

All Locked Up

Did Joe Sullivan, sentenced to life at 13, have a fair trial?

By Amy Bach

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Next week the Supreme Court will hear arguments, in *Sullivan v. Florida*, about whether sentencing a 13-year-old boy to prison without the possibility of parole violates the cruel-and-unusual-punishment clause of the Constitution. Joe Harris Sullivan is one of two teenagers that young currently doing life without parole for a nonhomicide offense in the United States. His lawyers are hoping that the court will extend its 2005 bar on executing criminals who committed crimes as juveniles to Sullivan's sentence.

Whatever the court decides, its ruling will be based on the premise that Sullivan received a fair trial. The adequacy of that proceeding isn't before the justices now. But a brief review of the trial record reveals a process so pathetic that it raises questions about whether Sullivan committed the crime in the first place. It also seems that the trial judge may not have intended to sentence Sullivan to life without parole. In the end, that judge, along with the prosecutor and defense lawyer, failed Sullivan so deeply that we have to wonder whether his sentence reflects a deep and basic failure of ordinary criminal justice.

Here's what we do know happened. One May

morning in 1989, Sullivan, then 13, and two older teens, Nathan McCants, 17, and Michael Gulley, 15, burglarized a home in Pensacola, Fla. They left with jewelry and coins. Later that day, someone returned to the house and found a 72-year-old woman, threw a black slip over her head, made her lie on her bed, and raped her orally and vaginally—so brutally that she had to have corrective surgery.

The remaining facts are trickier. The woman testified at trial that her assailant was a "dark colored boy" who "had kinky hair and he was quite black and he was small." She never looked directly at him. However, she remembered her attacker saying something like, "If you can't identify me, I may not have to kill you." At trial, she was permitted to testify that she recognized Sullivan's voice, saying, it "could very well be" his.

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The two older boys, who both received brief sentences for their roles in the crimes, also testified. Gulley claimed that Sullivan said he'd raped the woman; McCants claimed not to have gone back to the house the second time.

Sullivan denied raping the elderly woman, admitting only to the initial burglary. But he was tried as an adult on two counts of sexual battery and other related charges. The only physical evidence was a fingerprint lifted from a plaque in the bedroom, which could have been made during the burglary. The clothing and other evidence have been destroyed and couldn't be tested for DNA.

Sullivan's lawyer, Mack Plant, had a straightforward job: to investigate whether Sullivan was guilty of just the burglary or the rape as well. Plant also should have found out if Sullivan's friends got reduced sentences because they flipped on him, as well as what their criminal histories were.

Plant punted at every step, beginning with his failure to address whether Sullivan was even competent to stand trial. Social science research shows that most teens don't have the ability to determine whether to take a plea deal, much less make decisions about strategy for trial. But from the record, it appears Plant never had his client's reasoning and comprehension skills evaluated.

The lawyer declined to give an opening statement, which is like a batter not taking a swing. Plant also failed to cross-examine witnesses vigorously. He did not explore Gulley's and McCants' backgrounds to show they had a motive to lie. He never asked: "Did you get a deal here?" Michael Gulley had an extensive criminal history that included one sexual offense, according to court papers. A lawyer might have used this information to cast Gulley as a possible suspect instead of Sullivan. Plant did not. Instead, he focused on the fact that Gulley had to have his memory refreshed about the entire crime before testifying. This was a good point, but Plant blew through it. (Entire cross: a little more than a page.) And he never challenged the victim's identification of her assailant's voice as Sullivan's or asked her to listen to the other two boys' speech.

In his closing, Plant again said nothing about the self-serving nature of McCant's

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and Gulley's testimony. Here's his best line to the jury: "You know, I just don't know about this case." How true.

The trial whizzed by in eight hours. The jury took 35 minutes to convict. You could hardly blame them, based on the little they'd heard. Plant has since been suspended from the practice of law in Florida. The adequacy of his representation of Sullivan, however, was never properly raised on appeal.

The judge and prosecutor were also complicit in Sullivan's inadequate trial. At the sentencing hearing, after Sullivan's conviction, the question before Judge Nickolas P. Geeker should have been whether a 13-year-old who committed this horrible crime could be rehabilitated. Unlike an adult who commits the same offense, a young teen can change, according to the research of mental health researchers Laurence Steinberg and Thomas Grisso, who were the main experts in the juvenile death-penalty case and whose work Sullivan's attorneys are relying on now. A daylong hearing exploring the research on brain development and responsibility for young teens, along with Sullivan's juvenile history, family, education, and mental ability, would have given the judge the information he needed to determine whether Sullivan really merited the punishment of prison for life.

While the prosecutor may be less to blame than the defense attorney or the judge, he

also has a responsibility to make sure that the punishment he's asking for is appropriate. Prosecutor Lawrence Kaden described Sullivan's criminal history in terms of the number of points he had accrued under the state's adult sentencing guidelines. He apparently didn't take into account that two-thirds of those points were due to a crime Sullivan committed at age 12, when he and his older brother broke into a house and were attacked by a dog, which Sullivan hit in the head, accidentally killing it.

At the sentencing, Judge Geeker should have appointed another lawyer to replace Plant. Instead, he said, somewhat inexplicably, that he wanted it to be "perfectly clear to everyone that when he (Sullivan) gets out again and he commits any more offenses, he'll not be a juvenile offender. Hopefully, he will be an old man."

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life in prison without parole, why did he mention his release? (If he made a mistake, he wouldn't be the first. Another Florida judge has admitted to being confused about the law and incorrectly sentencing a 14-year-old to life without parole.)

There's no way to know, because as at so many other troubling moments in this trial, no legal professional stepped up to ask a question or to protest. Sullivan's trial showcases a common failure of the adversarial system—one that's especially troubling when the stakes involve locking up a child forever.

Amy Bach is the author of Ordinary Injustice: How America Holds Court. She is a graduate of Stanford Law School.

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