



Bruins 3, Penguins 4, Final

After cellphone vanishes in Kevin Spacey case, Cape DA's office pledges better evidence documentation

By [Matt Rocheleau](#) Globe Staff, July 12, 2019, 12:55 p.m.



The actor Kevin Spacey attended a pretrial hearing at district court in Nantucket. STEVE SENNE/ASSOCIATED PRESS/FILE 2019/ASSOCIATED PRESS

A flap over a vanished cellphone in the [high-profile sexual assault case against actor Kevin Spacey](#) has spurred the Cape and Islands district attorney's office to pledge that its investigators will do a better job of documenting evidence in future cases.

Spokeswoman Tara Miltimore said that, as detectives from her office testified in court earlier this week, "it would have been better to have a receipt filled out" when they returned Spacey's accuser's phone to his family, "and investigators involved with our office will do that henceforth."

Miltimore refused to say what changes, if any, would be made to meet that pledge.

State Police, which employs the two detectives who handled the case along with many others assigned to district attorney's offices and other investigative roles across the state, did not respond to questions about whether it will address such issues.

The cellphone has become a key piece of evidence in the case.

The accuser had used the phone to [text](#) his then-girlfriend during a July 2016 encounter with Spacey and to record footage via Snapchat of their interactions at Nantucket's Club Car bar, where Spacey allegedly unzipped the man's pants and fondled him, according to police.

Lawyers for Spacey, who has [pleaded not guilty](#), last month [demanded](#) access to the phone to try to [extract](#) additional information — including messages they say would help their client — that they [claim](#) was [not captured](#) in past efforts by state investigators to extract data from the phone.

The judge in the case [ordered](#) that the phone be provided to Spacey's lawyers.

But the accuser and his family [claimed](#) they haven't seen the phone since late 2017, when two State Police detectives assigned to the Cape and Islands district attorney's office picked it up to extract data from it for their investigation.

The detectives insisted [in court this week](#) they returned the device to the accuser's father at the family's home just weeks after they obtained it, but they acknowledged they failed to document giving the device back.

"Unfortunately, I was remiss, and I didn't have them sign for a receipt," the case's lead detective, State Police Trooper Gerald Donovan, said during testimony in Nantucket District Court Monday.

Spacey's lead attorney, Alan Jackson, blasted the district attorney's office over the lost evidence.

"The government can't point to any documentation that follows or tracks the location of that phone and now that it's missing, it's on them," Jackson said Monday. "And guess who loses because of this? That would be us because we're entitled to the phone."

In light of the phone's disappearance, Judge Thomas S. Barrett mused aloud Monday that he expected the defense to ask for sanctions to be imposed on the prosecution.

Later Monday, the case was [abruptly thrown into further disarray](#) after the accuser invoked his Fifth Amendment right against self-incrimination, prompting calls from the defense for the case to be dismissed.

The case's lead detective also testified Monday about other questionable steps investigators took.

Donovan said he didn't document how the accuser's mother, former WCVB-TV news anchor Heather Unruh, told him that she had deleted from her son's phone material showing "frat boy activities," nor did the detective ask why she did so.

“If she had said, ‘I deleted things related to this investigation,’ that would have been a different story,” Donovan said.

Donovan testified that he took Unruh at her word.

He also said that “past practice, common practice” was to return phones belonging to individuals if they are “a victim or a witness and they’re cooperating.”

Jackson asked: “What if that person is the central and sole witness of an event, and you’re aware that that person, or someone close to them with access to the phone, has manipulated the data? Do you think that’s smart to give that person back the phone?”

“Yes. They were cooperating,” Donovan replied. “He’s a victim. So we gave him back his phone.”

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