Bone of Contention

Exposing another to HIV is not attempted murder

February 1, 1997 By Catherine Hanssens

Education is the best way to slow the spread of HIV, but legislators often mistakenly favor force as a strategy. Most states have passed HIV-specific laws making it a crime for one person to “expose” another to the virus -- whether infection occurs or not. Assault and murder statutes are occasionally used against people with HIV; some are doing time for unprotected sex, others for spitting, biting and blood-splattering-acts rarely prosecuted when the suspect is negative. Unfortunately, criminal courts have taken scant notice of the fact that punishment-as-prevention policies undermine effective AIDS-education efforts. But in a decision last summer, the Maryland Court of Appeals reversed the attempted-murder conviction of Dwight Smallwood, an unsavory character who happens to have HIV.

During an ugly crime spree in September 1993, Smallwood and an accomplice robbed and raped three women at gunpoint. At the trial, the prosecutor characterized Smallwood’s HIV infection as a deadly weapon, arguing that unprotected sex by a person who knows he or she has HIV is the legal equivalent of firing a loaded gun at someone’s head. The court, agreeing, imposed not only three concurrent life sentences for the sexual assaults and 20 years for armed robbery, but additional penalties including three concurrent 30-year sentences for attempted murder.

The Court of Appeals, however, rejected the prosecutor’s “loaded gun” analogy by focusing on the proof of intention that is necessary to win a conviction for attempted murder. It was not sufficient that Smallwood knew he had HIV when he raped the women; the prosecutor also had to show that Smallwood intended to transmit HIV and cause his victims to suffer a death caused by the virus. But the prosecutor offered no evidence that Smallwood had any aim other than to rob and rape the women. The court concluded that intent could not be presumed, because the probability of HIV transmission in a single act of vaginal intercourse is extremely small -- according to estimates by the CDC, less than 1 percent -- obviously not the same risk as in firing a loaded gun at someone’s head. The court let stand Smallwood’s convictions for rape and robbery but reversed the convictions for attempted murder.

It remains to be seen whether the Smallwood decision will support the idea that merely the risk of HIV infection does not justify the conviction of a person who has exposed another to HIV. The Maryland Court of Appeals discussed -- but took no issue with -- the 1992 case of Curtis Weeks, an HIV positive Texas inmate charged with attempted murder for spitting on a prison guard. Based on statements he allegedly made -- and dubious, undocumented testimony that saliva transmits HIV -

- Weeks was convicted and sentenced to life imprisonment. He died of AIDS in prison.

Though Smallwood escaped the attempted-murder conviction, he too is likely to die behind bars. Yet, if the outraged headlines and talk-show invective that followed the decision are any indication, this fate does not satisfy many. Oddly, the fact that fewer than 5 percent of reported rapes result in imprisonment does not raise the public ire, while the specter of an HIV positive spitter does. The lesson here? The AIDS community has only partly shattered the stigma and stereotypes that equate HIV infection with wrongdoing. Until we dispel once and for all the moralistic notion that the virus spreads only in one direction -- from the guilty to the innocent, from criminal to victim -- legislators will persist in opposing effective HIV prevention measures in favor of pointless prosecutions.

© 2026 Smart + Strong All Rights Reserved.

http://beta.docker.poz.com/article/Bone-of-Contention-1081-1812