



NBA

Derrick Rose's accuser and her attorneys give new insight into civil suit

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- A conference call with Derrick Rose's accuser and her attorneys raised new questions about the case and whether a potential settlement is the right course of action for the Knicks guard.

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Thursday September 15th, 2016

The woman accusing New York Knicks point guard Derrick Rose and two of his friends of sexually battering her held a 90-minute conference call on Thursday to explain her case. I participated on the call. The woman, who is called Jane Doe to protect her identity, is

scheduled to appear in the U.S. District Court for the Central District of California on Oct. 4. At that time, Doe's trial against Rose, Randall Hampton and Ryan Allen will commence.

As I detailed in a previous [SI.com legal article](#), Doe seeks \$21.5 million in a lawsuit that contains multiple claims under California law. The most serious of those claims is sexual battery, which refers to intentionally causing a harmful contact with an intimate part of another person, and sexually offensive contact with that person resulting. Doe contends that Rose—whom Doe had dated for a couple of years—along with Hampton and Allen broke into her Los Angeles apartment on Aug. 27, 2013 and raped Doe, who was intoxicated at the time. The parties agree that sexual intercourse occurred but disagree about whether it was consensual.

To be clear, this dispute is a civil matter. If Doe defeats Rose in the forthcoming trial, Rose will be ordered to pay her a sum of money, but Rose would face no risk of any criminal sanction. Along those lines, there is neither a record of the Los Angeles Police Department investigating the incident nor any record of the convening of a grand jury to review it. The lack of an accompanying criminal investigation likely reflects, at least in part, Doe not immediately reporting the incident to the police or seeking medical care. Although under California law Rose could technically be charged with a crime for the incident until 2019, it is unlikely that will occur.

While Tuesday's conference call did not feature any major revelations, Doe and two of her attorneys, [Waukeen McCoy](#) and [Brandon Anand](#), shared new insights that shape the dynamics of the forthcoming trial.

Among those insights are the following five:

Jane Doe, attorneys elaborate on issue of consent

If jurors ultimately believe that Rose is liable for sexual battery, they will have concluded that, under California law, he either lacked consent or did not reasonably believe Doe consented to sexual intercourse. In her statements on Tuesday, Doe unequivocally charged that she neither consented nor gave any indication to Rose that she was inclined to consent. "There was no confusion," Doe asserted. She added that in light of her previous relationship with Rose, he should have known whether she consented to sex. Doe maintains that she was far too intoxicated to be capable of consenting.

Doe also highlighted that she did not know Hampton and Allen and would never have consented to having sex with two strangers. "There was nothing leading to that night that would have let [Rose's] friends think that I would want to be with them at all," Doe recalled on Tuesday. "I didn't know the two guys he was with ... that was the first time I met one of them, and we just barely said hello, and the other person, I don't remember him."

Doe also portrayed Rose's treatment of her the day following the incident in a suspicious light. Along those lines, she described Rose as behaving unusually cold and distant. For instance, after Doe texted him about the incident, she "wanted him to respond that he was in as much pain as I was." Instead, Rose never texted Doe back about what took place. Instead, as Doe remembers it, Rose only reacted with perfunctory responses about reimbursements for a sex belt and a friend's cab fare and without any introspection on what happened.

Doe's attorneys supplied other comments that cast doubt on the defense's strategy of claiming Doe consented. They asserted that after Rose had sex with Doe, he took his used condom, placed it back into the condom wrapper and then took it with him. Why, Doe's attorneys wondered, would Rose take a used condom with him, unless he wanted to give the false

impression he was not there? The attorneys also noted that Allen—Rose's friend—disposed of his used condom away from Doe's garbage and bathroom, perhaps as a means of separating himself from the incident.

Rose allegedly does not know what the word 'consent' means

Doe's attorneys claim that Rose, while under oath during a recent deposition, testified that he is uncertain of the meaning of the word "consent." Although Rose's academic issues are well-documented—the [NCAA vacated the University of Memphis's](#) 2007–08 season in part due to Rose's standardized test score discrepancies—it is nonetheless surprising that Rose would claim ignorance about an uncomplicated word like "consent." This type of testimony could be harmful for Rose if jurors question Rose's truthfulness. To counter that concern in a trial, Rose's attorneys might portray Rose as uncertain about how "consent" is understood in a legal sense rather than in everyday usage. Still, Rose's deposition about "consent" is likely a source of worry for Rose's attorneys with the trial less than three weeks away.

