

Amy Senser case: Suspects in similar cases aren't so lucky, and serve jail time

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When Amy Senser was charged last year in a hit-and-run death, friends and family of her victim complained that if she were anybody but the suburban wife of a former Minnesota Viking, she would've been in jail.

They were right.

An analysis of the 17 criminal vehicular homicide cases filed in Hennepin County from January 2009 to Sept. 15, 2011, the date Senser was charged, shows she was the only defendant who didn't spend at least a day in jail after arrest or while awaiting trial.

For the others, jail time ranged from a day to 290 days. The average criminal vehicular homicide defendant spent 75 days in jail; six of them spent more than 120 days in jail.

Four of the 17 defendants were women, and their average stay was nearly five days. Each pleaded guilty and wound up behind bars for anywhere from a year to eight years.

Senser, 45, of Edina, is to be sentenced July 9 on two counts of criminal vehicular homicide in the Aug. 23 death of Anousone Phanthavong, 38, who was head chef at Minneapolis' True Thai restaurant.

Phanthavong, of Roseville, was struck as he stood by his stalled car on the Riverside Avenue exit ramp from westbound Interstate 94.

Senser, who was traveling as fast as 55 mph in her husband's Mercedes-Benz SUV, knocked Phanthavong nearly 50 feet. He died at the scene.

At trial, Senser testified that she didn't stop because she didn't know she had hit a person. Jurors didn't believe her, and the counts of criminal vehicular homicide they convicted her on were for leaving the scene and failing to report the crash to police as soon as possible.

'SHE GOT NO DEAL'

Senser, wife of former Vikings tight end-turned-restaurateur Joe Senser, is free while she awaits sentencing. She could face up to four years in prison.

First, though, Hennepin County District Judge Daniel Mabley must rule on her motion for a judgment of acquittal and request for a new trial. The judge will have a hearing on the motions Thursday, May 31.

Phanthavong's family said they were pleased with the conviction but are still rankled that Senser has not seen the inside of a cell.

"The family and I think that rich people don't go to jail because we saw the system in action and how quickly some of the media rallied around the Sensers," said Anna Prasomphol Fieser, co-owner of True Thai and one of Phanthavong's closest friends.

"The American saying is, 'Money talks.' I understand that better now than I did when I first came here," said Fieser, who immigrated from Thailand. She attended each day of the trial.

But defense lawyers, the Minnesota State Patrol and even Hennepin County's top prosecutor said there was nothing unusual in Senser's lack of jail time. Hennepin County Attorney Michael Freeman said Senser "didn't get any special deal" and was treated much like any other defendant under similar circumstances.

"She got no deal on bail," he said.

FREE DURING INQUIRY

Once a criminal defendant is charged, a judge sets bail. If the defendant can post the entire amount, or pay a 10 percent fee to a bail bond company, he or she can be released to await trial.

Senser was never taken into custody, and when she made her first court appearance Sept. 16, her bail was set at \$150,000. She posted bond and went home.

Her attorney, Eric Nelson, had argued that she wasn't a risk for fleeing and that she wasn't a threat to public safety, two things judges consider when setting bail.

It appears her freedom had its genesis in an agreement Nelson made with the State Patrol some 10 days after the fatal crash, when investigators were still unsure who had been driving.

Nelson had turned the SUV over to the State Patrol the night after the crash, but he also told investigators that neither Senser nor her husband would give a statement, which was their right.

Speculation over who had been driving included Brittani Senser, one of Joe Senser's daughters by his first marriage. Angered by a media report saying she was a possible suspect, she phoned Nelson on Sept. 2 with an ultimatum: If he didn't tell the State Patrol that Amy Senser had been driving, she would.

Nelson summoned Amy Senser to his office and had her sign a single-sentence affidavit saying she was the driver. He then called Trooper John Farmakes, who was investigating the crash, and the two decided Senser would not be arrested after giving the affidavit.

"Consistent with our discussions, Ms. Senser will not immediately be taken into custody as a result of providing this statement," Nelson wrote in a letter he faxed to Farmakes. "I ask that the State Patrol issue charges by summons and complaint as Ms. Senser is neither a flight risk nor a danger to the community."

In the letter, introduced as evidence at Senser's trial, Nelson also asked Farmakes that if his client were to be charged with any crimes, "please advise me, or have the prosecuting authority advise me, so that we may arrange for her voluntary surrender at a mutually agreeable date and location."

Lt. Eric Roeske, a spokesman for the State Patrol, said there was nothing inappropriate in Farmakes' agreement.

"At that point, the investigation was still under way and we were not in a position to take anyone in custody," he said. "It would not vary from our standard procedures to handle a case in that manner."

He said that at that stage of the investigation, the State Patrol didn't have probable cause to arrest Senser, despite her affidavit.

"You really need enough evidence to charge someone before you arrest him," said Roeske. "We have to verify her statement, too, not just go, 'Oh, thank you for the statement; we're done.' We were not doing her any favors by saying, 'We're not going to arrest you right now.' We still had to corroborate her statement and make sure it was supported by the evidence."

Ryan Garry, a Minneapolis lawyer who has defended people charged with criminal vehicular homicide, said such agreements aren't unusual.

