



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

COURTS AND SENTENCING

Dealing with criminals

Posted by James Alan Fox, Crime and Punishment November 8, 2010 06:00 PM

The column below was written in advance of today's verdict convicting Steven Spader of murder and other charges. Neither the speed nor the outcome of the jury's deliberation was at all surprising. Given the extremely sympathetic victims and the extremely unsympathetic defendant in this case, it would have been a shocker had the jury taken even one night to sleep on its decision.

There was very little that would have persuaded the jury to find reasonable doubt, as Spader's own actions and words spoke volumes about his dangerousness and arrogance. Like most people, I am confident that the verdict was just. However, the prosecution's decision to deal with Spader's unsavory accomplices, even if deemed necessary to secure a conviction, is not the best means for ensuring justice.

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The evidentiary phase in the trial of Steven Spader, the 18-year-old New Hampshire man accused of murdering Kimberly Cates and attempting to kill her daughter Jaimie inside their Mont Vernon home, concluded last week without a single witness taking the stand for the defense. By contrast, the prosecution offered up dozens of witnesses, including several friends of Spader believed to have joined him in carrying out the brutal home invasion last year.

Despite the lack of direct testimony on his client's behalf, Jonathan Cohen was hardly silent when addressing the jury in his closing argument. The defense attorney went on the offensive, attacking the state's case by challenging the credibility of certain key prosecution witnesses — specifically, the accomplices to murder whose sworn testimony was obtained in exchange for reduced penalties.

It is hardly uncommon for prosecutors to utilize the testimony of accomplices or snitches to secure a conviction. Typically, however, guilt is corroborated by physical evidence of some kind, such as fingerprints, blood, DNA or surveillance video. The big surprise in the Spader case was in the complete lack of physical evidence linking the defendant to the crime scene, even though this could be explained, as the prosecutor contends, by steps the accused may have taken to cover his trail.

Perhaps the most compelling evidence comes from the defendant's own mouth and hand. Following the murders, even while locked in a jail cell awaiting trial, Spader apparently couldn't resist boasting and

bragging about the murders. Indeed, if anything has been shown beyond a reasonable doubt, it is Spader's narcissism and desire to be seen as tough and fearless.

Undaunted by the lack of evidence from the crime scene and from the riverbed where certain incriminating items may have been disposed, the prosecutor repeatedly emphasized detailed statements allegedly made by defendant in poems, text messages and letters. He reportedly boasted of killing dozens of people and wanting to kill more, although nothing suggesting any other homicides was introduced. He also bragged of ties to a national street gang without there being anything to confirm a gang affiliation. Of course, Spader would hardly be the first to exaggerate, or even fabricate, for the sake of attention.

It is unlikely that any member of the jury will feel even a shred of sympathy toward the defendant. His poetry, letters and text messages would convince even the most skeptical of his anti-social nature. And taken altogether, few court observers, including myself, would be surprised by a verdict of guilty as charged. Even so, shouldn't we expect much more than brash talk from the defendant and damning testimony induced from co-conspirators?

Notwithstanding the defendant's own actions and demeanor, I am troubled by the heavy reliance on the word of accomplices who would certainly have an incentive to lie or twist the truth. Although perfectly legal, we should be very cautious about deals with criminals.

The so-called "Innocence Project," for example, has investigated the cases of over 100 individuals whose capital murder convictions have been overturned for reasons often connected to witness misconduct. In fact, a recurrent theme underlying many of these exonerations surrounds the perjured testimony from jailhouse snitches or accomplices given strong incentives to take the stand on behalf of the prosecution.

In addition to cases in which innocents may have been framed on account of false testimony, other episodes of injustice involve guilty defendants given lengthy sentences when an equally culpable accomplice receives a deal. In Ontario, Canada, for example, serial rapist and murderer Paul Bernardo was convicted and sentenced to the maximum penalty, life without parole, after prosecutors negotiated a plea agreement with his wife Karla Homolka, who claimed to have been coerced by her abusive husband into participating in the murders. Shortly after being sentenced to just 12 years in prison, Homolka turned over homemade videotapes, revealing that she was anything but an unwilling partner in crime. By then, however, the deal had been sealed, and she was released from prison in 2005 at the expiration of her sentence.

Should Steven Spader be convicted, as appears likely, there will be congratulations all around for the prosecution team for having seen to it that justice was served, at least for Spader, if not so much for those who turned on him. The rest of us may feel relieved that someone like Spader is kept off the street. At the same time, we should not be too thrilled about the means employed to achieve that end.