at the execution  
17 witnessing today as a public witness.

18 THE COURT: Thank you. All right. I've reviewed both  
19 the motion and the response. I will let Mr. Williams' counsel  
20 speak to the motion. It's my understanding that there may be  
21 some testimony you wish to present.

22 You may go ahead, Mr. Williams, or whoever wishes to take  
23 the lead on this motion.

24 MR. WILLIAMS: Thank you for convening this hearing.  
25 To get some background on what has happened, we've got some

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1 media reports that there may have been some issues with Mr.  
2 Jones's execution. We then talked to Jeff Rosenzweig, who is  
3 Mr. Jones's counsel. And he gave us the information that we  
4 placed in the motion and filed as quickly as we possibly could.  
5 And so I hope to just use this as an opportunity to present Mr.  
6 Rosenzweig's testimony and the testimony of others who witnessed  
7 the execution to sort out what happened.

8 We also have, I should say, Morgan Holladay, who was Mr.  
9 Jones's spiritual advisor. I think she's on the line. I think  
10 Scott Braden was there. And we can also get Dr. Zivot on the  
11 line if that is necessary.

12 THE COURT: All right. You can proceed with your  
13 evidence. I don't really need any argument, I don't think, from  
14 either side on these issues. You can go ahead.

15 MR. WILLIAMS: So is Jeff on the line?

16 MR. ROSENZWEIG: I am.

17 MR. WILLIAMS: Jeff, why don't you just go ahead and  
18 tell us, you know, what you told us before. What did you see?

19 MR. ROSENZWEIG: Okay. Well, I took some rough notes.  
20 I was standing in the back, next to the door, but I was standing  
21 essentially the whole time. And I wrote down Mr. Jones's last  
22 words were at 7:03. He talked for two to three minutes.  
23 There's a clock on the wall where you can see. And it appeared  
24 to start at 7:06. His lips moved very briefly for, you know,  
25 just a few seconds. What struck me then was they started the

1 consciousness checks almost immediately, like at 7:07 -- 7:07,  
2 they started various consciousness checks. They were doing his,  
3 you know, feeling on his face, on his chest, doing his eyes and  
4 that type of thing. It struck me as very different from what  
5 they had done with Mr. Lee, whose execution I saw last week.

6 At 7:11 and 7:12, what I noticed was that Mr. Jones's mouth  
7 opened and then shut. This happened three or four times, maybe  
8 five times max, but probably three or four times. There wasn't  
9 any other real movement, other than his mouth opened and then  
10 shut. And then probably the best analogy would be, you know,  
11 like a fish opening a mouth and then chomping on, you know, a  
12 bait or something like that. And that sort of faded away and  
13 stopped after four or five times. And then it was basically  
14 peaceful with no real incident until 7:19, when the coroner was  
15 summoned, and 7:20, when the corner pronounced him -- pronounced  
16 him dead. I could see Mr. Jones's right hand and fingers.  
17 There was no movement in the hands and fingers. Anyway, that's  
18 what I saw. I did not hear anything.

19 MR. WILLIAMS: Now, you said something about a central  
20 line to us earlier. What happened there?

21 MR. ROSENZWEIG: Well, what happened was, Director  
22 Kelley called me on Saturday and offered Mr. Jones to have a  
23 line put in, similar to that which I understand Mr. Williams had  
24 declined. Anyway, I asked that Mr. Jones be allowed to call me.  
25 And he called me this morning, not yesterday, but this morning.

1 And I explained to him what the offer was. And he decided to  
2 take it. When I got to the prison, roughly -- you know, got in  
3 the isolation area where Mr. Jones would normally be housed  
4 around, roughly, 4:45, he was not there. I was told that he was  
5 in the infirmary and had been there for several hours having a  
6 line put in.

