

Tucson Citizen

Crime & safety

Victims' families can help, hurt prosecution

They rally friends, family, call reporters

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Published: 01.22.2009

Almost every morning for the past year, Jose Rincon has been waking up before 4 a.m.

He often used that time to e-mail friends and family about what was happening with the case against the drunken driver who struck and killed his son or read articles about the case against Glenda Lorraine Rumsey.

Rumsey, 43, was convicted Dec. 11 - on what would have been Jose Rincon Jr.'s 15th birthday - of negligent homicide, aggravated assault and three drunken driving counts.

She was sentenced Tuesday to 14 years in prison - one year for every year of Jose Rincon Jr.'s brief life.

Last week, Adriana Rincon expressed concern about how her husband will adjust now that the criminal case is closed.

"As a spouse, I'm a little concerned," she said in the couple's historic midtown home. "But we've had some heart-to-heart talks and it's something I'm keeping my eye on."

From the time Rumsey was arrested on the day of the accident, Jan. 12, 2008, through her sentencing Tuesday, the Rincons were as active as possible. They rallied friends and relatives to attend hearings and made sure reporters knew when Rumsey was in court.

Not every family or loved ones of a victim take such an active role.

"In general, it's very helpful to prosecutors to have the victims actively involved," said University of Arizona law professor Gabriel "Jack" Chin.

The more cooperative victims and victims' representative are, Chin said, the more information prosecutors can gather to bolster their case.

But the involvement can take a toll on the family, and on the case.

Jose Rincon said a family friend warned him early on about the horrors of a criminal legal battle and any civil battles - such as the lawsuit the Rincons filed against Rumsey and others.

"It didn't dawn on me," Jose Rincon said. "We were so overcome with grief, that was the last thing on our minds.

"Then, as we found things out early on, it's a system that is set up completely for the defendant, really, until the day of the verdict.

"That can be very frustrating," Jose Rincon said.

He said he set his mind to figuring out how to navigate his family through the legal system and make sure his son's life wasn't forgotten.

Adriana Rincon, meantime, took a different route and focused on the couple's two daughters, Gaby, 16, and Julissa, 8.

"How are we gonna get over this?" Adriana said she asked herself. "We still have children. I kind of took on the role of focusing on healing and making sure the kids were OK.

"Jose had this tension, this anger, but we can't be vigilantes. We can't take matters into our own hands," Adriana said.

"But we can keep pushing for the wheels of justice to keep moving consistently and not be delayed," she said.

Outspoken victims and their representatives can spur prosecutors to pursue cases harder, Chin said.

"It makes the work seem more important," he said. "It makes them feel like you're doing something for real people and something that hopefully, will improve the situation for real people."

Victims' representatives also can be helpful at sentencing, Chin noted, to show the impact of the crime.

"If they do make a statement, it's more likely that the judge will impose a higher sentence," Chin said.

Sometimes family involvement can be problematic, he said.

The Rincons' efforts to make the community and media aware of the case caused Rumsey's defense attorneys to complain to Pima County Superior Court Judge Richard S. Fields about whether such an outpouring of support would influence jurors.

"At many of the pretrial proceedings in this case, the spectator portion of the courtroom has been filled by individuals who appear to be friends and/or

family members of the parents of the deceased," attorney Michael J. Bloom wrote in a trial memorandum in July.

"Their presence in large numbers necessarily raises the potential for them to prejudicially influence the jury."

One juror in the Rumsey case, Pat Nichols of Green Valley, said she was aware the trial garnered much interest.

"I tried to block them out," Nichols said. "I knew that there were people out there, but I didn't know how many. The last day it seemed pretty crowded."

The judge made sure the Rincons and their supporters didn't interfere with the case, the couple said.

"He kind of scolded us," Jose Rincon said. "But in a nice way.

"Initially, we were taken aback. But you know? That was good of him, saying that he was there to deliver justice and he would do it if there were two of you or a hundred of you," Jose Rincon said. "He asserted the authority that he has in the courtroom."

Rincon said he kept his son in mind the whole way.

"It did give me something to focus on, where I felt like I was still doing something for him."

He said he realized that the justice he sought was bigger than his grief.

"We needed to make sure the system works and the wheels keep turning, and that my son's innocence isn't lost," Jose Rincon said.

In some cases, though, how the victims or their supporters participate can have a negative effect on the case. Their expectations of how the case is resolved can be unrealistic and impede progress, Chin explained.

"If the victim's family is not familiar with the justice system and what the typical disposition of cases are, they may want a plea out of the norm that is more punitive than what is typically within the range of that type of case."

Veteran defense attorney Brick P. Storts III, who has defended several clients in high-profile cases, said that sometimes a plea deal that benefits both the defense and the state can be scuttled by well-intentioned victim advocates. Families of defendants also can interfere.

In the first-degree murder case of Marco Antonio Chavez, 34, his family caused him to turn down a plea deal that would have spared the victim's family a long trial but would have sent him to prison for life.

