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In Sexual Assault Cases, Athletes Usually Walk

By Tom Weir and Erik Brady, USA TODAY

As Kobe Bryant's sexual assault case winds its way through pretrial motions and hearings, the Los Angeles Lakers star may have one intangible factor working in his favor. USA TODAY research of 168 sexual assault allegations against athletes in the past dozen years suggests sports figures fare better at trial than defendants from the general population.

Of those 168 allegations, involving 164 athletes, only 22 saw their cases go to trial, and only six cases resulted in convictions. In another 46 cases, a plea agreement was reached. Combined with the six athletes convicted at trial and one who pleaded guilty as charged, that gives the athletes a 32% total conviction rate in the resolved cases. That means more than two-thirds were never charged, saw the charges dropped or were acquitted.

"I would say almost the exact opposite would be true in the normal course of business," says Nancy O'Malley, who chairs the sexual assault committee of the California District Attorneys Association and who is Alameda County's chief assistant district attorney.

"In some areas, the conviction rate is 80-85%" at trial, O'Malley says. In Alameda County, which includes Oakland and Berkeley, "we probably have a 90% conviction rate of those that go to trial."

National statistics also suggest most ordinary defendants charged with sexual assault are punished. In May 1998 the U.S. Department of Justice tracked rape charges in the nation's 75 largest counties and found 52% of the defendants in 586 cases were convicted of rape and 14% were convicted of some other crime, either at trial or through pleas.

"It's not surprising that it's a relatively low conviction rate" for prominent athletes, says Linda Fairstein, former head of the sex crimes unit in the Manhattan district attorney's office in New York and a board member of the National Center for Victims of Crime.

"These are cases where frequently even if the claim is legitimate there is enormous pressure on the victim not to press charges, that you're ruining his career," Fairstein says.

Prosecutors who have handled these high-profile cases say they also face a hurdle because of the "he said-she said" nature of sexual assault trials, particularly when a celebrity defendant's word is pitted against that of an accuser unknown to jurors, which figures to be the scenario in Bryant's trial.

Charges were dropped in 20% of the resolved athlete-related incidents, and in an additional 36% law enforcement authorities never filed formal charges.

There is another explanation, to be sure, for why so many athletes are never charged. Because of their celebrity or wealth, they can be targets for false allegations.

No charges, for example, were filed against Pittsburgh Steelers running back Jerome Bettis after a 2002 sexual assault accusation. The district attorney in Westmoreland County, Pa., said he found evidence of a scheme to entrap Bettis and extort money.

Stats in sex cases questionable

As victim-support groups point out, statistics on sexual assault are subject to question, because, they say, only about 16% of such cases are reported.

The National Association of Attorneys General and the National District Attorneys Association say no database exists that tracks all rape statistics, and quantifying outcomes of sexual assault cases is made additionally difficult because laws and definitions vary greatly from state to state.

USA TODAY's research included newspaper and wire service databases and interviews with district attorneys, defense lawyers and court officials. The research covered the period from the rape conviction of former world heavyweight boxing champion Mike Tyson in February 1992 — the last time a sexual assault allegation against an athlete so dominated the sports world — to the present.

The 168 allegations all involved either current or former athletes at the pro level and in NCAA Division I football and basketball. Of them, 162 have been publicly resolved; the others are four pending cases, another with a sealed outcome and one in which the outcome could not be ascertained.

Bryant appeared in court Friday for a motions hearing regarding a 19-year-old woman's allegation he sexually assaulted her June 30 at a resort near Vail where she worked as a concierge. Bryant, who was in Colorado to have knee surgery, has publicly admitted having sex with the woman but says it was consensual.

Among the motions that have been filed by Bryant's lawyers is one seeking to admit evidence that his accuser had been prescribed an anti-psychotic drug and also made "purported suicide attempts" to get attention from an ex-boyfriend.

Bryant's lawyers also are challenging the constitutionality of Colorado's rape shield law, which limits what defense lawyers can use at trial about a rape victim's sexual history. Eagle County's chief detective in the case has testified that the panties the accuser wore to the hospital for her physical exam the day after her encounter with Bryant contained semen and sperm that weren't Bryant's.

Bryant's legal team also wants to prevent prosecutors from using at trial evidence police took from Bryant on July 2, including clothing and other items obtained during a physical exam of Bryant.

Bryant's attorneys sought, and failed to win, a dismissal of the charges in October.