7 A little while later, he was wheeled back in. He told me  
8 at that time that they had tried to put something in his neck,  
9 and they were not able to do it. And eventually they put ports  
10 or lines, or whatever the terminology is, in both arms, around  
11 the elbow. Both of his elbow areas were sort of bandaged, I  
12 guess, to cover -- to cover that, you know, where the ports or  
13 the lines were going to be.

14 MR. WILLIAMS: Okay. Is there anything else you want  
15 to note?

16 MR. ROSENZWEIG: No. Beforehand, I had told Mr. Jones  
17 that if, in fact, he was conscious to, you know, express it in  
18 some way so we would know, and if that included, you know,  
19 either by trying to say something or, you know, finger movements  
20 or whatever. What I saw did not appear to be him attempting to  
21 say anything. I mean, you know, it was just -- it was an  
22 opening, sort of a slackening of the mouth where it was clearly  
23 open, and then it would close.

24 MR. WILLIAMS: And this was about, you said, five or  
25 six minutes after --

1           MR. ROSENZWEIG: Yeah. My notes, which I was  
2 scribbling, it started at 7:06 on the wall clock. And those  
3 movements of the consciousness checks appeared to start at 7:07.  
4 And at 7:11 and 7:12 was when the mouth opening and closing  
5 occurred. And that sort of faded away, and there really wasn't  
6 anything until 7:19.

7           MR. WILLIAMS: Okay. My colleague has called Dr.  
8 Zivot and put him on the phone in front of me. And I don't know  
9 if he has heard what Jeff said or if he has anything to say  
10 about that or if that testimony is desired by the Court. But we  
11 would like to present it if it is.

12           THE COURT: I will say that I won't confine your  
13 record. I'll let you make whatever arguments and present  
14 whatever testimony you wish to present.

15           I want to administer the oath. I did not do it before Mr.  
16 Rosenzweig spoke. Anybody who intends to be a witness, we're  
17 going to do it at one time, just like you are standing here in  
18 open court. We're going to do it by phone. Mr. Wilkins, Cory  
19 Wilkins, who is Judge Holmes's courtroom deputy, is in here to  
20 administer it. So anybody who is on the line who intends to  
21 offer testimony -- and, Mr. Rosenzweig, we're going to apply  
22 this retroactively, so go ahead and take the oath.

23           MR. ROSENZWEIG: That's fine. I'm prepared to do that  
24 retroactively.

25           THE COURT: All right. Mr. Wilkins is going to

1 proceed for me.

2 (Witnesses sworn.)

3 MR. RUDOFISKY: Your Honor, this is Mr. Rudofsky. For  
4 the record, I would like to object to Dr. Zivot's testimony. He  
5 wasn't there. And, at the very least, he's only hearing about  
6 this for the first time. I'm not really sure why he's  
7 testifying. But at least just for the record, note my  
8 objection, please.

9 THE COURT: I will note your objection, Mr. Rudofsky.

10 MR. WILLIAMS: I think let's go ahead and present the  
11 testimony of Morgan Holladay, I think, if she's on the line.  
12 And Dr. Zivot can hear that.

13 Morgan, are you there?

14 MS. HOLLADAY: I am here.

15 MR. WILLIAMS: So have you heard what Jeff had to say?

16 MS. HOLLADAY: I did.

17 MR. WILLIAMS: Do you have any different recollection  
18 or a different perception of what happened in the execution or  
19 additional recollection?

20 MS. HOLLADAY: I guess the only thing that I would  
21 add, I did notice the same things.

22 MR. WILLIAMS: Let me start --

23 MS. HOLLADAY: I was in the third row. I do believe  
24 that I heard an audible sound from Mr. Jones at some point,  
25 although my perception wasn't such -- I wasn't keeping track of

1 time, so I don't know exactly when that happened. So during  
2 that time, he opened his mouth several times and closed it.

3 MR. WILLIAMS: So can you tell me a little bit more  
4 about --

5 MS. HOLLADAY: I think it was just like a -- how he  
6 opened his mouth. He just sort of opened it, like his jaw  
7 dropped.

