

Intellectual disabilities complicate justice system Man's death at group home frustrates family

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Michael Rohloff holds a childhood photo of his brother, Herbert, who was born with Down syndrome. (Stacey Wescott/Chicago Tribune photos)



Michael Rohloff was shocked to hear his brother died after an argument over Halloween candy.

BY ELVIA MALAGON CHICAGO TRIBUNE

Herbert “Herbie” Rohloff wasn’t expected to live to 53 years old.

He was born with Down syndrome, and doctors said they did not think Rohloff would survive past his second birthday, according to relatives. As a teen, he wasn’t expected to make it to adulthood. As he reached middle age, his brother worried that the biggest threat to his life was the busy intersection outside his group home in the West Rogers Park neighborhood.

But his family never thought his life would end violently. Last October, a fight with another resident over Halloween candy turned physical, and [two weeks later Herbert Rohloff was dead](#). Chicago police closed the homicide case by exception, meaning detectives know who committed the killing but aren’t pursuing charges because of the person’s mental capacity, said Anthony Guglielmi, spokesman for the department, in an email. The Cook County state’s attorney’s office declined to comment.

The homicide case, among hundreds in Chicago last year, was complicated from the start because of the suspect’s intellectual disabilities. The legal community has discussed for years how to mete out justice in such cases. Now an approach known as an individualized justice plan is gaining some traction as a way to hold people with intellectual disabilities accountable while providing alternatives to traditional forms of punishment. Last year, Illinois lawmakers agreed to create a task force to look at the issue.

Charging people with intellectual disabilities can be complex because it's unclear whether they could formulate the intent to kill, said Hugh Mundy, an associate professor at the John Marshall Law School.

"Every criminal (offense), or virtually every criminal offense, requires a mental state in order to prove the element," Mundy said. "It's not just the act itself."

Rohloff's brother and his sister-in-law, Michael and Maria Rohloff, have been grappling with who should be held accountable. They described Herbert Rohloff as someone who liked to eat fried chicken, listen to Prince and watch "Rocky" movies. They've filed a wrongful death lawsuit against Lutheran Social Services of Illinois, the organization that runs the group home where Herbert Rohloff spent his entire adult life.

"You know, I don't think it serves a purpose for (the person of interest) to be put in jail because he will not understand," Maria Rohloff said. "But he needs to be put where he can't hurt anyone else."

'Killed over a candy bar'

Last November, Michael Rohloff got a call from his mother telling him Herbert had been hospitalized in Evanston. Rohloff found his brother struggling to breathe, with a black eye and bruises to the head, he recalled in an interview with the Tribune.

"He looked at me, his face lit up, like it always does, and he was like, 'Michael,' " he said.

The last thing Herbert told his brother was that his ribs hurt. He would spend the next few weeks at Presence St. Francis Hospital in Evanston, heavily sedated, before he died. He suffered his injuries Oct. 31 when another resident beat him up over Halloween candy, but he wasn't taken to the hospital until the next day, according to the family and reports from Chicago police and the Cook County medical examiner's office.

An autopsy determined Herbert died Nov. 16 from complications of multiple injuries and from congestive heart failure, according to the Cook County medical examiner's office. He had rib fractures and multiple injuries to his spine.

"You know, it's ridiculous," Rohloff said. "Of all the things, I was sitting there worried about him living too close to Devon and Western because the traffic is hectic, and (there are) so many strangers in the area. And you essentially get killed over a candy bar."

'It's not about pointing fingers'

There aren't data on how many people with intellectual developmental disabilities have been charged with serious felonies, but The Arc, a national advocacy organization for people with disabilities, is trying to get funding to fill that void in research, said Leigh Ann Davis, director of its criminal justice initiatives.

There have been cases of those with intellectual disabilities being prosecuted for, and being victims of, serious crimes, Davis said. That's why it's important for police agencies and the courts to understand the needs of those with disabilities, she said.

“What we’ve seen happen is that law enforcement (officers) don’t decipher that there is a difference, necessarily, between people with mental illnesses and intellectual developmental disabilities, and how that’s important because they may need to provide different services for someone or they may need a different referral depending on what type of disability the person has,” Davis said. “And the more that they (officers) know about the person’s disability, the more likely they can de-escalate a situation.”

In Illinois, advocates for those with intellectual disabilities are working with local prosecutors to find a middle road that provides alternatives to traditional criminal punishment. Amy Newell, executive director for The Arc’s branch in Rockford, said the group is pushing for courts to use personal justice plans that lay out the person’s diagnosis, limitations and recommendations.

“It’s not about pointing fingers, shaming people or any of that,” Newell said. “It’s about having an open conversation and really doing what’s best and safest for everyone.”

Last year, lawmakers created a task force to examine how those with disabilities are confined in jails, how they are represented in criminal cases and how police interact with them.

In Herbert Rohloff’s case, police believe a resident of the group home caused the injuries and the person was taken to a local psychiatric facility for treatment, said Guglielmi, the police spokesman. Police aren’t moving forward with any criminal charges because of the person of interest’s mental capacity, he said in an email.

Cook County State’s Attorney Kim Foxx’s office did not return multiple requests for comment.

Mark Heyrman, a clinical law professor at the University of Chicago Law School, said not pursuing charges in the case was probably a wise choice, because it would be difficult for prosecutors to secure a conviction if they couldn’t prove the person of interest comprehended what he did.

“He may have a limited understanding of what actually happened,” Heyrman said.

A family seeks justice

The Rohloff family suspects a worker supervising the residents was preoccupied giving another resident a bath when the fight unfolded, said Craig Hoffman, an attorney representing the family. Even so, the family isn’t sure why Herbert wasn’t taken to the hospital the same day he was injured. In the lawsuit against the home, the family notes that Herbert was taken to the hospital the next day and in a private vehicle by a worker rather than in an ambulance.

The home where Herbert lived, in the 6200 block of North Artesian Avenue in West Rogers Park, remains open, according to a statement from Lutheran Social Services of Illinois. It opened in 1983, and many of the residents have lived there since then, according to the statement.

“At Lutheran Social Services of Illinois, we consider the people who live in our CILA (Community Integrated Living Arrangement) homes family, so of course we mourn the

loss of any of these individuals as that of a family member,” the statement read. “Legally, the Illinois Mental Health and Developmental Disabilities Confidentiality Act precludes us from divulging any information on our residents.”

The civil case remains pending, and the family expects it could take years before it’s concluded.

Holidays and birthdays without Herbert keep coming and going. This summer, Rohloff had the words “my favorite” tattooed on his arm in the same font used in the “Rocky” movies.

Herbert stopped intellectually developing when he was 5, and he couldn’t express himself beyond simple sentences. “My favorite” was something Rohloff often heard his brother say, and “Rocky” was one of Herbert’s favorite movies.

Rohloff also has found himself regularly wearing the T-shirt that he wore to the hospital the day his brother died.

“It’s odd what you connect and stay with,” he said as he teared up. “I was wearing this shirt when he passed, and I was just saying today, ‘I’m never going to get rid of this shirt.’ ”

emalagon@chicagotribune.com

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