

Transcript 4-26-07pi

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

NORMAN TIMBERLAKE, MICHAEL LAMBERT,	)	
DAVID LEON WOODS,	)	
Plaintiffs,	)	CAUSE NO. 1:06-cv-1859
	)	Indianapolis, Indiana
-v-	)	April 26, 2007
	)	9:30 a.m.
ED BUSS, ET AL.,	)	
	)	
Defendants.	)	

Before the Honorable  
RICHARD L. YOUNG, JUDGE

OFFICIAL REPORTER'S TRANSCRIPT OF  
PRELIMINARY INJUNCTION HEARING

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For DEFENDANTS:	Thomas D Quigley, Esq. Betsy M. Isenberg, Esq. INDIANA STATE ATTORNEY GENERAL 302 West Washington Street IGCS-5th Floor Indianapolis, IN 46204
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Court Reporter:	Patricia A. Cline, CM, FCRR Official Court Reporter

340 U.S. Courthouse  
46 E. Ohio Street  
Indianapolis, IN 46204

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PROCEEDINGS TAKEN BY MACHINE SHORTHAND  
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1 (Call to the Court.)

2 THE COURT: Good morning.

3 (Everyone said Good morning, Your Honor.)

4 THE COURT: We're here today in the matter of Norman  
5 Timberlake, plaintiff, Michael Allen Lambert, David Leon Woods,  
6 intervener plaintiffs v. Ed Buss, Superintendent of the Indiana  
7 State Prison, cause number 1:06-cv-1859. And the matter before  
8 the Court today is the application for preliminary injunction  
9 filed by Intervenor David Woods on, I believe April 18, 2007,  
10 and a response was filed I believe yesterday by the defendant.

11 And appearing today on behalf of Mr. Woods is Attorney  
12 Linda Wagner and Attorney William Van der Pol, Jr.

13 Ms. Wagner, would you introduce the rest of your table,  
14 please.

15 MS. WAGONER: Yes, Your Honor. Across the table from  
16 me is Mr. Alan Freedman, Ms. Carol Heise, they are co-counsel  
17 for Michael Lambert.

18 And to my immediate right is Brent Westerfeld, who is one  
19 of the attorneys for Normal Timberlake.

20 THE COURT: Very good, thank you.

21 MS. WAGONER: And Bill Van der Pol is my co-counsel at  
22 the end of the table.

23 THE COURT: Okay. And representing the defendant is  
24 Deputy Attorney General Tom Quigley.

25 Mr. Quigley, would you introduce your table, please.

5

1 MR. QUIGLEY: Yes, Your Honor. Good morning, thank  
2 you. At the end of the table is Betsy Isenberg, my co-counsel,  
3 and next to me is the defendant Ed Buss.

4 THE COURT: All right. Thank you. And it's my  
5 understanding, Ms. Wagner, that Mr. David Woods is present by  
6 audio at the Department of Corrections at Michigan City; is  
7 that your understanding?

8 MS. WAGONER: Your Honor, we just had a connection  
9 with Mr. Woods and the audio was going in and out and he had a  
10 visitor there to see him. And he respectfully decided, I  
11 think, to go and receive that visitor and waive participating  
12 by listening this morning. He just -- he stated explicitly  
13 that he trusts Mr. Van der Pol and I to represent his interest.

14 THE COURT: All right. Mr. Quigley, are you aware of  
15 Mr. Woods' position also this morning?

16 MR. QUIGLEY: Yes, Your Honor. And the defendant  
17 certainly has no objection.

18 THE COURT: Okay, fine.

19 I understand also we have some witnesses who are going to  
20 be testifying by telephone.

21 MS. WAGONER: That's correct, Your Honor.

22 THE COURT: Okay. Any other matters preliminarily  
23 before we begin your presentation, Ms. Wagner?

24 MS. WAGONER: Not on behalf of the plaintiff, Your  
25 Honor.

6

1 THE COURT: Mr. Quigley.

2 MR. QUIGLEY: Your Honor, the only thing is that the  
3 defendant would renew the objections we expressed yesterday  
4 during the telephonic conference to any of this until the  
5 motion for summary judgment on the basis of the failure to  
6 exhaust has been decided.