8 MR. WILLIAMS: And you said that you weren't keeping  
9 close track of time. Do you have a general estimate of when  
10 that was during the process?

11 MS. HOLLADAY: It was sort of early on.

12 MR. WILLIAMS: Okay. Was there any sort of gasping or  
13 coughing that you could perceive?

14 MS. HOLLADAY: Yes. I think that it was more like a  
15 sort of gurgling.

16 MR. WILLIAMS: And at what point was that? Was that  
17 at the same time that his mouth was open?

18 MS. HOLLADAY: Yes.

19 MR. WILLIAMS: I don't think we have anything else to  
20 ask of Morgan.

21 We have Scott here.

22 MR. BRADEN: This is Scott Braden. And for the sake  
23 of time, I was in the back row, standing up. The only thing I  
24 might add, just slightly a little bit different, when his lips  
25 moved, it appeared to me that he was trying to talk. But that's

1 my observation. But Jeff is right. His lips moved, and I agree  
2 with everything that Jeff said.

3 MR. WILLIAMS: So with the consciousness check and  
4 with the mouth opening?

5 MR. BRADEN: Yes.

6 MR. WILLIAMS: Okay. Dr. Zivot is here.

7 Dr. Zivot, are you here?

8 DR. ZIVOT: Yes.

9 MR. WILLIAMS: Have you heard this testimony?

10 DR. ZIVOT: I have.

11 MR. WILLIAMS: And do you have any commentary on what  
12 you've heard?

13 DR. ZIVOT: I think that there's a couple of things  
14 that I think are clear. The first thing is that it's very  
15 difficult for people who are not knowledgeable in this sort of  
16 thing to try to understand what they see, from a couple of  
17 perspectives. First of all, they don't have a good vantage  
18 point. And their task now is trying to evaluate whether or not  
19 these things go smoothly when they are not really there to see  
20 up close. Second of all, they are not trained as to what they  
21 think they are supposed to see. So as a natural inclination, we  
22 try to ascribe meaning to what we see.

23 I can tell you what you should be seeing, and it sounds  
24 like this was not the case. But you can correct me if I  
25 misunderstand the narrative.

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1           The first thing that should happen is midazolam is given.  
2           And in that circumstance, after a period of time, there should  
3           be no response, none; no movement of the mouth, no movement of  
4           the shoulders, nothing of the fingers. There should be no  
5           movement no matter what an individual does in trying to create  
6           movement. The movement can also occur -- even if there's no,  
7           quote, consciousness check in play, there should be no movement,  
8           none. And at that point, when there is absolutely no movement  
9           at any point, that would be the point where the person charged  
10          with evaluating, quote, consciousness should signal that the  
11          vecuronium should be given, not until that time. And there  
12          should be a period of time where there's nothing that's  
13          happening prior to vecuronium being given. If anything is  
14          happening, any movement at all, that indicates to me it could be  
15          such a degree of awareness, some consciousness, that it's  
16          difficult to measure or articulate from an individual lying  
17          there. And that's what should happen.

18           So is that what happened from the witnesses, or is that not  
19          what happened? It sounds like that's not exactly what happened.

20           MR. WILLIAMS: So can we trust there was no pain in  
21          this situation after midazolam was given?

22           DR. ZIVOT: No, no, I cannot. No. Why would I think  
23          that? Midazolam is not an analgesic in any way. But if there's  
24          movement and then you give someone -- and that indicates some  
25          degree of some inner experience that may or may not be able to

1 be articulated. Now you've given them the paralysis. You will  
2 always look good after that. You will always look quiet. And  
3 now you've chemically paralyzed them, and they have no way of  
4 indicating that there's anything going on inside of them. Now  
5 it's hidden forever. So once the vecuronium is given, they will  
6 die, and the cause of death will be suffocation. You don't need  
7 potassium at that point. You will die of suffocation. Since  
8 there's no cardiac monitor, we don't know if the potassium does  
9 anything or not. But I will not say we can be certain that  
10 there was no pain here. I would not say that at all.