Pressure to prosecute?

B. Todd Jones, the Minneapolis attorney who won baseball Hall of Famer Kirby Puckett an April acquittal on sexual assault charges, contends some district attorneys may be more inclined to file charges against a celebrity athlete because they fear that doing otherwise would make it appear they go easy on famous people.

“Before Puckett was charged,” Jones says, “he went through a nasty and very public divorce. He already had a taint. That may have had some impact on the charging decision.”

Alan Harris, who prosecuted the case for Hennepin County, said he “could not disagree more strongly.” He said the decision was based strictly on the facts of the case developed by police investigators.

At Puckett’s trial, Jones says, the player’s standing or popularity with the Minnesota Twins probably helped.

“He had an outstanding playing career and was beloved in Minnesota and to a large extent still is,” Jones says. “Sometimes if an athlete is beloved in their locale, some jurors are predisposed to give a benefit of the doubt. ... Our working assumption was that if someone wanted to be on that jury, they didn’t want to put Kirby in jail.”

Harris declined to comment on that.

Another advantage athletes, at least the pros, enjoy: Because of their financial resources, they can hire more experienced lawyers than do most defendants.

Bryant has hired Hal Haddon and Pamela Mackey, partners in the prestigious Denver law firm of Haddon, Morgan, Mueller, George, Mackey and Foreman, whose Crawford Hill Mansion offices include a swimming pool and basketball court.

Both Haddon and Mackey are veterans of high-profile cases.

Haddon represented John and Patsy Ramsey while they were under suspicion in the death of their daughter, JonBenet, in a case in which they never were charged with a crime.

Mackey represented Colorado Avalanche goalie Patrick Roy in a 2001 domestic violence case involving his wife. The case was dismissed by a judge who ruled it fell short of the state standard for the charge.

Star’s word vs. unknown’s

Prosecutors say a sexual assault trial becomes more difficult when a celebrity is involved.

Bryant, 25, is a five-time NBA All-Star whose popularity has led to multimillion-dollar endorsement deals and numerous television commercials. For athletes with superstar status and the wealth it brings, a plea bargain is unlikely, says Puckett’s attorney, Jones.

“If an athlete pleads to anything, it could have ramifications on his ability to continue playing in his sport, and it could have ramifications with respect to civil lawsuits such as intentional infliction of emotional distress,” Jones says. “You leave yourself open if you have deep pockets.”

Unless there is compelling physical evidence, the trial often can become a case of a celebrity athlete’s word against that of his unknown accuser.

“The nature of the crime is that it almost always takes place in private,” says Camden County, N.J., first assistant prosecutor James P. Lynch, who reached a plea agreement on sexual assault charges against former World Boxing Association heavyweight champion Bruce Seldon in 1998. “Normally, there are no other eyewitnesses.”

Because of that, says Lynch, such trials are “an adversarial proceeding that is not pleasant and is not geared to making a victim comfortable. ... These matters frequently come down to questions of credibility, and it can be difficult if one side already has a reputation.”

Waukesha County, Wis., District Attorney Paul Bucher believes the reputation of former Green Bay Packers tight end Mark Chmura played a significant role in a 2001 trial that ended with Chmura’s being acquitted of charges he sexually assaulted a 17-year-old girl at a party.

“First, the big question in the jury’s mind is: ‘What are we doing here?’” Bucher says. “Some people don’t believe you should take a he said-she said case against a national superstar. There is a super presumption of innocence.”

Bryant’s case doesn’t quite fit that mold. The Puckett and Chmura trials occurred in the areas where the athletes’ on-field performances had made them sports heroes. Bryant’s case is being heard about 750 miles from his home arena.

Under Colorado law, Bryant could go to prison for four years to life, even as a first offender with no criminal record. Probation could last a minimum of 20 years, and lifetime supervision would be possible. Either sentence would include a state-required management program that evaluates convicted sex offenders with lie detectors and the plethysmograph, a device that measures arousal patterns.

The defense attorney in the Chmura case points out that the intense public scrutiny and the possible repercussions facing a celebrated athlete can be very wearing.

“What happens to the fellow is incredible,” says Gerald Boyle, whose 10-day defense of Chmura was broadcast on Court TV. “Every pundit in the nation has an opinion, and it’s very, very unfair. ... The aftermath is excruciating. Even when an athlete is found innocent, there will always be an asterisk on his name.”