Why Doe doesn't want her identity revealed

Doe's attorneys sought and obtained protection from the court so that her name and identity are not revealed to the public and, by extension, the media. On Tuesday, Doe shed light on the importance of preserving her anonymity. "I don't want to be seen or known as a victim," Doe remarked, "I don't want people to know it's me."

Doe, whose attorneys describe as enrolled in an unspecified school, also observed, "I don't feel safe." Although Doe did not precisely explain why she worries about her safety, she is no doubt aware of various online postings that, sometimes angrily, insist she is lying. Doe also stressed that she does not want to "drag" her family "through this suffering." In short, Doe wants to resume a normal life after resolution of her high-profile lawsuit against an NBA star—something that would be extremely difficult if her identity became public.

NBA, Knicks have not reached out to Doe or her attorneys

[As I detailed on SI.com](#), the Knicks, NBA and companies with which Rose has signed endorsement deals—most notably Adidas, which signed Rose to a 13-year, \$185 million contract—could punish Rose for off-court misconduct. On Tuesday, Doe's attorneys revealed that neither officials from the NBA nor Knicks have contacted them.

While the absence of an inquiry from the NBA or the Knicks does not mean the league and Knicks aren't investigating the allegations, it does suggest that Rose doesn't face imminent league or team discipline. To be clear, however, the Knicks, NBA and Adidas all have substantial discretion to punish Rose. Punishment would seem particularly plausible if Rose is found liable. It could also occur if he settles the lawsuit in a way in which he acknowledges he made a mistake (something unlikely to happen, particularly since, as explained above, there remains the possibility he could be charged with a crime).

Doe v. Rose could settle before the Oct. 4 trial

I asked Doe's attorneys if they are surprised the lawsuit has not reached an out-of-court settlement. In a settlement, Rose would agree to pay Doe some amount of money in exchange for her dropping her lawsuit. A settlement would seem to make sense. After all, even if Rose prevails in the trial, testimony during the trial could embarrass him and paint him in a damaging light—and in truth, his reputation has already been tarnished by the case. Scheduling-wise, the trial will also be disruptive for Rose, who is about to start his career with the Knicks. The Knicks' first preseason game will be on the same day Rose's trial is scheduled to start and Rose would miss several days from camp to appear at the trial. Rose could also lose the trial. In that case, he would be found liable for the civil law equivalent of rape and ordered to pay Doe millions of dollars. He would then face a potential NBA suspension and termination of his lucrative endorsement deals. At minimum, a settlement would prevent that worse case scenario from occurring.

McCoy—one of Doe’s attorneys—told me he was “very surprised” the case has not yet settled. He stressed, “We’re always open to getting cases resolved before trial.” McCoy, however, did not seem optimistic a settlement would be reached. He went so far as to contend that Rose’s attorneys will not respond to emails and they “continue to make accusations” against Doe that aren’t true.

Still, sometimes the nearing of a trial gets parties who otherwise dislike one another on the phone to reach a deal. There remains a fairly high chance this lawsuit will settle before the parties appear in court on Oct. 4.

Michael McCann, SI's legal analyst, is a Massachusetts attorney and the founding director of the Sports and Entertainment Law Institute at the University of New Hampshire School of Law.