11 MR. WILLIAMS: I believe that's all the witness  
12 testimony we have to present right now, Your Honor.

13 THE COURT: All right.

14 MR. RUDOFISKY: Your Honor, this is Mr. Rudofsky. At  
15 your discretion, I'm ready to go ahead very quickly. I have  
16 three, literally, one-minute points, and then we have Will Jones  
17 for brief testimony.

18 THE COURT: You may proceed.

19 MR. RUDOFISKY: My three points are, first, just keying  
20 off of what Dr. Zivot said, as this Court understands, the  
21 standard that is applicable on the first prong of *Glossip* is not  
22 being absolutely certain that there's no pain at all.

23 Number two, as Your Honor noted, the Eighth Circuit was  
24 very clear that plaintiffs have to prove the second prong of  
25 *Glossip*. And they haven't done so.

1           And, number three, as Your Honor is going to hear, this  
2 execution, like the last execution, went very, very well. And  
3 even -- I don't agree with this. But even if they argue that in  
4 some way, shape or form maybe something small went wrong in the  
5 administration of the IV or anything like that, which, as I  
6 said, they are wrong. As Your Honor knows, the Eighth Circuit  
7 cases are clear, accident or maladministration does not rise to  
8 an Eighth Amendment violation.

9           Having said that, I know you don't want to hear legal  
10 argument. Let me just turn it over to Will Jones. Will is on  
11 another cell phone, so I have asked him to speak very, very  
12 loudly. But if for any reason you can't hear him, Your Honor,  
13 or anybody else on the call, just please tell me quickly. He  
14 will speak louder.

15           THE COURT: Thank you. You may proceed, Mr. Jones.

16           MR. RUDOFASKY: Will, we're ready.

17           MR. JONES: I --

18           MR. RUDOFASKY: You have to be louder than that.

19           MR. JONES: At 7:06 -- the actions they are talking  
20 about happened within that first five minutes. What I observed  
21 from the second row was snoring, deep, deep sleep. And the  
22 times that his mouth opened just looked to me to be when he was  
23 taking a breath, opened his mouth two, maybe three times, took  
24 deep breaths that he took right around the time of his snoring,  
25 like someone who is snoring and occasionally breathes in through

1 their mouth. That's what I saw. After that, I never saw any  
2 movement other than that. His mouth opened two or three times  
3 to take a breath.

4 MR. RUDOFISKY: Will, could you explain what they did  
5 for the consciousness check?

6 MR. JONES: Went on the side of the face and then also  
7 ran a finger across his eyelids, ran fingers across the eyeballs  
8 themselves.

9 MR. RUDOFISKY: And was there any response?

10 MR. JONES: None.

11 MR. RUDOFISKY: And I apologize. I should have asked  
12 you this at the beginning. Judge Baker doesn't know who you  
13 are. Could you just give a sort of one minute to one and a half  
14 minute sort of background of who Will Jones is?

15 MR. JONES: Sure. Deputy Attorney General over the  
16 Special Investigations Division, which houses the Cyber Crimes  
17 Unit, where we investigate the internet crimes against children  
18 and child pornography cases. I've been a prosecutor since 2001,  
19 most of that time within Pulaski County. For over 11 years, I  
20 was a prosecutor for Pulaski County, where I tried a few murder  
21 cases, a couple of rape cases, over a hundred jury trials,  
22 managed a case load typically around 100, 200 cases at a time.  
23 And I supervise the Law Enforcement Section here at the Attorney  
24 General's Office.

25 MR. RUDOFISKY: And, Will, did anybody in the room

1 afterwards suggest to you or say to you or act in any way like  
2 there was some kind of suffering or pain going on? Did any of  
3 the reporters start asking questions, you know, like you would  
4 normally if there was something bad that happened?