Chavez could be sentenced to death if he is convicted of first-degree murder in the 2006 stabbing death of UA professor emeritus Mac E. Hadley, 76.

Chavez, who has a life-threatening liver disease, had agreed to plead to first-degree murder with a guaranteed life sentence, with prosecutors dropping charges of arson, burglary, car theft and property theft.

Under pressure from Chavez's family, he backed out of the plea and will face a trial, which subjects the victim's family - including an elderly widow - to more anguish, prosecutors said at the time.

Not surprisingly, defense attorneys don't usually welcome pretrial attention to a case.

Pretrial publicity that involved many articles and TV news stories about the life and death of Tucson police Officer Patrick Hardesty became appeal fodder for John Montenegro Cruz, who was convicted of murdering him and sent to death row.

Storts, who was the contract attorney appointed to represent Cruz, asked for a mistrial when Hardesty's supporters congratulated a witness in front of jurors.

Senior Deputy County Attorney Rick Unklesbay said pretrial publicity can hurt the prosecution by causing the trial to be moved out of town, such as was the case with Christopher "Bo" Huerstel and Kajornsak "Tom" Prasertphong.

Huerstel and Prasertphong were accused of killing three Pizza Hut workers in 1999. Their first trials were moved to Prescott because of pretrial publicity.

"It wasn't because the victims' families did anything wrong," Unklesbay said. "But a case that gets a lot more attention and is in the press is more likely to be a case that gets sent to another county."

Victims' family and friends are often besieged by reporters following a high-profile killing and often ask prosecutors whether it's OK to talk to the media, Unklesbay said.

"I say, 'Sure, it's obviously your decision. I can't tell you not to talk to somebody. But let me give you an example,' " Unklesbay said he tells them.

"How three families of the victims in the Pizza Hut case had to be present for six weeks in Prescott, uproot their lives to attend the trial, had to live out of a hotel for six weeks a couple hundred miles from home."

"I've had families that purchased billboards, had car washes, families that had T-shirts of their loved ones on it, who talk to the press, who actively get involved in trying to change the laws," the veteran prosecutor said.

"I don't begrudge that at all," Unklesbay said. "But I make it clear to them that there is a chance that it could affect the case by having a change of venue or affect the case by giving the defense some ammunition that they will use to try and thwart the result that (the families) are looking for."

Unklesbay said he also suggests holding back on any kind of public statement or political cause until after the criminal case is settled.

The most prominent example in Tucson - perhaps statewide - of how a victim's family made a difference after prosecution was the family of murder victim Laura Austin.

Mark Austin, Laura's husband, was tried twice and acquitted after he claimed he was not guilty by reason of insanity. Mark Austin spent a few months in the Arizona State Hospital before being freed.

Laura Austin's family lobbied the Legislature, which created the 1994 "Laura's Law" that replaced "not guilty by means of insanity" with "guilty but insane" and holds convicted killers criminally accountable if sanity is restored.

Victims and their representatives are more empowered now in courts, thanks to victims' rights laws enacted in the 1990s.

"People are more aware now that they have rights in the courtroom," Unklesbay said.

As a result of such laws, prosecutors have an obligation to keep victims and their representatives aware of hearings and other matters such as plea offers.

The Rincons said they felt "blessed" that the lead prosecutor assigned to the Rumsey case, Deputy County Attorney Mark Diebolt, and his staff were so attentive to their questions and calls.

"But I had to remind myself that he is not our representative," Adriana Rincon said. "He's the state's representative, yet he takes us into account."

Adriana Rincon said the family was told not to express emotion in the courtroom for fear that it might prompt a mistrial, especially when she chose to be present for testimony that included her son's autopsy.

"And I was listening to painstaking detail of what happened to him," Adriana Rincon said. "His two broken legs, his lacerated back, every bone in his skull fractured - and (Rumsey) drove away."

"That was very challenging," Adriana said. "And I could see the defense attorneys turning around and looking at me for any reason to call for a mistrial. I wasn't gonna be the reason for a mistrial."

The Rincons said the only time they lost their cool was after Rumsey was convicted and the jury had left the courtroom.

"(Rumsey) starts getting frantic and saying things like, 'I'm going to jail. I can't believe I'm going to jail. I didn't get to make arrangements. I didn't get to say goodbye to my kids,' " Jose Rincon said.

"Right in front of us!" he said. "How self-centered and self-focused can you be?"

"At that most traumatic moment, Jose jumped up and yelled out, 'I didn't get to say goodbye to my son!' " Adriana said.

Whether active participation in a criminal case actually makes a difference in the outcome - at least prior to sentencing - is unclear.

"A judge shouldn't be affected by the notoriety of the case or whether the courtroom is packed or not," said retired Superior Court Judge Robert B. Donfeld.

"A judge should do their job and judge the case and whatnot by virtue of the facts of the case and the defense.

"Most judges strive for that objectivity," he said.

"Is it always successful? No," Donfeld said. "Judges are human beings.

"But that's the goal. That's what we try to do and I would say more often than not, we're successful," he said.