

Yesterday, the jury in the Brandon McInerney case told the judge that they were unable to reach a verdict. A mistrial was called by the Judge, thereby concluding the first trial in this matter without a verdict. Our local paper reports that 7 of the jurors voted for manslaughter and five for some form of murder either first or second degree. The result has left many people in the community angry, and no one seems satisfied. How this jury could not make the right decision is on the minds of the community. Of course, right being defined by what position you would take on this case. Let me attempt to answer that question with this post.

For those who have followed the case daily in the paper, you know it revolves around a 14 year old boy shooting another 14 year old boy in the back of the head in front of a classroom full of kids and teachers. Brandon (cannot get myself to call a boy Mr. McInerney) brought the gun to school for the specific purpose of killing Larry (another boy I cannot call Mr.). Of course the case has much more to it. Two of the more salacious details that threw gasoline on an emotional fire were that Brandon was alleged to have been a white supremacist, and Larry was said to have been a transgender gay teenager.

An unemotional cold hard legal analysis of this case should lead to the conclusion that the facts do not justify anything but a murder conviction. However, looking at the case as a rational and caring mature person it would be hard to justify prosecuting a 14 year old troubled boy as an adult. The tension between these two positions causes extreme emotion on both sides of this debate and created the appearance of a legal circus. This emotion was reflected throughout the trial; reports of the prosecutor and the defense team having to be separated by the bailiff, one of the defense attorney's accusing the judge of being prejudice and homophobic, and the same defense attorney openly crying in front of the jury during testimony and argument are symbolic and evidence of a case that got the better of the participants emotions.

I have tried 15 murder cases to verdict both as a prosecutor and a defense attorney, some of these cases were wrought with emotion, none at the level of this case, but that experience gives me some insight in to why the jury deadlocked the way they did, and also allows me to render the opinion that not much will change if the case is retried. I believe the only message you can reasonably take from this verdict is that jurors showed compassion for a disturbed 14 year old boy. The first reaction to most when I say this is what about compassion for the 14 year old victim. The reality is that jurors rarely have compassion for the deceased in a murder case, simply because they never see him. It's easy for a jury to relate to the subject of the prosecution, he's in court everyday and he is literally the subject of every conversation they hear. The deceased of course is not there, no matter how many pictures you show.

The defense team for Brandon did many things that showed inexperience and a lack of trial skill in how a jury relates to lawyers. They made many accusations of the prosecutor, the judge, of witnesses who they disagreed with, showed inappropriate emotion (i.e. crying in court) in the courtroom, and asked questions that should never be asked. If Brandon's defense team showed a little more skill and less desire for the dramatic they would have the verdict they desired. This jury was inclined to give Brandon the benefit of the doubt; they just failed to fully capitalize on this desire. However, the one thing the defense team did was show a great deal of skill by asking witnesses and putting on witnesses who either spoke well of Brandon, or spoke to the abuse he suffered as a child, or spoke of him as a

child. There was an incredible amount of this type of testimony and it was highly effective in causing the jury to empathize with Brandon and give him the benefit of their compassion. There are not many adults who do not feel for a child who is abused and troubled, and this jury proved to be no exception.

Juries are powerful bodies and they are not required to explain the rationale for their verdict. If a juror decides that compassion in this case is reaching the conclusion that this boy should not go to prison for the rest of his life, the jury had the ability to show it, and apparently seven of them did. The failure of the prosecution in this case is not realizing that the letter of the law is never more powerful than the emotion and compassion a boy like Brandon will generate. It is hard to paint someone as a cold-blooded racist gang member killer, when that person is a 14-year-old boy. The reason for this is that most people usually do not see evil in children, and adults are inclined to forgive them. The prosecution's failure to recognize this basic human reaction was one of the most shocking things about this case.

Now the District Attorney has a choice to make, one I am sure he is not looking forward to making. He must decide whether to retry Brandon again and once again seek a murder conviction and sentence of 40-50 years to life or allow Brandon to plead guilty to Voluntary Manslaughter with a gun allegation with a maximum sentence of 21 years.

At some point, The District Attorney has to deal with the reality of the answers to some basic questions. Does the District Attorney desire to incarcerate a boy for an adult crime, and does his failure to convict this child lead him to the conclusion that the expense both monetarily and emotionally of such a quest are justified? Does the District Attorney's desire to get justice for the deceased affect the justice sought for the damned? If the District Attorney truly understands the answers to these questions and understands the reality that human emotion and compassion will always be present in the heart of any juror who judges Brandon, is another trial really the right thing to do in this case?