7 THE COURT: All right. We'll show that objection.

8 MR. QUIGLEY: Thank you, Your Honor. Ms. Wagner, are  
9 you ready to begin?

10 MS. WAGONER: Yes, Your Honor. I would call Sarah  
11 Nagy.

12 Q Sarah, are you there, can you hear me?

13 A Yes, I can.

14 Q Okay. Please identify yourself to the Court and spell your  
15 name.

16 THE COURT: She's going to have to be sworn. Also  
17 she's going to have to speak up a little bit or we need a  
18 little more volume, but Sarah Nagy is testifying by remotely by  
19 telephone.

20 SARAH NAGY

21 PLAINTIFF'S WITNESS, SWORN

4 move around more, to get closer to the IV site, wherever she  
5 needs to be, as long as she doesn't obstruct the vision of the  
6 doctor.  
7 Q Let's go back now to the time when the sodium thiopental is  
8 put into the tube. What happens then? The sodium thiopental  
9 goes into the tube?  
10 A Goes into the tubing.  
11 Q What are you paying attention to?  
12 A Him mostly.  
13 Q Him being?  
14 A The offender.  
15 Q What is the execution director paying attention to?  
16 A The IV site.  
17 Q Watching the actual IV site itself?  
18 A Yes.  
19 Q What are you looking for?  
20 A Well, she has training in IV therapy and sustaining,  
21 maintaining IV's. She's looking for an infiltration. Somebody  
22 in that training could tell you better than me. But swelling,  
23 leakage, any type of pain or movement that would associate with  
24 not having the catheter in right.  
25 Q If she sees that, what happens?

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1 A She advises me and we stop the execution. We close the  
2 blinds. We have the doctor come out to re-evaluate the  
3 situation.  
4 Q Has that ever happened to your knowledge?  
5 A No, sir.  
6 Q That's the plan that you would go through if something like  
7 that did happen?  
8 A Yes.

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- 9 Q At some point does somebody indicate to you that all the  
10 sodium pentathal has been put into the IV?  
11 A Yes, sir, over the radio.  
12 Q And what happens then?  
13 A The execution is stopped for the moment. The physician, we  
14 give the physician full time to look around at the offender,  
15 the IV site. The execution director, again because she's had  
16 this training, she goes up to the IV site and looks at it very  
17 closely.  
18 I walk around the offender. I look for any signs of  
19 consciousness. I say his name. I touch him. The physician  
20 has advised us that there's other things that we may do if  
21 there's anything in question, like a sternum rub, touching the  
22 body as well. Maybe a gentle shake to see if we can detect any  
23 consciousness or the doctor can see anything like that on the  
24 offender.  
25 Q Have you ever done that before?

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- 1 A Not yet, no.  
2 Q Do you plan to do it this time?  
3 A Yes, we do.  
4 Q What are noxious stimuli?  
5 A Again I'm not a medical person. I think I have heard my  
6 testimony turn around because I have said some things. I'll  
7 try to make this as general as possible. We have ammonia  
8 tablets that are used to test the nasal. I believe this is  
9 used by anesthesiologists as a way to test the noxious stimuli,  
10 nose.  
11 Q Are you going to be using those with Mr. Woods?  
12 A Absolutely.

13 Q If you see anything -- what have you seen in the past at  
14 this stage of the proceedings?

15 A I have seen absolutely no movement. The chest not even  
16 rising. The offender goes to sleep immediately. I say three  
17 to five seconds, sometimes it's not even that long. That is  
18 with the beginning of maybe one -- ten percent of the drug, the  
19 sodium pentathal put in, they're already asleep. And then  
20 sometime later they tell me process complete. By this time we  
21 have never seen the chest even rise.

22 Q You touch them?

23 A No, we haven't touched them, but we're right there on top  
24 of them. We're talking. As we talk to the radios, they can  
25 hear us as we were talking.

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1 Q Do you let the offender know that you're checking to make  
2 sure that he's not conscience?

3 A Yes. In the future that's going to be much clearer of us  
4 checking. But in the past, I think your question was what we  
5 did in the past, in the past we've never seen any sign of  
6 consciousness whatsoever.

7 Q And so you do not proceed unless you have an unconscious  
8 offender?

9 A Yes. Absolutely. And I will confirm that with the  
10 doctor --

11 Q Okay.

12 A -- before I allow the process to proceed.

13 Q Is there any reason why you want Mr. Woods or any other  
14 offender to suffer pain?

15 A Absolutely not. I know most of the offenders on death row  
16 who have been there a long time, their entire time of  
17 incarceration 20 years. I have known David Woods for 20 years.