Word count: 846

Row: 4 Seat: 16

**Glossip v. Gross**

Facts: Oklahoma death row inmates filed action that use of midazolam in carrying out the death sentence violated the 8th amendment; Due to the fact that the use of this drug has the potential to cause severe pain in the following 2 steps of the 3-step execution process.

Procedural History: Court of appeals and district court upheld the states decision. Appealed to US Supreme Court.

Issues: Does the use of Midazolam violate the 8th amendment?

Holding: No it does not due to the fact that it is not a cruel or unusual punishment.

Judgment: Affirmed.

Legal reasoning:

Justice Alito

1. The court has long ago established that the death penalty was constitutional.
2. In order to claim violation of ones 8th amendment rights one must provide an alternate solution, since Baze was decided.
   1. However, the prisoners did not do so in this case.
3. There was no solid proof that the drug violated ones 8th amendment due to the fact that it did not create an “unacceptable risk of severe pain.
4. There was no error in the doctor’s expert witness.
   1. Dr. Evans simply miss typed and corrected his statement later in the trial.
   2. Dr. Lubarsky’s testimony was not a deciding factor in the courts opinion therefore her mistake is irrelevant.
   3. The celling effect claimed to be caused by Midazolam has not be proven by any doctor thus far.

Justice Scalia concurring

1. The court has never suggested that the death penalty is impermissible.
   1. The death penalty would violate the 8th amendment if it caused “…terror, pain or disgrace…” However, none of those apply in this case.
2. There would be equal pressure on police prosecutors and jury to convict if the death penalty was replaced with life without parole.
3. Death sentences are not carried out right away thus leaving the inmates in jail for a lengthy amount of time, though life without parole would inevitable be longer.
4. Justice Breyer claims that the death sentence does not deter other criminals from committing crimes that would constitute the death sentence. Although there are several statistical studies which prove otherwise.
5. “Justice Breyer… rejects Enlightenment” due to the fact that he wishes to take this 8th amendment issue out of the hands of the people and reverse it him self.

Justice Thomas concurring

1. The 8th amendment prohibits only methods of the death penalty “that are deliberately designed to inflict pain.
   1. The state had no intention to inflict pain on these inmates therefore, the court should have left this case at that.
2. A grand jury is more capable of determining what individuals should or should not receive the death penalty than a test that law students carry out.
   1. The test is designed to label the worst of the worst. Nevertheless its system does not accurately portray the remorse one might feel after the crime has been committed.
   2. Nor does the point system calculate the disgust one might feel when hearing the gruesome details of a child being raped so profusely that she dies.

Justice Breyer dissenting

1. One should not take into account what was permissible when the Bill of Rights were written or at any other point in history. But rather what the people today feel is permissible.
   1. There are several innocent people who have been proven innocent after executed due to an advance in science. This “suggests a serious problem of reliability.”
2. Due to the drastic change of the death sentences carried out based on ones gender, race, location and politics a point system should be implemented which ranks ones crime in order to insure equality under the law. Thus making this penalty less arbitrary.
3. Excessive delay is a must because it helps to prevent against the innocent loosing their life.
   1. However, the delay of the execution leads to the prisoner being dehumanized and physiologically damaged. Which is cruel and unusual punishment.
   2. The purpose of the death penalty is to “secure deterrence, incapacitation, retribution” Nevertheless prolonging the execution undermines the purpose.
4. The death penalty is unusual due to the fact that it is no longer carried out in 30 states and numerous other countries have outlawed it.

Justice Sotomayor dissenting

1. The use of Midazolam does not ensure that the patient does not feel the other two drugs.
   1. The drug has a ceiling effect which causes the drug to stop working past a certain dose.
   2. Midazolan has never been proven effective for this purpose.
2. Baze did not say that the prisoners must offer another method to prove that the traditional one was unconstitutional. Rather that the prisoners could not argue that another method of execution is only marginally safer.

Relation to other cases: Baze v. Rees, Wilkerson v. Utah, and Roper v. Simmons

Baze v Rees- D Wilkerson v. Utah- B, Roper v. Simmons-A

Source of law: 8th amendment.

Interpretive style: Justice Alito in the opinion of the court defends the traditional view of the 8th amendment through recalling not only what the founders believed the amendment meant, but also incorporating other courts opinions.