

DAILY



TIMES

DELAWARE COUNTY'S NEWSPAPER

DelCoTimes.com

Spencer: Not guilty verdict separates fact, fiction

Published: Wednesday, September 23, 2009

By GIL SPENCER

gspencer@delcotimes.com



First of Two Parts

The girl was 9 years old and she had a story to tell the police. It went like this: On Feb 2, she went to visit a friend who lived up the street. Her friend's father answered the door and told her his daughter was not at home.

He then invited her into the house.

She said she went into the den and sat on the sofa while the father turned on the TV and showed her a movie of nude adults having sex.

The girl told police that her friend's father asked her, "Have you ever seen a penis?" She said "No." He asked, "Do you want to see my penis?" She said, "No."

Nevertheless, she said, the man pulled his pants down. He was wearing white underwear. Then he started touching his penis. She said he asked her,

"Do you want to touch it a minute?" She replied "No." After that, he pulled up his pants, kissed her on the side of the head and said, "You won't tell anyone, right? Come to me if you have to talk to anyone."

She left the house, went home and told her sister and her grandfather that the man up the street had exposed himself to her.

The police were called.

Now, the story the little girl told wasn't true. It was a lie from start to finish. But that didn't stop a father of three (I'm withholding his name at his request) from being charged with various sex offenses and prosecuted by the Delaware County District Attorney's office.

Last week, he was found not guilty by a jury of his peers. The trial took two days. The jury's deliberation, two hours.

It is not the first time this D.A.'s office has gone to trial on a sex accusation that stretched the limits of plausibility, let alone reasonable doubt.

The man and his wife have three children. He has a job. She works, too. He has never been in trouble with the law before.

When he got the message that evening that police wanted to talk to him, he went right down to the station house with his wife.

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He waived his rights to a lawyer and gave a statement about what happened that afternoon.

The girl down the street had come to his house, knocked on the door and asked if his daughter was home. He said "No," and the girl left. That was it. The girl never entered the house. End of story.

But police told him they had a witness to the girl entering his house, though no such witness was ever produced or testified.

The police asked his wife if they could come to the house to see if they could find any porn videos in their den. The cops searched and found nothing.

Based on the girl's word alone, and with no other physical or corroborating evidence, the man was charged with indecent exposure, corrupting the morals of a minor and endangering the welfare of a minor.

The couple now needed a lawyer. They found two in John Kusturiss and Alyssa Poole, a father and daughter team in Media.

Before going into practice with her dad, Poole worked in the D.A.'s office. She spent two years in the Special Victims Unit, which is to say she knows her way around these kinds of cases.

It didn't take long for her to figure out she had the worst kind of client on her hands — an innocent

one. (They're the worst because if they're convicted, it's the lawyer's fault.)

"It makes you sweat, I'll tell you that," said Poole's father.

Everything about the case was lousy, according to Poole.

She said police heard the story from the grandfather first while the accusing girl was right there in the room. Then the girl repeated the story while the grandfather and her sister were present.

The police report offers very few details of what supposedly happened at the crime scene.

(Later, on the witness stand, the investigating officer would testify that he doesn't like to ask children in these situations too many detailed questions because he doesn't want to confuse them.)

The accused offered to take a lie detector test, but the D.A.'s office declined to take him up on his offer.

Poole asked the prosecutor if her client took such a test at his own expense, would the D.A.'s office review the results. She was told they would.

Lie-detector tests are not admissible in court, but they are used as investigative tools. Often, if a suspect passes a polygraph, cops and prosecutors

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will drop charges or at least take a much harder look at the evidence they have.

Kusturiss and Poole hired one of the most respected polygraph experts in the area, Roger Rozsas, to do exam.

Before the test, Rozsas warned them that they might not like the results, but he wouldn't sugarcoat them. Their client not only wanted the test, he demanded it.

When it was over, Rozsas told the lawyers that though rarely does he "go out on a limb like this," there was no question in his mind.

"He didn't do it," he told them.

What he told me Tuesday was, "This incident didn't happen."

Poole got a copy of Rozsas' report to the D.A., hoping somebody would a look at it and the lack of evidence in the case.

But no.

Despite the polygraph results and despite conflicting testimony given by the girl at the preliminary hearing, the charges would stand. Unless he pleaded guilty to something, the man was going to trial.

I called the D.A.'s office for its side of this story

Tuesday. I'm hoping they call me back.