5 MR. JONES: No, there was not. I will say that it  
6 appeared, as the warden was walking away, the microphone was  
7 turned off. It was brief, 10 to 15 seconds. It was clear that  
8 he was saying something before the drugs were administered,  
9 before he started to lose consciousness.

10 MR. RUDOFISKY: Will, I want to make clear of that  
11 because not all of us are really in tune with the complete  
12 procedures. As I understand what you are saying is, the  
13 microphone went off. He gave last words. The microphone went  
14 off as the director was walking away, and that's what you are  
15 talking about. The 15 seconds after that was when he mumbled  
16 something. Is that correct?

17 MR. JONES: That is correct. It was probably more  
18 like five to ten. It was just a handful of words, just a few  
19 words. But it looked like he was directing the director as she  
20 walked away, or the executioner, one of the two.

21 MR. RUDOFISKY: Okay. And, Your Honor, that's really  
22 all I have for Will, unless you have any questions for him.

23 The one thing I would like to add is, we have sent  
24 Christoph and copied opposing counsel on numerous press reports,  
25 in addition to a report from the Governor's criminal justice

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1 policy aide, who also witnessed the execution, although he did  
2 it from a closed-circuit TV in what's called the "farmhouse" on  
3 that complex. I mean, obviously, between Will's testimony and  
4 the press reports, we're happy to rest on that.

5 THE COURT: All right.

6 MS. VANDIVER: This is Julie Vandiver. We've also  
7 seen a couple of press reports, which April is going to email to  
8 Christoph, that talk about the gasping.

9 THE COURT: All right. I'm sending someone right now  
10 to check for that email.

11 MR. RUDOFISKY: For our part, Your Honor, I apologize.  
12 Christoph will quickly find that there are about six emails in  
13 his box. It's just sort of how we had to do with a quick  
14 turnaround.

15 THE COURT: That's fine. We've reviewed what the  
16 State has sent already, so we'll wait for what Mr. Williams has  
17 sent.

18 MR. RUDOFISKY: Your Honor, the only other thing I  
19 would add is, you know, I appreciate and take very seriously  
20 Jeff Rosenzweig's testimony: Hey, if you are conscious, let us  
21 know, talk to us, move your hand. And I also appreciate his  
22 testimony, as I understood it, that it didn't look like he was  
23 trying to talk or say something or move his hands. So I guess I  
24 would like to give a shout-out to Jeff Rosenzweig, who I  
25 appreciate being very fair and honest.

1 DR. ZIVOT: This is Dr. Zivot. I would just say, I  
2 appreciate that's what you said, Mr. Jones. But it's not really  
3 scientifically sound. So the fact that he is not able to give  
4 you a thumbs up or a thumbs down or articulate something that  
5 can be clearly heard in no way indicates that he did not have  
6 some awareness. This is, again, my first point, that witnesses  
7 don't really know what they see and that they are not trained to  
8 understand what's happening here. That's the problem.

9 THE COURT: We do not yet have the press accounts from  
10 Mr. Williams, from Ms. Vandiver. But I will tell you that based  
11 upon the evidence that I have heard, I am prepared to rule.

12 Ms. Vandiver, from what I understand, those press reports  
13 would not be inconsistent with what Mr. Rosenzweig, Ms. Holladay  
14 and Mr. Braden testified to. They would, in fact, be consistent  
15 with that testimony. Is that fair?

16 MR. WILLIAMS: She's left the room, and I'm not  
17 familiar with them.

18 THE COURT: Why don't you make sure of that first.

19 MR. WILLIAMS: Okay.

20 MS. VANDIVER: I'm here.

21 THE COURT: Ms. Vandiver, the question I had is, we  
22 have not yet received the press accounts that you intended to  
23 send. But if you could confirm for me those press accounts, are  
24 they consistent with the testimony that this Court has heard  
25 from Mr. Rosenzweig, Ms. Holladay and Mr. Braden?

