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Justice could be another victim of Katrina

Alex Friedrich | Knight Ridder Newspapers

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NEW ORLEANS --]

NEW ORLEANS—Whether Kriss Lane is convicted on charges that he killed a convention visitor two years ago might come down to one thing: whether floodwaters buried or destroyed the champagne bottle prosecutors say Lane used as a club.

Whether Curtis Smith is found guilty of hitting a guy with a beer bottle outside a French Quarter bar last year might depend on something else: whether authorities can track down the scattered partiers they say were witnesses.

And whether contractor Paul Speth is cleared of a theft charge involving his work on some houses may depend on whether they're standing.

It has been a world turned upside down for Orleans Parish District Court ever since Hurricane Katrina swept through. Prosecutors fear floodwaters submerged evidence, and the storm forced many witnesses, jurors and attorneys to leave the state.

Prosecutors and defense lawyers, some of whom are Katrina victims themselves, are beginning to piece together their cases. But the outcomes could be much different from what they originally expected.

"Cases ... can be devastated," said prominent defense lawyer J. Michael Small of Alexandria, La.

The wheels of justice will grind on, of course. Some courts are operating, and others will open in the coming weeks. A leading prosecutor sounded optimistic, saying his staff can retrieve the paper files and hard drives necessary to restart proceedings on the court's 3,900 cases.

"Yes, I'm concerned about the evidence," said Val Solino, executive assistant district attorney for Orleans Parish. No one has opened the door yet to survey the extent of the damage, he said.

"But very few cases (rely) on just evidence alone. And we'll make every effort to locate people."

Yet several lawyers say Katrina has become a wild card for their clients.

Take the 26-year-old Lane, who is facing a first-degree murder charge. He and two others reportedly visited the hotel room of conventioner Shawn Johnson of Atlanta one night two years ago. Prosecutors say Lane bashed in Johnson's head with a champagne bottle and drowned him in his hot tub.

Prosecutors fear the courthouse evidence room was flooded, and where the champagne bottle is at this point is anyone's guess.

"What's a jury going to require" for evidence, asked Ralph Brandt, chief assistant district attorney of the trial and screening division of the Orleans Parish district attorney's office. A skeptical juror, he said, may insist, "I want to see it, and if you don't have it, he's not guilty."

Evidence is even more important in drug cases. Cornell Gasper was facing his second drug charge in a year when Katrina hit. The evidence—a bag containing the 50 to 70 pieces of crack cocaine he allegedly had on him when he was arrested—may have been under water.

Even if court officials find the bag, defense lawyers suggest, they might not be able to read the label and connect it to Gasper.

"I don't know how they're going to make the case now," said his lawyer, Carol Kolinchak.

Evidence is just the beginning. The flood also forced eyewitnesses in many crimes to flee the area—some to shelters out of state—and some may never move back.

That could be sweet for Smith, who faces an aggravated battery charge stemming from a French Quarter bar brawl. If prosecutors can't find their witnesses, the 24-year-old "will definitely walk," said his lawyer, Raleigh Ohlmeyer III.

But Smith has his own witness problem. Ever since Katrina struck, his lawyer hasn't been able to find a bar patron expected to testify that Smith was defending himself.

For Jesse Hoffman, the stakes are much higher. The 27-year-old is sitting on death row for kidnapping, raping and murdering a female ad

executive in 1996.

His lawyer, Kolinchak, has been trying to get his sentence reduced to life in prison. She says she has collected testimony indicating he suffered from abuse, showed signs of brain damage and "wasn't in his right mind" when he killed the woman.

The court granted her a hearing, but the flood has driven off those who would testify in his defense. She has no idea where they are, and said she would have no money to bring them back and put them up even if she found them.

"This is a case where life and death is hanging in the balance," she said.

For at least one defendant, it's unclear whether Katrina was a blessing or a curse.

Ohlmeyer pointed to another client, Speth, a 70-year-old Jefferson Parish contractor. Two years ago, he was indicted on felony theft in connection with the alleged bilking of an insurance company for \$46,000.

Then Katrina hit, and now the insurance company is preoccupied with storm-related damage elsewhere in the Gulf Coast.

But should the company's attention return to Speth, Ohlmeyer said, things would get tough.

The evidence that could clear him, the lawyer says, is in the work he performed on a handful of New Orleans-area houses.

But some of those houses were in areas Katrina hit hard. And some or all of the owners—potential witnesses who could vouch for Speth's work—have scattered.

"The case was a pain ... to begin with," Ohlmeyer said. "Now all I have (for a defense) is my client's testimony."

(Friedrich reports for the St. Paul Pioneer Press.)

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