More Friday.

Gil Spencer's column appears Sunday, Wednesday and Friday. E-mail him at gspencer@delcotimes.com

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gspencer@delcotimes.com



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Second of Two Parts

The man stood accused of inviting a 9-year-old girl into his home, showing her a porn movie and exposing himself. That's what the girl told her family and the police last February.

Last week, a Delaware County jury acquitted him of all charges.

His lawyers, John Kusturiss and Alyssa Poole, say this is a case that should never have come to trial. All the cops had was a story — one that lacked detail, specifics and a certain amount of plausibility.

Their client denied that the girl, a friend of his daughter's, was ever allowed into his house on the day in question. His denial was later backed up by a polygraph exam given by Roger Rozsas, one of

county's top lie-detector experts.

Rozsas told me that this was a crime that "did not happen."

If investigators had taken the least bit of time to look into the girl's background, they would have found she had a motive to lie about her friend's father. He'd forbidden his own daughter to play with her for a time after an incident a year or so earlier. (On the witness stand, the girl said she thought her friend's father was "mean.")

She is, by all accounts, a cute kid. But even cute kids lie. It's the responsibility of adults to figure out when they're telling the truth and when they're not. This is especially true when a man's livelihood and reputation are at stake.

Defense attorney Poole is a former assistant district attorney. She spent two years in the county's Special Victims Units prosecuting alleged sex offenders.

"This whole case was a disappointment to me," Poole said.

She said she reached out to her former colleagues in district attorney's office to "make sure they were aware" how weak their case was, but to no avail.

Deputy D.A. Mike Galantino says his office won't hesitate to "pull the plug" on a bad case if the facts

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warrant it. Just last Monday, he told me, charges were dropped against a handicapped man falsely accused of attacking a woman.

But in this matter, "we didn't have any information this girl was lying," he said.

No information other than the denials of the suspect and the lie-detector report of Rozsas.

As for the verdict, Galantino said, he was "satisfied that the jury made its determination based on the evidence presented to them."

Poole was satisfied with the jury, less so with her former colleagues.

"We don't think they (the D.A.s) adequately looked into this case," Poole said. "(Even with) all the information we tried to present to them, it pretty much didn't matter ... This little 9-year-old girl told a story and we had to go to trial."

It was at trial where it became clear, at least to the jury, that the investigating officer didn't do his job very well. He took down the girl's story without questioning it and while the grandfather and sister were right there in the room.

The jury, of course, didn't get to hear about the lie-detector test the defendant passed or from Rozsas. But they did get to hear from the defendant himself.

And now so will you.

He has asked me not to use his name in this story. His family, he said, has been through enough these last few months. But he was willing to talk.

The family man recalled getting the message from the police last February asking him to come down to the station.

"They called me in and I was guilty. The officer said she (the girl) told her story and he believed her. I kept telling him I didn't invite her in my house. He said they had a witness. I didn't know what was going on. I answered all their questions, but it didn't seem to help me." (By the way, no witness was ever produced.)

"He (the cop) said, 'If you admit to this, you won't do any jail time. I'll get you the help you need.' I told him I can't admit to something I didn't do."

The man and his wife tried to tell the police about the girl's problems, her troubled family life and "how she lies and knows about sex." But none of it did any good. He was charged the next day.

As his lawyers worked to convince the county prosecutor that no crime had been committed, he did the best to go on with his life.

"Thank God," he said, "I have little kids" because they kept him busy "helping them with their homework, cooking dinner taking them to

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cheerleading and football practice.”

His wife works second shift at her job so he's in charge of the kids in the late afternoon and evening. He drives a truck.

During the ordeal, he said he all neighbors, family and friends were great. But it was his wife who stood out.

“I couldn't ask for a better woman,” he said. “I was angry when it happened, really angry. But she was even angrier about it than I was.”

Eventually though, they had to put their trust in their lawyers and the jury system.

After the not guilty verdict was read last week, he said, the relief in the courtroom surprised even him.

“Everyone was crying, my dad, my friends. It was pretty touching.”

It cost him \$10,000 to defend himself. But he's not thinking about that right now.

“The last few days have been bliss,” he told me. “I'm back to my routine, back to my life. It's like a big burden off my shoulders.”

He was grateful to his wife, friends, and neighbors.

“We pulled together and got through it,” he said.

If a few people in authority in this county had done their jobs a little better, this guy and his family never would have had to.

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