1 MS. VANDIVER: Yes. They say that they saw gasping.  
2 April is trying to send them to you right now, and she's just  
3 having a hard time. They were on Twitter. She's having a hard  
4 time getting them off of Twitter.

5 THE COURT: All right.

6 MS. VANDIVER: So she's in the middle of doing it. I  
7 apologize for the delay.

8 THE COURT: Since my understanding is those accounts  
9 would be consistent with the witness testimony that this Court  
10 has heard from witnesses for Mr. Williams, I'm going to go ahead  
11 and rule. I will take into account that what I understand Mr.  
12 Williams' position to be is that others in the room would  
13 corroborate what the eyewitnesses have testified to already  
14 before this Court.

15 So in regard to my order, I'm going to make findings of  
16 fact first. In regard to the allegations related to condemned  
17 inmate Jack Jones's central line and placement of IV lines for  
18 the execution, to the extent that is an issue even properly  
19 before this Court as it relates to the protocol, the Court sees  
20 no violation of the Arkansas midazolam protocol, even assuming  
21 Mr. Williams' allegations regarding Mr. Jones's attempted  
22 placement of a central line and placement of IV lines are true.

23 As far as Mr. Williams having rejected the option for a  
24 central line being placed, based on the evidence before this  
25 Court, that was Mr. Williams' option, and it in no way violates

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1 the Arkansas midazolam protocol, again, to the extent that issue  
2 is even properly before the Court.

3 In regard to allegations related to condemned inmate Mr.  
4 Jones's consciousness checks after the midazolam was injected,  
5 there is no requirement that defendants wait five minutes from  
6 the last injection of midazolam to conduct a consciousness  
7 check. The Arkansas midazolam protocol requires defendants to  
8 wait at least five minutes from the first injection of midazolam  
9 to conduct the consciousness check. The protocol is silent in  
10 regard to a continuing consciousness check. On the face of Mr.  
11 Williams' filing and based on the testimony this Court has  
12 heard, the Court cannot conclude the defendants failed to  
13 conduct a proper consciousness check. Mr. Williams, in the  
14 filing, admitted that after five minutes had elapsed, around  
15 7:11 or 7:12, Mr. Jones was moving his lips and gulping for air.  
16 However, Mr. Williams, in his filing, and the witnesses from  
17 whom the Court has heard today state nothing about what occurred  
18 after 7:11 or 7:12 p.m. until 7:20 p.m., when Mr. Jones was  
19 declared deceased.

20 Further, there's no allegation made by Mr. Williams as to  
21 what time defendants injected Mr. Jones with vecuronium bromide  
22 or potassium chloride, nor is there evidence in the record  
23 before this Court as to how long those drugs require to have  
24 their intended effect. In other words, the record evidence is  
25 not present that prior to Mr. Jones being declared unconscious,

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1 the vecuronium bromide or potassium chloride were injected. I  
2 can't make that finding. I don't have that evidence before me  
3 in this record, even if I assume everything that Mr. Williams'  
4 counsel and eyewitnesses have testified to and what he states in  
5 his filing. In fact, during the Court's hearing, Mr. Williams'  
6 witnesses agreed that Mr. Williams completely stopped moving  
7 sometime after five to six minutes after the midazolam was  
8 administered. That fact was corroborated by the State's  
9 witness, Will Jones.

10 Based upon what the Court has heard from the eyewitnesses  
11 in regard to the execution, the Court finds no support for a  
12 claim and an allegation that the execution appeared to be  
13 torturous and inhumane, as alleged by Mr. Williams in his  
14 motion.

15 The conclusions of law based upon those findings of fact,  
16 the first conclusion of law is a quote from *Glossip*, which is:  
17 "Because some risk of pain is inherent in any method of  
18 execution, we have held that the Constitution does not require  
19 the avoidance of all risk of pain."

