

Kevin Spacey accuser didn't report alleged assault for 15 months, contradicting prosecutors

By CHRIS FRANCESCANI Jul 8, 2019, 8:12 PM ET

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COMING UP | Kevin Spacey accuser testifies in court



Three years to the day after a boozy encounter in a New England summer resort bar, the young man who has accused actor [Kevin Spacey](#) of felony [sexual assault](#) that night appeared publicly for the first time and testified in a Nantucket courtroom on Monday.

Before deciding part of the way through his testimony to exercise his Fifth Amendment right against self-incrimination, Spacey's accuser confirmed under questioning from the actor's lead defense attorney that he did not report the alleged assault to police for 15 months, rather than the three months prosecutors have been contending since filing charges against the actor in January.

The lead investigator in the case also testified Monday under questioning from Spacey's defense attorney that the one-year difference was the result of a "typo."

A spokeswoman for the Cape and Islands District Attorney's office acknowledged the error but declined to respond further to a request for comment from ABC News. She also declined to say whether earlier court filings would be amended to reflect the accurate date of the original report -- October 31, 2017.

After a series of significant blows to the prosecution's case against Spacey during the daylong hearing, the presiding judge noted that it was unclear whether the case would "continue or collapse." He scheduled another status hearing for July 31.

The accuser -- who is not being named because he said he was the victim of a sexual assault -- arrived in the courtroom wearing khaki pants, a blue blazer and a vivid pink shirt that matched his mother's blouse, and sat in silence waiting for the Spacey case to be called. Appearing calm while tapping his right foot continuously, the young man was flanked on either side by his father and mother -- Heather Unruh, a former New England television anchor at ABC affiliate WCVB in Boston.

The lead investigator in the case also acknowledged for the first time on Monday that he did not advise the accuser or his mother to preserve the contents of the phone for evidence, and that he took Unruh at her word when she told him that she had deleted some potentially embarrassing "frat boy activities" from her son's phone before turning it over to him.



The Club Car in Nantucket, Mass., Jan. 6, 2019.

"If she had said I deleted things related to this investigation, that would have been different story," Massachusetts State Police trooper Gerald Donovan testified under questioning from Spacey defense attorney Alan Jackson. "I didn't think that Heather Unruh would be lying to me, so yes, I did take her at her word."

Donovan also testified that he did not file any paperwork reporting Unruh's voluntary admission about the deletions until just last month -- nearly three years after the alleged incident. When that record was handed over to defense attorneys, Jackson sought from the judge and was granted direct access to the phone itself. Monday was the deadline to either turn over the phone or testify as to what happened to it.

A civil attorney for the accuser told Nantucket District Court Judge Thomas Barrett that the phone authorities apparently returned to the alleged victim's family has been irretrievably lost.

"We could not locate the phone," Mitchell Garabedian, the alleged victim's civil attorney told Barrett, before going on to say that the accuser and his parents do not even recall ever receiving the phone back from police.

(MORE: [The rise and fall of Kevin Spacey: A timeline of sexual assault allegations](#))

He said a replacement phone for the accuser that could potentially have uploaded data from the phone he used the night he met Spacey in July, 2016 was either lost or stolen during a trip to Europe.

Donovan later testified that no documentation was generated when he returned the cell phone to the family.

"Unfortunately I was remiss and I didn't have them sign for a receipt," he said from the witness stand.

Jackson contended that text messages and other data exculpatory to his client were deleted from the phone, and without the actual device, he could not complete a forensic examination of the device to recover some or all of the deleted material.

In previous hearings, Jackson has underscored his contention that vital data was deleted by comparing screenshots the alleged victim sent to a Nantucket police investigator with the more comprehensive data recovery from the government's forensic exam of the phone.

"The government can't point to any documentation that follows or tracks that phone and now that it's missing it's on them," he told Barrett.

He argued that the state police and the accuser's family are at odds over whether the phone was returned.

"They're pointing fingers at each other, there's no receipt or documentation and guess who loses? Us," Jackson said, referring to his client and defense team.

"Where is the actual phone? That's what we want that's what we're entitled to and we still don't have it."



Kevin Spacey is pictured on the red carpet in New York, June 11, 2017.

