

There were major discrepancies in the prosecution evidence, but the judge advised the jury, ‘The pieces do not have to fit together like a puzzle.’

Why did the judge say this, when the pieces of the puzzle did fit together to confirm the boy’s story? – In contrast, the discrepancies in the complainant’s evidence strongly suggest *someone was lying*. In short, the discrepancies prove that the complainant was an unreliable witness and therefore the charges should have been dismissed.

The Judge: After the judge recognised that there were major discrepancies between the complainant’s story and the three other eyewitnesses, Kyle was shocked to hear Chief Justice Brian Martin instruct the jury, ‘**The pieces [of the story] do not have to fit together like a puzzle.**’ In other words, Kyle thought, the judge was saying that jury should not question the complainant’s version of events, despite her discrepancies that were obvious to all at the trial. In his sentencing remarks, the judge said, ‘The differences in their recollections are of no significance.’¹ It appeared to Kyle that the judge would make an example of an Aboriginal boy who had sex with a ‘naïve’ white girl. What evidence was there corroborating the allegation that the girl was naïve, apart from her mother’s testimony? In contrast, the judge allowed records of Kyle’s behavioural problems in primary school to be presented in an attempt to smear his character.

The witnesses

The rugby player walking to training said he saw the boy on top of the girl on the ground as though the couple were having sexual intercourse. The man was embarrassed and coughed as he walked by. To the rugby player there was no indication that he was witnessing a sexual assault. When he looked back, the girl was getting dressed and the boy was going to the tap. There was no time for the third act of penetration the complainant described (and the boy denies).

¹ http://www.nt.gov.au/ntsc/doc/sentencing_remarks/2007/03/20070322horace.html

The school caretaker a little later the caretaker saw ‘an Aboriginal boy’ with blonde tinting (like Kyle) and a white girl walking out of the school grounds side by side and then talking at the fence. There was no indication of distress. The girl was not ahead of the boy as the complainant described.

The girlfriend told a different story in almost every detail to her companion, the complainant. She says Kyle introduced himself by his proper name at the bus stop. She waited at the bus stop for her friend to come back with Kyle from the school yard. The couple came back together. Certainly her friend was flustered, as could be expected, but she told her girlfriend to say nothing. The two *walked* back to the house (not *ran*, as the complainant claimed.)

The complainant claims she was afraid of Kyle. She said he gave a false name. Yet she walked with him into the school yard to show him the way to ‘a street.’ In the yard, she said, ‘There’s your street.’ But no street is visible from the Anula school yard at that point. Only dense vegetation is visible (see photograph). In any case, any street around the school can be reached by following Yanyula Drive (see map). The complainant’s story does not fit in most details with the other three eyewitnesses on that day. Their witness statements do fit ‘like a puzzle.’ It is quite probable that the girl would have had regrets after her perhaps painful sexual encounter, but this does not make it rape. The complainant’s evidence includes new memories that had come back after 3 years counselling and in ‘nightmares’, like the memory that is not in the original statement, of the boy saying, ‘This will be our little secret.’ (Kyle denies he said or would use such an expression).

The accused: Kyle was advised not to give evidence. His mates tell him he should have pleaded guilty when he was 15 and received a lighter sentence. In the lifestyle he was leading at that time amongst his peers there had been nothing unusual about that afternoon. The teenagers he mixed with in the northern suburbs were all sexually active. Because Kyle persisted in claiming that what occurred in the school yard was consensual, the judge said that he showed a lack of remorse. Of course Kyle, who was a father by the time of the sentencing, has learnt a lot in the intervening years and now regrets that brief sexual encounter in 2003 – but that does not make him guilty of rape.

The Doctor: The transcript reveals that the medical officer botched the examination of the complainant. The examination for signs of assault was done too soon and was too uncomfortable to proceed adequately. **No DNA from the accused was detected on the girl's genital swabs.** An expert from Adelaide said the apparent minor injuries could have been caused through a clumsy and inexperienced sexual encounter, but were not conclusive. From the examination evidence it could not even be determined if the hymen was damaged, or if the girl had been a virgin as claimed.

The Police Officer: On the evening of May 3rd, 2003, the police found Kyle sitting at the bus stop in front of the Anula shops. The officer said to him, 'We want to ask you some questions about an assault.' Kyle answered innocently, 'What assault?' His conscience was clear. Kyle had no idea of the girl's age until told by the police. The police officer in charge of the investigation did not pursue the case further until August 2005, 2½ years later due to her personal difficulties at the time. Apart from some police harassing Kyle and his grandmother at home over suspected unrelated minor (nonsexual) offences, Kyle heard no more about the serious rape allegations in the following years as he matured physically. At no time did Kyle attempt to evade the police.

The boy's stepfather saw the complainant at the police station when he went to see his stepson. He claims that the girl smiled knowingly across the room at the boy and that she looked a lot older than her age. At the time she certainly did not look like a 'naïve' 14-year-old. (See page 3). Kyle kept asking his step father, 'Why did she lie?'