

Dropped rape counts could cripple Duke case

By Aaron Beard

THE ASSOCIATED PRESS

DURHAM - A prosecutor's decision to drop rape charges but keep other counts against three Duke University lacrosse players has left many legal experts - including some who had supported him - wondering what case he could have left.

Sexual offense and kidnapping charges remain against the defendants, but even some former backers of District Attorney Mike Nifong say the accuser may have lost her credibility for good after backing off a key allegation.

"I don't understand why all the charges aren't being dropped at this time," said Norm Early, a former Denver prosecutor who works with the National District Attorneys Association and had previously approved of Nifong's handling of the case.

"It's such an incredible credibility problem that you wonder how the prosecution could rehabilitate her on the other charges."

The woman says Reade Seligmann, Collin Finnerty and David Evans attacked her March 13 at a team party where she had been hired as a stripper. In a five-page statement she gave police in early April, she wrote that she was raped vaginally, anally and orally.

Nifong dropped rape charges against the three men Friday, writing in court papers the accuser is no longer certain vaginal intercourse had occurred. That is required for a rape charge under state law, and "the state is unable to meet its burden of proof with respect to this offense," Nifong said in the filing.

"He got a rape indictment, so presumably he must have

felt there was unequivocal evidence there was penetration," said Duke law professor James Coleman, a frequent critic of Nifong's handling of the case. "And for him now to say the only person who could have established that now isn't sure, that's pretty extraordinary."

Without DNA evidence linking the three players to the accuser, the woman's testimony figures to be the key element of the prosecution's case. Both Early and John Banzhaf, a professor at George Washington University Law School, said Friday that means the defense is sure to make the dismissal of the rape charge - and what it implies about her credibility - an issue at trial.

Banzhaf said no jury is likely to believe a witness who for months contended she had been raped, but now isn't sure.

"This is the beginning of the end," Banzhaf said. "If they couldn't make the rape case, I don't see how they could make the others."

Seligmann, Finnerty and Evans insist they are innocent. Their attorneys have repeatedly called on Nifong to drop the case, citing the lack of DNA evidence, criticizing how police conducted a photo lineup and maintaining that the accuser, a 28-year-old student at North Carolina Central University, has given investigators at least a dozen different versions of the alleged assault.

"What we have now, ladies and gentlemen, is a prosecutor who says his case rises and falls on the statement of the accuser and (he) is going forward with a case when he

knows he has multiple, different, contradictory statements from that person," defense attorney Joseph Cheshire said Friday.

In dropping the rape charges, Nifong did not specify what sex acts authorities now believe occurred, and defense attorneys said Friday they don't have a clear idea of what the prosecutor will present at trial.

Nifong hasn't return repeated messages seeking comment. In an October 30 interview with The Associated Press, he said he felt a "responsibility" to prosecute the case.

In an interview with The New York Times published Saturday, Nifong said the "case will go away" if the accuser ever says one of the

players she identified did not attack her. He also said he wasn't surprised the defense had focused on the accuser.

"If you can keep the victim from coming to court, if you make the victim say, 'Gee, this isn't worth it,'" he told the Times.

Nifong's commitment to case and the accuser, Coleman said, shouldn't come as a surprise.

"To all of a sudden drop it and admit he doesn't have evidence to proceed to trial would be a fairly damning admission. I don't expect that to happen," Coleman said. "On the other hand, I don't think the case has credibility. How can anyone believe there's evidence to support the remaining charges?"

Activists: Change sentencing age

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Triangle Lost Generation Task Force, a non-profit group taking action against the high rate of incarceration of black and Latino males.

Fuller's brother had hopes of going on to college, but she said it was a "downward cycle" after the felony record.

"My hope is to stop others from going on that downward cycle," she said.

The juvenile sentencing age has been especially dramatic on black males who represent more than 67 percent of North Carolina prison inmates under 20, according to a 2006 statewide report. But Fuller didn't base her argument on race. Instead, she based it on the cognitive development of youth under age 18, and the cost to the state.

Fuller said her brother was not aware how much his actions would cost him. If he had been sentenced as a juvenile, his record would have been sealed, and he would not have suffered from the stigma.

Scientific research states that youth up to age 18 are not as aware of the ramifications of their actions. It points to four areas of developmental immaturity that may bear directly on criminal culpability: impaired risk perception, foreshortened time perspective, greater susceptibility to peer influence and reduced capacity for behavior control.

North Carolina is one of only three states - with New York and Connecticut - where adult jurisdiction starts at 16. In 10 states the age limit is 17, and in the remaining 37 and the District of Columbia, the age is 18.

The North Carolina Policy and Sentencing Advisory Commission was created in 1990 by the General Assembly to make recommendations on sentencing laws and policies.

After several heated debates over the sentencing age of juveniles, the commission recently recommended that the age be increased to, but not including, 18.

Sentencing commission research shows that juvenile offenders who enter adult prisons, or are on probation, are more likely to re-offend than the overall population.

In 1999, 46 percent of offenders aged 16 or 17 were re-arrested within three years, compared to 38 percent of all offenders. The sentencing commission also found that the rehabilitative needs of juveniles are better met within a treatment-oriented environment.

Still, Durham Sheriff Worth Hill is a vocal opponent of raising the limit.

"If we do that, we're lowering the standards rather than raising the standards of young people's behavior," he said. "Most of us in law enforcement wouldn't welcome that change at all."

Rice: U.S. can elect black president

By Anne Gearan

THE ASSOCIATED PRESS

WASHINGTON - America is ready to elect a black president, says Secretary of State Condoleezza Rice.

The highest-ranking black government official in the United States, Rice has said repeatedly she will not run for president despite high popularity ratings and measurable support in opinion polls.

"Yes, I think a black person can be elected president," Rice said in an Associated Press interview Thursday.

The top U.S. diplomat also said Iraq is "worth the investment" in American lives and dollars. She said the United States can win in Iraq, although the war so far has been longer and more difficult than she had expected.

She made the remarks at a time when President George W. Bush is under pressure from the public and members of Congress to find a fresh course in the long-running and costly war, which has shown no signs of nearing an end and cost the lives of more than 2,950 American troops.

"I know from the point of view of not just the monetary cost but the sacrifice of American lives a lot has been sacrificed for Iraq," Rice said.

Bush would not ask for continued sacrifice and spending "if he didn't believe, and in fact I believe as well, that we can in fact succeed," Rice said.

Rice was asked whether an additional \$100 billion the Pentagon wants for the Iraq

and Afghan wars might amount to throwing good money after bad in Iraq. Bush and Congress have already provided more than \$500 billion for the two conflicts and worldwide efforts against terrorism, including more than \$350 billion for Iraq.

"I don't think it's a matter of money," Rice said. "Along the way there have been plenty of markers that show that this is a country that is worth the investment, because once it emerges as a country that is a stabilizing factor you will have a very different kind of Middle East."

She said the first successful black candidate will be "judged by all the things that Americans ultimately end up making their decision on: Do I agree with this person? Do I share this person's basic values? Am I comfortable that this person is going to make

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