At another point in the hearing, Garabedian told Barrett that a civil lawsuit against Spacey over the alleged incident that was filed last month but abruptly withdrawn last week was due to his client becoming emotionally overwhelmed.

"There was a civil suit filed, but because of the emotional rollercoaster my client is on, the civil suit is dismissed," he said. "He only wanted one roller coaster ride at a time."

Yet the civil lawsuit was dismissed "with prejudice," meaning it can't be refiled. Garabedian declined during a break in the hearing to expand upon his comments in court.

Authorities launched an investigation into the former "House of Cards" actor after the young man contacted them by phone in October, 2017 and alleged that Spacey plied him with beer and whiskey in July 2016 after meeting him at the Club Car bar and restaurant in Nantucket, where he had worked that summer as a busboy, and sexually assaulted him. Several weeks later, he met investigators in person for a follow-up interview, according to a spokeswoman for the district attorney's office.

(MORE: [Young man who accused Kevin Spacey of sexual assault drops civil lawsuit](#))

In that subsequent, face-to-face interview with detectives, authorities say the young man told them he hung around the bar after he finished work near midnight on July 7, 2016, talked to Spacey and got an autograph from the actor for himself and his girlfriend.

Just over a week after her son first reported the alleged incident to police, Unruh held a press conference to allege that Spacey had forcibly stuck his hand down her then-18-year-old son's pants and groped his genitals, tearfully calling the actor a "sexual predator."

The alleged victim, who told police he lied to Spacey about his age, saying he was a 23-year-old college student at Wake Forest University, also told investigators he "had at least four or five beers before Spacey allegedly suggested that they should switch to whiskey," according to court records.

Spacey, according to the complaint, allegedly told the busboy, "Let's get drunk."



Kevin Spacey stands in district court as his attorney Alan Jackson, right, addresses the judge during an arraignment hear... more +

The alleged victim told investigators "things started to get a little fuzzy when he and Spacey went over to the piano" at the Club Car, according to the criminal complaint in the case. At one point during the night, he and Spacey were near the bar's piano when he alleges that Spacey started rubbing his thigh and then unzipped the victim's pants and began groping his genitals.

The busboy told detectives that "he wasn't sure if Spacey went into his pants through the open zipper" or if the actor groped his genitals over his pants and boxer shorts.

The alleged victim told investigators that while Spacey was touching him, he was texting and communicating with his girlfriend and other friends on Snapchat and sent his girlfriend a Snapchat video of Spacey groping him, according to the criminal complaint. He alleged the inappropriate touching continued for about three minutes, according to the complaint. Those texts and videos have been a key focus of heated, pre-trial courtroom debates during previous hearings in the case.

(MORE: [Case against Kevin Spacey may come down to alleged victim's testimony: Experts](#))

After being questioned by Jackson on the witness stand about whether he was aware that it's against the law to delete potentially exculpatory data from a piece of evidence in a criminal probe, the proceedings were recessed and after some time the accuser informed the judge through a representative that he intended to exercise his Fifth Amendment right against self-incrimination and decline to provide further testimony.

Barrett said that the accuser's Monday testimony would be stricken from the record as a result. Jackson sought an immediate dismissal of the charge against Spacey.

"This entire case is completely compromised" by the accuser's decision to take the Fifth, he said. "He's the sole witness that can establish the circumstances of his allegation."

Barrett declined to immediately dismiss the charge, after an assistant district attorney asked for a week to confer with his office, but acknowledged from the bench that "without [the accuser's testimony], the Commonwealth will have a tough row to hoe," adding that it remained unclear whether the case would "continue or collapse" without the testimony of the accuser himself.

Later, Unruh -- the accuser's mother -- testified under questioning by Jackson that she had deleted some data from the phone that would be unflattering to her son, including an image of him smoking "a water pipe." She emphatically denied deleting any data -- texts, photos or video -- related to the night at the center of the investigation.

Unruh waived her Fifth Amendment rights before taking the witness stand.

"I have nothing but the truth to tell," she told Barrett, as a tear slid down her cheek.

Under questioning, she vehemently denied intentionally discarding the phone, and reiterated that she, her husband and son don't ever recall the phone being returned to them by authorities.

"Absolutely not. No one wants that phone more than we did," she said.

"I beg to differ, ma'am," Jackson replied.