20 Based upon the evidence before this Court, this Court  
21 concludes that Mr. Williams has failed to demonstrate a risk  
22 that is sure or very likely to cause serious illness and  
23 needless suffering and give rise to sufficiently imminent  
24 dangers from the Arkansas midazolam protocol defendants intend  
25 to implement to execute Mr. Williams.

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1 I'll say as a footnote, in regard to Dr. Zivot's testimony,  
2 the nature of the science in this Court's view is still  
3 equivocal, and Dr. Zivot's testimony doesn't sway the Court.  
4 For the reasons stated, I don't know when the potassium chloride  
5 and the vecuronium bromide were administered in relation to the  
6 midazolam on this record, so I can't say what that timing was or  
7 what that effect would have been, here on this record, even if I  
8 were inclined to say that that could pose a dangerous or, you  
9 know, harmful death in some way. I can't make that finding from  
10 the facts that are before me.

11 As a result of that, the Court denies Mr. Williams' motion.  
12 As the Court reads the law, the Court is without power, denying  
13 the motion. I'm without power to enter a stay of execution. So  
14 the Court's stay of execution is dissolved because the Court  
15 cannot find on the record before it a violation of the Eighth  
16 Amendment.

17 I will also add, all of this analysis assumes that Mr.  
18 Williams is correct, that the second prong of *Glossip* is not  
19 required at this phase. The Court does not know whether that's  
20 correct or not based upon the law before it. If the second  
21 prong of *Glossip* is required by Mr. Williams, Mr. Williams  
22 clearly cannot prevail. There's no additional evidence before  
23 this Court, other than what was before the Court in the *McGehee*  
24 case. And the Eighth Circuit found that evidence of reasonably  
25 available alternatives insufficient to satisfy the *Glossip* and

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**Respondent's Exhibit 1**

1 *Baze* test. There's nothing different before the Court now to  
2 reach a different conclusion here.

3 That's my ruling. We have a court reporter here who has  
4 transcribed the entire hearing, including my ruling. Because  
5 I've ruled from the bench, we'll issue a very short order that  
6 incorporates the order that I've just stated during the  
7 telephone status conference.

8 MR. RUDOFISKY: Your Honor, this is Mr. Rudofsky. Just  
9 a point of clarification. I just want to make sure, as of Your  
10 Honor's oral order right now, the stay has been lifted.

11 THE COURT: Mr. Rudofsky, I do not believe I have  
12 authority under Eighth Circuit law to enter a stay of execution  
13 if I do not find that Mr. Williams is substantially likely to  
14 prevail on the claims that he's alleged. So I believe this  
15 Court is without authority to enter any form of a stay of  
16 execution.

17 MR. RUDOFISKY: I appreciate that, and I'm sorry to be  
18 a pain about this. Tammy -- I forget her last name at this  
19 moment -- and I'm sorry about that. Tammy from the district  
20 court provided us a stay that stayed the execution, so I am  
21 trying to cross the T's and dot the I's and make sure what I  
22 understand you to be saying. I just want to be very careful. I  
23 want to make sure that that stay is no longer in effect as of  
24 now.

25 THE COURT: That stay is no longer in effect as of now

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1 because this Court understands that it is without authority to  
2 enter such a stay.

3 MR. RUDOFISKY: I appreciate that, Your Honor. Thank  
4 you.

5 THE COURT: If there's nothing further, that concludes  
6 the conference call.

7 MR. RUDOFISKY: Thank you, Your Honor.

8 (Proceedings concluded at 9:21 p.m.)

9 REPORTER'S CERTIFICATE

10 I certify that the foregoing is a correct transcript from  
11 the record of proceedings in the above-entitled matter.

12 /s/Elaine Hinson, RMR, CRR, CCR Date: April 25, 2017.  
13 United States Court Reporter

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**Respondent's Exhibit 1**