



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

COURTS AND SENTENCING

[Odgren: Upon further review, should be murder two](#)

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Rule 25(b)(2) of Massachusetts criminal procedure, which permits a trial judge to modify a jury verdict, was focus of today's hearing in the case of the *Commonwealth of Massachusetts v. John Odgren*, who was convicted two months ago of murdering 15-year-old James Alenson. Without suggesting any similarity in importance, Rule 25(b)(2) works somewhat like the instant replay rule employed in the National Football League.

Superior Court Judge S. Jane Haggerty, listened intently to arguments pertaining to a defense motion to change the jury verdict from first degree murder to second degree. But, as with an NFL coach's challenge of a ruling on the

field, it typically takes compelling evidence to change the decision of a trial jury.

From where I sat in the Middlesex County courtroom, the defense arguments were many times stronger than those of the prosecution. Even so, it is surely questionable whether the evidence will be considered by the judge to be strong enough to convince her to overrule the jury's verdict and reduce the conviction to second degree murder, which would make Odgren eligible for parole after 15 years.

Without denying the tragedy of James's murder or the pain that it caused his family, there are many reasons why John Odgren does not fit the mold of the worst of the worst, kind of murderer for which life sentences are designed and clearly warranted.

Odgren was 16-years-old at the time of his offense. And even the U.S. Supreme Court has ruled that juveniles, by virtue of their lesser degree of emotional and neurological development, are not as culpable as adults, even in the case of heinous crimes. Simply put, teenagers may look like adults, dress like adults, and kill like adults, but they reason like children. This doesn't imply that juvenile murderers are not responsible or shouldn't be punished severely, but just not to the same degree as adults.

As reflected in Odgren's assault on James Alenson, juveniles typically act impulsively and spontaneously without fully considering the consequences for themselves, much less their victims. Just moments after he repeatedly and brutally stabbed Alenson, Odgren realized what he had done, and frantically tried to find help to save James from dying.

In today's hearing, Assistant District Attorney Marguerite Grant pointed out that the Massachusetts Supreme Judicial Court has ruled that age alone is not an appropriate basis for reducing the sentence. That may be, but in this case, age is not the only factor. Odgren's array of mental disorders -- including Asberger's Syndrome, bipolar disorder, depression, anxiety and ADHD -- combined with his age to limit his capacity for cold-blooded planning and shrewd premeditation.

Still, the state argued that premeditation was only one of the theories under which the jury returned a first-degree murder verdict. According to the jury's decision, the murder was also extremely cruel. There is no doubt that to the Alensons, and in the empathic response of the jurors, the senseless loss of life was indeed a cruel twist of fate. But the cruel and sadistic killers that I've encountered in my work do not immediately after their crimes curl up and

cry, Oh God, what have I done?," or seek to assist their victim.

In a statement to the media, the Alenson's wrote, in part: Our family misses James every single day. James was kind to everyone he knew and met, he was loving and sincere. As a family, the pain and suffering of having your child murdered is indescribable, to know James suffered and died alone at the hands of someone else and to live with that knowledge, is terrible. To hear that John Odgren's imprisonment is unfair or cruel when he is the one who murdered our beloved son is unthinkable to us. □

We all sympathize with the Alenson's grief. And no one questions the fairness of Odgren's imprisonment. It is, however, the ineligibility for ever being considered for parole that seems excessive, at least to those of us who believe that juvenile criminals, given the right circumstances, deserve a second chance. With maturation and treatment, there may be a time when John Odgren can and should return to free society, and that should in no way diminish the horror and tragedy surrounding James Alenson's death.

It will be a while until Judge Haggerty rules on the motion to reduce Odgren's verdict, much longer than those NFL referees take under the hood □ reviewing video replays. In

the NFL, coaches rarely prevail even when the evidence seems to be persuasive. Likewise, Rule 25(b)(2) challenges, although successful on occasion, represent "an uphill battle," as Defense Attorney Jonathan Shapiro characterized it.

Whatever the outcome of today's hearing and any future appeals there may be, the Odegren case should be evidence enough for our state legislature to rethink the youthful offender statute that mandates all murderers ages 14 and over to be tried and sentenced as adults. Many states around the country have reconsidered the wisdom of the automatic transfer of juveniles to the adult courts as well as the logic for sentencing juvenile murderers to life without parole. Even Texas has abolished such sentences for juveniles. It is time for Massachusetts, at one time considered to be a progressive leader in juvenile justice policy, to do the same.