

# Family of executed Ohio man plans lawsuit over his botched lethal injection

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The family of a death row inmate is planning a lawsuit against the state of Ohio following his botched execution. Dennis McGuire was put to death using an untested combination of medical drugs that appeared to cause him prolonged distress, in violation of the US Constitution's ban on cruel and unusual punishment.

Dennis McGuire, 53, was convicted in the 1989 rape and murder of pregnant newlywed Joy Stewart, 22. He was executed using an untested protocol using the sedative midazolam and the painkiller hydromorphone. It was not until 25 minutes after administration of the drugs that authorities at the Southern Ohio Correctional Facility in Lucasville pronounced the prisoner dead.

McGuire's daughter Amber, son Dennis and daughter-in-law Missie were present in the execution chamber Thursday morning. A local reporter present at the execution described how the family members were "crying and visibly upset," and that Amber McGuire cried out, "Oh my god," as her father writhed during the final minutes of his life.

A timeline made available by the Ohio department of corrections recounted how a syringe of midazolam was inserted at 10:27 a.m., 49 seconds, followed by hydromorphone at 10:27 a.m., nine seconds. At 10:42 a.m., the prison medical team recommended waiting an additional five minutes to ensure that McGuire was dead. However, it was not until 10:52 a.m. that it was recorded that no further heart or lung sounds could be heard.

At a press conference on Friday, the inmate's son described what he had witnessed. "I watched his stomach heave," he said, "I watched him trying to sit up against the straps on the gurney, I watched him repeatedly clench his fist," adding that it "appeared to me he was fighting for his life while suffocating."

The younger McGuire continued, "The agony and

terror of watching my dad suffocate to death lasted more than 19 minutes. I can't think of any other way to describe it other than torture. Until yesterday, I did not understand what cruel and unusual punishment was. Now I do, I witnessed it. No one should have to die the way my dad did."

Lawyers for the condemned inmate had sought to halt his execution, arguing that the use of the untested two-drug protocol could lead to a medical condition known as "air hunger," causing him to suffer "agony and terror" while struggling to breathe. US District Judge Gregory Frost ruled in favor of Ohio, allowing the execution to proceed.

State Assistant Attorney General Thomas Madden argued that despite the Eighth Amendment to the Constitution's ban on cruel and unusual punishment, "You're not entitled to a pain-free execution." Following his client's death, McGuire's defense attorney Allen Bohnert called the lethal injection "a failed, agonizing experiment," adding, "The people of the state of Ohio should be appalled at what was done here today in their name."

An expert witness for the defense, David Waisel, professor of anesthesia at Harvard Medical School, told an Ohio court that use of midazolam, a sedative, was inappropriate in an execution and that, in using it, the state ran the risk of the prisoner being conscious for as long as five minutes while suffering the sensation that he was suffocating. Eyewitness accounts of the execution appear to indicate that this is precisely what happened. *Columbus Dispatch* reporter Alan Johnson has witnessed numerous executions. He described in a post on the newspaper's web site how this one, his 19th, "was different." "After three to four minutes," Johnson wrote, "Dennis McGuire began gasping for breath, his stomach and chest were compressing deeply,

he was making a snorting sound, almost a choking sound at times.”

He added, “I didn’t notice it at first, but his left hand—which had been waving at his kids—had clenched into a fist.” Johnson recalled that for about 10 minutes, McGuire appeared to be straining against his restraints. “Obviously he couldn’t get up,” he wrote, “but he appeared to be trying to get up or at least raise up in some fashion.”

Following the execution, human rights group Reprieve condemned the gruesome procedure. The organization has been campaigning for a European-wide boycott of providing medical drugs for use in US executions. Ohio had previously used a single-drug protocol of pentobarbital for most of its executions. Stockpiles of the drug had expired, however, and the manufacturer said it no longer desired its product to be used in executions.

Like the 31 other US states that practice capital punishment, Ohio is scrambling to put new deadly drug protocols in place to keep the death penalty assembly line moving. Ohio has four more executions scheduled in 2014, the next set for March 19. Attorneys for condemned inmate Gregory Lott will likely challenge his execution on the basis of the botched execution of Dennis McGuire. The American Civil Liberties Union is calling on Ohio Governor John Kasich to halt all executions in the state following Thursday’s execution.

Since the US Supreme Court reinstated the death penalty in 1976, 1,362 individuals have been sent to their deaths. These have included foreign nationals denied their consular rights, the mentally impaired, and those convicted of crimes committed as juveniles. The rate of executions has declined somewhat from a high of 98 in 1999 to 39 last year, largely in response to declining popular support for the death penalty and numerous exonerations of death row inmates.

However, the United States continues to uphold, and its highest court sanctions, a practice condemned and outlawed by the vast majority of industrialized nations. In a statement following Dennis McGuire’s execution, John Paul Rion, attorney for the McGuire family, commented, “There is not a question in this case that the punishment was ‘cruel.’ Every observer stated that suffering took place. Do we want to follow the example of civilized countries throughout the world and end this procedure?”



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