

After first failed attempt, court grants Ohio another chance to execute death row inmate

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The Ohio Supreme Court ruled Wednesday that the state can try again to execute a death row inmate after a failed attempt to do so seven years ago. In a 4-3 ruling, the court said the state would not violate the US Constitution's ban on cruel and unusual punishment or double jeopardy by executing Romell Broom, a Cleveland man sentence to death for the murder of 14-year-old Tryna Middleton in 1984.

Ohio first attempted to execute Broom on September 15, 2009. That attempt failed, as the execution team at the Southern Ohio Correction Facility in Lucasville tried unsuccessfully for as long as two hours to insert the lines to inject the lethal chemicals into his body. According to witnesses, he was poked multiple times before the team gave up and Governor Ted Strickland called off the execution.

In a 4-3 opinion authored by Justice Judith Lanzinger, the Ohio high court ruled that the state could proceed with Broom's execution, writing, "The state's intention in carrying out the execution is not to cause unnecessary physical pain or psychological harm, and the pain and emotional trauma Broom already experienced do not equate with the type of torture prohibited by the Eighth Amendment's prohibition of cruel and unusual punishment."

The court also ruled that a second execution attempt does not constitute a second punishment, which would violate constitutional prohibitions on double jeopardy. The Fifth Amendment of the US Constitution holds: "No person shall be ... subject for the same offence to be twice put in jeopardy of life or limb."

The Ohio court held that "[b]ecause the lethal-injection drugs were never introduced into the IV lines, the execution was never commenced." This means, they opined, that because the lethal chemicals were never injected into Broom's veins, that he had not been

administered the ultimate penalty and that another attempt would not be a second punishment. They reasoned that the effort to establish a viable IV line was merely a "necessary preliminary step [that] does not, by itself, place the prisoner at risk of death."

Broom's execution began at about 2 p.m. on September 15, 2009. Over the course of 95 minutes to two hours the execution team, comprised of a phlebotomist, an assortment of nurses, technicians and a physician attempted unsuccessfully to find a line to administer the deadly drugs.

According to court documents, members of the prison medical team jabbed and poked the condemned inmate at least 18 times, twisting and moving catheters, making holes in his arms, legs, elbows, wrists and the backs of his hands and ankles. Catheter needles were repeatedly inserted into "already swollen and bruised sites," according to the documents, and one of his veins bulged and "blew."

While the Ohio court held that another execution attempt would not constitute cruel and unusual punishment, the majority opinion's account of the first attempt cannot be described as anything but torture. They wrote:

"By this time, Broom was in a great deal of pain from the puncture wounds, which made it difficult for him to move or stretch his arms. The second session commenced with three medical team members—9, 17, and 21—examining Broom's arms and hands for possible injection sites. For the first time, they also began examining areas around and above his elbow as well as his legs.

"They also reused previous insertion sites, and as they continued inserting catheter needles into already swollen and bruised sites, Broom covered his eyes and began to cry from the pain. Director Voorhies [Office

of Prisons of the Ohio Department of Rehabilitation and Correction] remarked that he had never before seen an inmate cry during the process of venous access.”

According to the court document, “Broom later stated that he saw [a nurse] ... enter the chamber. Someone handed her a needle, and when she inserted it, she struck bone, and Broom screamed from the pain. At the same time, another team member was attempting to access a vein in Broom’s right ankle.”

In one of two dissenting opinions filed in the case, Justice William M. O’Neill wrote that the description of what happened that day “chills me to the core.”

“Any fair reading of the record of the first execution attempt shows that Broom was actually tortured the first time,” O’Neill wrote. “Now we embark on the task of doing it again.”

No new execution date for Broom has currently been set, and his defense attorneys are expected to appeal the Ohio court decision to the US Supreme Court. If his execution does go forward, it would be the first time a failed execution had been reattempted since the US Supreme Court reinstated the death penalty in 1976.

In 2015, Ohio delayed all scheduled executions until 2017 due to the difficulty obtaining drugs needed for lethal injections. The last execution to take place in Ohio was that of Dennis McGuire, on January 16, 2014. Family members watched as McGuire writhed in pain as an untested lethal cocktail of two drugs were injected into his veins. He was pronounced dead 25 minutes later by prison authorities.

Ohio, one of 31 US states that practices capital punishment, has 11 executions scheduled for 2017, eight for 2018, and seven for 2019, according to the Death Penalty Information Center. Since the reinstatement of the death penalty in 1976, the state has executed 53 people.

The Ohio court’s majority ruling to allow a second attempted execution of Broom draws on the precedent of a 1947 decision by the US Supreme Court in the case of Willie Francis. Francis was sentenced to death at age 16 by the state of Louisiana for the murder of Andrew Thomas, a St. Martinville, Louisiana pharmacy owner. Francis survived Louisiana’s first attempt to put him to death when the current of electricity was not strong enough to kill him.

On Francis’ first date with death, May 3, 1946, as he sat in the electric chair at Louisiana State Penitentiary

in Angola, witnesses reported hearing him scream from behind the leather hood, “Take it off! Take it off! Let me breathe!” as the electrical surge was applied. It was later found that the portable electric chair, known as “Gruesome Gertie,” had been incorrectly set up by an intoxicated prison guard and inmate.

The Supreme Court ruled 5-4 that Louisiana’s plan to send Francis back to the execution chamber had nothing to do with any pain he might have suffered on the first attempt, and that the Constitution permits “the necessary suffering involved in any method employed to extinguish life humanely.” Francis was returned to the electric chair on May 9, 1947, at age 18, and this time the electrical current was sufficient to kill him.



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