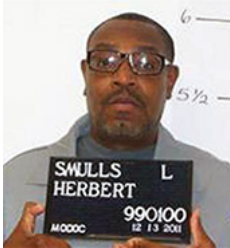


### **Missouri Executes Man After Appeals Denied** **News**

Posted by : Randy

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BONNE TERRE, Mo. (AP) -- In 1991, Herbert Smulls called jeweler Stephen Honickman and set up an appointment to meet at his store in suburban St. Louis. He said he wanted to buy a diamond for his fiancée.



It was a set up. Smulls wanted to rob the store and took along a 15-year-old friend to help commit what became a far worse crime: Honickman was shot to death. Honickman's wife, Florence, was also shot, but survived by faking death in a pool of her own blood until the assailants left.

Late Wednesday night, Smulls was put to death with a lethal dose of pentobarbital, Missouri's third execution since November and the third since switching to the new drug that's made by a compounding pharmacy the state refuses to name.

Smulls, 56, did not have any final words. The process was brief, Smulls mouthed a few words to his two witnesses, who were not identified, then breathed heavily twice and shut his eyes for good. He was pronounced dead at 10:20 p.m.

Florence Honickman spoke to the media after the execution, flanked by her adult son and daughter. She questioned why it took 22 years of appeals before Smulls was put to death.

"Make no mistake, the long, winding and painful road leading up to this day has been a travesty of justice," she said.

His attorneys spent the days leading up to the execution filing appeals that questioned the secretive nature of how Missouri obtains the lethal drug, saying that if the drug was inadequate, the inmate could suffer during the execution process. The U.S. Supreme Court granted a temporary stay late Tuesday before clearing numerous appeals Wednesday - including the final one that was filed less than 30 minutes before Smulls was pronounced dead, though the denial came about 30 minutes after his death.

When asked about the time between the appeal and the execution, Missouri Department of Corrections spokesman Mike O'Connell said, "I'm not familiar with that."

Like Joseph Paul Franklin in November and Allen Nicklasson in December, Smulls showed no outward signs of distress in an execution process that took about nine minutes.

Missouri had used a three-drug protocol for executions since 1989, but makers stopped selling those drugs for executions. Missouri ultimately switched late last year to a form of pentobarbital made by a compounding pharmacy. The state claims that since the compounding pharmacy is part of the execution team, it is not required to disclose its name.

Smulls had a troubled life from the start. Born in St. Louis to an unwed 15-year-old, he was passed along to two other caregivers while still a toddler. As a young man he turned to crime and spent time

in prison for robbery.

In the summer of 1991, he decided to rob again.

Honickman's F&M Crown Jewels in the tony St. Louis suburb of Chesterfield was open by appointment only. Honickman agreed to meet with Smulls on the pretense that Smulls was buying a gift for his fiancée.

The encounter quickly turned violent. Honickman, shot and dying on the floor, pleaded with Smulls to stop.

"Enough already, take what you want," Honickman said according to his wife's testimony. The robbers took rings and watches, including the ones Florence Honickman was wearing. They apparently thought she was dead, as she'd been shot in the side and the arm, lying motionless in her own blood.

"I felt pain and terror while I lay on the floor playing dead while the murderers ransacked our office," Florence Honickman said Wednesday night.

When police stopped Smulls 15 minutes later, they found stolen jewelry and weapons in his car, St. Louis County prosecutor Bob McCulloch said. Florence Honickman identified the assailants.

Smulls' legal case was protracted over several appeals and over several years, finally ending in 2009 with the death sentence. His accomplice, Norman Brown, was sentenced to life in prison without parole.

"It was a horrific crime," McCulloch said. "With all the other arguments that the opponents of the death penalty are making, it's simply to try to divert the attention from what this guy did, and why he deserves to be executed."

Compounding pharmacies custom-mix drugs for individual clients and are not subject to oversight by the U.S. Food and Drug Administration, though they are regulated by states.

Smulls' attorney, Cheryl Pilate, contended the state's secrecy regarding where the pentobarbital is made makes it impossible to know whether the drug could cause pain and suffering during the execution process.

Pilate also said she and her defense team used information obtained through open records requests and publicly available documents to determine that the compounding pharmacy is The Apothecary Shoppe, based in Tulsa, Okla. In a statement, The Apothecary Shoppe would neither confirm nor deny that it makes the Missouri drug.

Pilate said the possibility that something could go wrong persists, citing recent trouble with execution drugs in Ohio and Oklahoma. She also said that previous testimony from a prison official indicates Missouri stores the drug at room temperatures, which experts believe could taint the drug, Pilate said, and potentially cause it to lose effectiveness.

Some Missouri lawmakers have expressed reservations about the state's execution procedure. On Tuesday, Missouri Senate Democratic Leader Jolie Justus introduced legislation that would create an 11-member commission responsible for setting the state's execution procedure. She said ongoing lawsuits and secrecy about the state's current lethal injection method should drive a change in protocol.