Referring to one Internet poll last summer in which nearly half of 167,000 respondents said they thought Bryant was guilty, Boyle says, “How ... can anybody say that? We don’t know the facts yet. It’s a hellish problem.”

‘Acquaintance factor’ key

Establishing the facts can be a problem for both sides in celebrity cases as well as those against ordinary defendants. Prosecutors say such cases become more difficult when there is an “acquaintance factor” — when the accuser and the accused knew each other before the alleged incident.

At an Oct. 9 pretrial hearing, the Eagle County chief detective in Bryant’s case testified the accuser had greeted Bryant when he arrived at the hotel and agreed to give him a tour of the resort, after which she willingly entered his hotel room.

Ken Mauldin, district attorney for the Clarke County, Ga., area, which includes the University of Georgia campus in Athens, says the acquaintance factor weighs more heavily with juries in a sexual assault case than whether it involves an athlete.

Mauldin failed to gain a conviction in an acquaintance-rape case against a Georgia football player last year but says, “I don’t think it mattered whatsoever to that jury that an athlete was involved.”

Mauldin points out he was able to win a stranger-to-stranger rape case in June even though the victim initially refused to cooperate with investigators.

“I’ve run into people who say, ‘Put me on that jury, and we’ll convict him.’ But when they get behind that jury bar, they’re closer to the Constitution than they will be at any other time in their lives,” Mauldin says. “In my 20 years I think almost all juries have done a good job of sticking to the facts.”

Mary Keenan, the Boulder County, Colo., district attorney who reopened the JonBenet Ramsey murder case in 2002, says sexual assault victims often have their credibility challenged if they did not report the crime quickly or do not remember details exactly. Keenan contends they may delay because of the trauma they have suffered.

In acquaintance-rape cases, Keenan says, “You seldom hear the word ‘rape’ in the first 12 hours. People don’t want to believe they’ve been raped.”

Instead, Keenan says, “What you go through is self-blaming and self-guilt, because you know this person. It takes awhile for the mind to process that it wasn’t your fault. That can take 12 hours, 24 hours or 48 hours before it sinks in. In the meantime a victim will make lots of statements, and you may lose physical evidence. Until they talk to somebody else, they don’t figure out it’s rape, and then the defense uses that against you.”

In the Bryant case, Eagle County sheriff’s detective Doug Winters has testified that he interviewed the accuser the day after the incident, at her parents’ home.

Winters also testified that the accuser told him that after leaving Bryant’s room, she returned to the hotel’s front desk, finished her shift and went home. She told a co-worker that night what had happened, Winters said. The co-worker urged her to go to police and followed her home that night to make sure she was OK, he said.

Keenan says the credibility problem “absolutely” plays into defense efforts to establish reasonable doubt but adds, “We can work through that. When someone is honest, it shows. ... You sit down with the victim, and, if they do not have a motive to fabricate, a good prosecutor knows what they’ve got.”

With that goal in mind, says Keenan, “I meet with the victim very early on and spend a lot of time emphasizing that telling the truth can’t hurt them. I tell them, ‘Tell me the worst thing an investigator could dig up in your past and use against you, and let’s start with that.’ Once they understand the only thing they have to do is tell the truth, it isn’t that difficult.”

The dynamics of the Bryant case, however, indicate a grueling ordeal is ahead for everyone involved.

Puckett’s attorney says the effect of a celebrity presence in court can’t be underestimated. “Media scrutiny is magnified by 1,000,” says Jones, adding, “I don’t like trying a case in a fishbowl. You had to run a media gantlet outside the courtroom every day for two weeks.”

Looking ahead to Bryant’s case in Colorado, Jones says, “It’s going to be a circus. He’s got some good lawyers. She and her family better be buckled up for a very tough ride.”

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ABOUT THIS REPORT – Six staffers from the USA TODAY library combed two media database services looking for stories about current and former athletes who have faced allegations of sexual assault since Mike Tyson’s rape conviction in February 1992.

They limited their search to professional athletes as well as college athletes from NCAA Division I football and men’s basketball. They searched more than 10,000 news sources through LexisNexis and Factiva, including wire services, magazines and a range of newspapers large and small.

The researchers ran multiple searches using a variety of methods in an attempt to uncover as many cases as could be found.

Details of certain cases were then verified using court documents obtained through several legal databases, including Courtlink, Pacer and LexisNexis. Two reporters verified details in many of the cases through interviews with defense lawyers, prosecutors and court clerks.

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