Doubt shadows Leavitt into execution chamber

Posted: Wednesday, June 6, 2012 12:00 am | Updated: 7:28 pm, Tue Jun 5, 2012.

Marty Trillhaase |

"The law says 'reasonable doubt,' but I think a defendant's entitled to the shadow of a doubt. There's always the possibility, no matter how improbable, that he's innocent." - The character Atticus Finch from "To Kill a Mockingbird."

By the standard of reasonable doubt, Richard Albert Leavitt stands convicted of the brutal 1984 stabbing and multilation of Danette Elg, a crime for which he's scheduled to die by lethal injection Tuesday.

But there's a difference between being reasonably sure of his guilt and absolutely certain of it.

Leavitt was convicted on circumstantial evidence. Blood at the scene matched his type. But Leavitt maintained his innocence. He had been to Elg's Blackfoot home previously and claimed a bloody nose resulted in his own blood being found there.

Last month, Boise State University psychology professor Charles Honts put Leavitt on a polygraph machine and asked him three questions:

- "Did you stab Danette Elg?"
- "Did you remove Danette Elg's internal genitals?"
- "Were you present when Danette Elg was stabbed?"

Each time, Leavitt answered no. Honts says Leavitt passed the polygraph test. Granted, that's inadmissible as evidence of innocence in a court of law. But were Leavitt being sentenced today, a jury would learn of the test results and inevitably would be swayed by them.

There are other questions. Leavitt's lawyer, David Nevin of Boise, wants to apply DNA testing to resolve this question: Did the blood of Leavitt and Elg blend? If so, Leavitt was at the scene of the crime. Or did Elg's blood cover Leavitt's already dried blood at the crime scene? That would corroborate Leavitt's story.

And would the DNA of a third person show up?

Contrary to what you see in the movies, it's difficult to get the courts to listen to evidence of innocence, although Nevin says a recent U.S. Supreme Court case would open the door in Leavitt's case.

At the same time, the record is strewn with examples of people who were condemned to die, only to be freed on new evidence.

Since 1973, 140 people have been exonerated. Two came from Idaho - Charles Irwin Fain, whose 1983 conviction based on a jailhouse snitch and expert testimony was overturned by DNA evidence, and Charles Paradis, whose 1980 conviction was set aside when it turned out prosecutors withheld exculpatory evidence.

Death penalty critics believe at least 10 wrongly convicted people in the United States went to their deaths in that time.

Hence a movement is building in this country to accommodate Atticus Finch's higher pre-requisite. In Maryland, it takes DNA and something as clear cut as video footage of the perpetrator caught in the act to impose the death penalty.

While still governor of Massachusetts, presumed GOP presidential nominee Mitt Romney proposed a strict "gold standard" of removing all doubt before imposing a death sentence. Romney was trying to impose capital punishment on a state that had none, so legislators rejected his bill.

Nevertheless, individual jurors - now empowered by the U.S. Supreme Court to impose a death sentence - are cognizant of the advances in forensics that have overturned convictions. Woven within the plummeting numbers of death sentences handed out - 78 last year vs. 315 in 1996 - is the power of lingering doubt.

These doubts exist in Leavitt's case and to execute him now means means they'll never be resolved. Once the sentence is carried out, the state is free to dispose of the evidence in the Elg murder. Even on the remote chance that someone has the resources to bring a wrongful death suit against the state and force a DNA examination, the burden would be on Leavitt's advocates to prove him innocent.

If Leavitt goes to his death Tuesday, you will never be certain he's guilty beyond a shadow of a doubt. -M.T.

More about Editorial

- **ARTICLE**: Can't supremes quit tippy-toeing around Eyman?
- **ARTICLE**: Idaho is a long way from taxing dental floss
- **ARTICLE**: Temperance comes with a price discount
- **ARTICLE**: Public scrubbed clean from Idaho executions