"This type of thing is, relatively speaking, common in defending someone being investigated of a crime," he said. "Often, the police are unable to connect the dots, and the defense attorney is in a position to negotiate the custody status of his client, should his client provide certain information and/or cooperate with law enforcement."

Garry said that unlike many other criminal vehicular homicide defendants, Senser was not taken into custody at or near the scene at the time of the crash.

"While I am not familiar with Eric's exact strategy, he obviously decided that he was going to inform the government that Amy was the driver, and he used that critical information to his advantage to control the fact that she would not be arrested," he said. "That was a wise decision and good lawyering by Eric."

Fieser said Phanthavong's family contrasted the way Senser was dealt with in Minnesota to the case of Koua Fong Lee, the St. Paul man charged with criminal vehicular homicide in Ramsey County in a 2007 crash that took the lives of three people.

Lee's conviction was overturned after his attorneys contended his Toyota Camry accelerated and sped through an intersection because of a mechanical defect, not because of his driving.

"Koua Fong Lee did not flee the scene of his accident," said Fieser. "He waited for the police, who took him straight to jail and then the prosecutor made sure he went straight to prison. Amy Senser drove off into the night, waited 10 days to turn herself in, and has yet to spend even one night in jail. You tell me how things work."

LEAVING THE SCENE

Of the 18 criminal vehicular homicide defendants in Hennepin County from 2009 up to and including Senser's case, 10 left the scene of the crash.

Of those 10, five were arrested a short time later because of witness statements or other clues.

In one case, officers followed a 2.5-mile trail of leaked radiator fluid from the crash site to the home of the perpetrator.

That driver, Stuart Douglas Larson, 49, of Minnetonka, had a blood-alcohol content of 0.15, nearly double the 0.08 at which a motorist is considered impaired. Larson spent 47 days in jail, took his case to trial and was convicted.

He was sentenced to 57 months in prison and is due to be released in October 2013.

Larson and four of the other defendants had past driving-while-impaired convictions in Minnesota. The criminal complaints show that alcohol was found in 10 of the 18 defendants, and it was alleged or suspected in at least three of the other cases, including Senser's.

Senser testified that she drank part of a glass of wine two hours before the crash. Applying that statement to the formula used by the Minnesota Bureau of Criminal Apprehension, her blood-alcohol content at the time of the crash would have been less than 0.01.

REJECTED DEALS

Of the 10 cases in which alcohol testing was done, the lowest blood-alcohol content was 0.07 and the highest was 0.36, which is 4.5 times the limit.

The high reading belonged to Melissa Kathleen Heus, 35, of Minneapolis, who was charged in the December 2008 death of a 37-year-old Blaine man. She rear-ended his car at 84 mph, and his car burst into flames. Witnesses couldn't pull him out, and he burned in his car.

A Richfield woman who endured "months of medical problems" from her injuries in the crash died the following June.

In November 2009, Heus accepted a plea deal from prosecutors, and she was sentenced to eight years in prison.

Senser and Larson were the only defendants who took their cases to trial. After a jury convicted Larson, a judge ordered him jailed to await sentencing. Senser was allowed to remain free after she was found guilty.

The rest of the cases were settled by plea bargain. While awaiting trial, prosecutors twice offered Senser a deal.

The first was that if she pleaded guilty of a single count of criminal vehicular homicide, the state would recommend a four-year sentence. She rejected it. Freeman's office later offered another deal, saying it would make no sentencing recommendation if she pleaded guilty of two counts. She turned it down.

Nelson countered with an offer: In return for Senser's guilty plea to a single count, the state would recommend probation. Prosecutors rejected it.

TWO GOT A YEAR

None of the 17 defendants got probation. Heus' sentence was the most severe for criminal vehicular homicide, but one defendant's vehicular-homicide charges were dismissed and he was sentenced to more than 30 years in prison for causing a death while fleeing a police officer.

His crash killed a Fridley woman and her two young sons.

Two of the women -- Kirsten Driscoll and Taylor Hohmann -- received the most lenient sentences; each got a year in the Hennepin County Workhouse.

Those two women also represent the oldest and youngest of the 18 defendants. Driscoll, of Minneapolis, is now 52, while Hohmann, of Plymouth, is 21.

Driscoll had struck and killed a pedestrian on Lake Street in Minneapolis. She told officers she had just come from her daughter's graduation party and thought she might have fallen asleep, but her blood-alcohol content registered 0.19, more than twice the legal standard for impairment.

She got a four-year sentence, which was stayed for 10 years, and was ordered to serve 365 days in the workhouse.

Hohmann, who had two other convictions for driving while intoxicated, struck and killed a pedestrian in Crystal. She drove home, but when police tracked the vehicle down the next day, she admitted her involvement.

Like Senser, she said she thought she'd hit a pothole.

Hohmann was given a four-year sentence, stayed for five years, and then five years' probation. The judge ordered her to serve 365 days in the workhouse.

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BY THE NUMBERS

A breakdown of the 18 criminal vehicular homicide cases in Hennepin County from January 2009 to Sept. 15, 2011:

-- Left scene of crash, 56 percent