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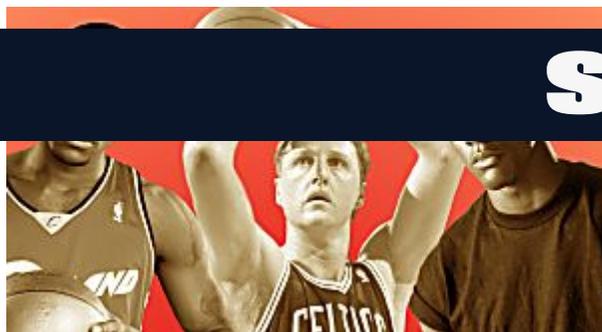
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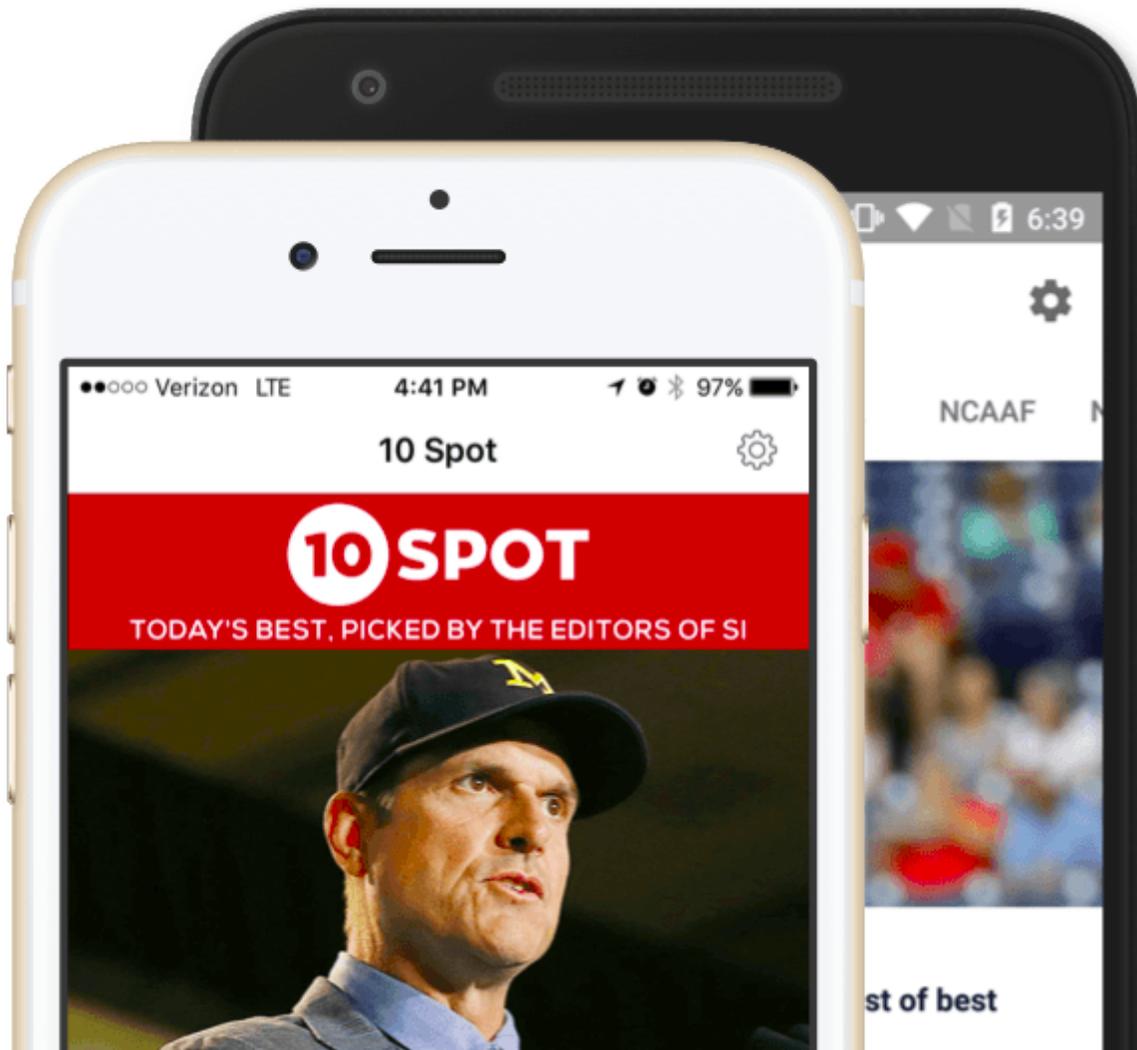
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