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Prosecutors drop assault case against actor Kevin Spacey

By [Matt Rocheleau](#) Globe Staff, Updated July 17, 2019, 6:04 p.m.



Kevin Spacey STEVEN SENNE/ASSOCIATED PRESS/FILE/ASSOCIATED PRESS

Prosecutors dropped the sexual assault case against actor Kevin Spacey Wednesday, closing a high-profile criminal case that collapsed when the accuser refused to testify about deleted cellphone messages sent from a Nantucket bar on the night of the encounter.

In December, Spacey was charged with groping an 18-year-old busboy at the Club Car bar in July 2016. Spacey, a two-time Oscar winner, allegedly unzipped the man's pants and fondled him, police and prosecutors said. Spacey's lawyers denied the allegations, describing the encounter as "mutual and consensual flirtation."

In a one-sentence court filing, Cape and Islands District Attorney Michael O'Keefe's office said prosecutors were dropping the case "due to the unavailability of the complaining witness," ending a rare criminal prosecution to emerge from the wave of sexual assault allegations in the #MeToo movement.

In a statement, O'Keefe's office said officials had met Sunday with the accuser, the son of former WCVB-TV news anchor Heather Unruh, and his lawyer.

"The complaining witness was informed that if he chose to continue to invoke his Fifth Amendment right, the case would not be able to go forward," prosecutors said. "After a further period of reflection privately with his lawyer, the complaining witness elected not to waive his right under the Fifth Amendment."

Prosecutors said they could have given the accuser immunity and forced him to testify, but decided against it. They noted that they could not win a conviction "on the uncorroborated testimony of an immunized witness."

Explaining the decision, they added, "A grant of immunity compromises the witness to a degree which, in a case where the credibility of the witness is paramount, makes the further prosecution untenable."

Spacey's lawyers did not respond to requests for comment Wednesday evening.

Mitchell Garabedian, the lawyer representing the accuser, said in a statement that "my client and his family have shown an enormous amount of courage under difficult circumstances."

He declined to comment further. Unruh did not respond to a message left for her.

The accuser, who has a different last name than Unruh, is named in legal filings. The Globe doesn't identify alleged sexual assault victims without their permission.

The case against Spacey began to unravel last month, when his legal team, led by former Los Angeles prosecutor Alan Jackson, revealed that Unruh had previously told police she had deleted information from her son's phone before providing it to them as evidence.

It was a key piece of evidence: The accuser had used the phone to text his then-girlfriend during his encounter with Spacey and record footage of their interactions via Snapchat.

Court filings showed the man's texts from that night included messages saying that Spacey "grabbed my [expletive] like 8 times." and repeatedly texting "Help."

He also wrote at one point, "I got the autographs and a hell of a . . . story."

Spacey's lawyers demanded access to the phone, saying they believed it contained additional information that would help Spacey's defense.

But the phone was nowhere to be found, which prompted the judge to raise the idea that prosecutors could face sanctions.

The accuser and his family claimed they hadn't seen the phone since late 2017, when police picked it up. Detectives insisted they returned the device to the family just weeks later, but acknowledged they failed to document it.

Last week, the accuser took the stand to face questions about his phone, his first public comments since the case began. At first, he denied having any knowledge of deleted texts and frequently answered questions by saying he did not remember.

But after Spacey's lawyer told him that, under Massachusetts law, deleting or altering information that could be useful for prosecutors was illegal and punishable by time in prison, the accuser invoked his Fifth Amendment right against self-incrimination. The judge ordered his testimony stricken from the record, and said prosecutors would have a "tough row to hoe" without his account at trial.

Prosecutors asked for time to decide whether to proceed with the case but acknowledged they might drop the charges.

At that same hearing, Unruh acknowledged that she had deleted some material from her son's phone before turning it over to investigators, but said she had never tried to hide that fact from investigators. She said that the deleted information wasn't directly related to the allegations against Spacey and insisted the deletions showed her son partying in college more than a year after his encounter with Spacey.

In court, Unruh also said a civil case her son had filed against Spacey had been dropped without a settlement. Garabedian said his client had been on a "roller coaster" of emotions and jettisoning the civil lawsuit was his way of dealing with it.

Before the accuser invoked the Fifth, prosecutors were already facing an “uphill battle,” said Adam Citron, a criminal defense lawyer and former prosecutor who has followed the case.

“The defense did a great job of painting a cloud of doubt and eroding the complainant’s credibility,” said Citron.

Once the accuser invoked the Fifth Amendment, the case was doomed, he said.

“There’s limited exceptions, but in a case like this without a [cooperative] complainant, you’re really not going to be able to prove your case,” said Citron. “Without the complainant to testify, there’s really no case.”

Citron said the maneuver prosecutors used to withdraw the case, a nolle prosequi filing, technically leaves the door open to pursue the charges later. But Citron called the likelihood of that happening “slim to none.” Even if the accuser changed his mind and was willing to testify, prosecutors would not likely want to refile a case that hinges on someone who previously refused to testify, he said.

Spacey’s career collapsed in 2017 following a number of allegations of sexual assault and harassment. Earlier this month, Variety, the entertainment news outlet, reported that British police detectives traveled to the United States in May to interview Spacey about six sexual assault allegations against the actor, who led London’s Old Vic Theatre between 2004 and 2015.

Danny McDonald and Martin Finucane of the Globe staff contributed to this report.

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