

# Australian Defence Force Academy cadet pleads not guilty to raping fellow cadet



By [Clare Colley](#)

Updated 23 June 2016 — 10:17am first published at 9:37am

An Australian Defence Force Academy cadet in Canberra [accused of raping a fellow cadet](#) while she was sleeping will fight the charges.

Jack Toby Mitchell, 19, pleaded not guilty in the ACT Magistrates Court on Thursday and had his bail continued under strict conditions he avoid all contact with his alleged victim and remain at least 100 metres away.



ADFA cadet Jack Toby Mitchell leaves the ACT Magistrates Court after pleading not guilty to raping a fellow cadet while she was sleeping.

*Photo: Elesa Kurtz*

Police allege Mr Mitchell assaulted the 18-year-old woman in the early hours of the morning on Saturday May 28 after the pair shared a taxi back to the ADFA campus from Civic nightclub Mooseheads with a third male cadet.

The Campbell man was arrested on Friday June 3 and appeared in court where he was formally charged with sexual intercourse without consent after the woman reported the incident to the officer in charge and police.

Earlier in the month, the court heard the pair had known each other for four months and the woman had previously told Mr Mitchell she only wanted to be friends when he asked to begin a relationship.

The woman told police she was intoxicated and thought Mr Mitchell was taking her back to her room, but instead he allegedly took her back to his room and began kissing and touching her on his bed.

She allegedly told Mr Mitchell she "felt fuzzy" from the alcohol and turned away from him saying she wanted to sleep, but he began sexual intercourse.

The court heard she became uncomfortable and tried to push Mitchell away after telling him it was hurting, but he allegedly told her "it would be OK" and continued.

Mr Mitchell allegedly told police the woman had initiated the sexual contact after she pulled him towards his room when they were dropped off by the taxi.

He allegedly told police he asked the woman "do you want this?" and she had replied "yes" before the pair began having sex.

He said after 30 to 40 minutes they both decided to stop because they were "tired and drunk".

ADFA agreed to arrange alternative accommodation for Mr Mitchell to keep him away from the woman after his first court appearance on June 3.

At the time, his defence lawyer said Mr Mitchell would not interfere with the investigation and was taking the matter "very seriously".

"He is someone with a chance to go further in life," he said.

## **Related Article** [ADFA cadet charged with sexual assault](#)

"I can assure your honour I spoke to him in the cell downstairs and explained to him what's at stake here, it's his liberty."

Mitchell remained silent during his second court appearance on Thursday. He had his bail continued and the matter will return to court on September 1.

# ADFA cadet charged with sexual assault



By [Clare Colley](#)

Updated 3 June 2016 — 6:34pm first published at 9:22am

An Australian Defence Force cadet in Canberra accused of raping a fellow cadet while she was sleeping has been granted bail.

Police allege Jack Toby Mitchell, 19, assaulted the 18-year-old woman in the early hours of Saturday morning after the pair shared a taxi back to the ADFA campus from Civic nightclub Mooseheads with a third male cadet.

The court heard the pair had known each other for four months and the woman had previously told Mr Mitchell she only wanted to be friends when he asked to begin a relationship.

The woman told police she was intoxicated and thought Mr Mitchell was taking her back to her room, but instead he took her back to his room and began kissing and touching her on his bed.

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He told police he asked the woman "do you want this?" and she had replied "yes" before the pair began having sex.

He said after 30 to 40 minutes they both decided to stop because they were "tired and drunk".

Special Magistrate Maria Doogan granted Mr Mitchell bail, with conditions he did not contact, intimidate, harass, or assault his alleged victim, did not ask anyone else to do so, and not approach her within 100 metres.

The court heard ADFA would arrange for Mr Mitchell to be housed in alternative accommodation to keep him away from the woman.

The prosecution opposed bail claiming Mr Mitchell would interfere with evidence, "influence" the woman or exert pressure on her through friends or fellow cadets.

"Particularly in an environment such as ADFA people will be talking," the prosecutor said. "Lots of opinions will be formed of his conduct in the situation."

But his defence lawyer said there was "strong evidence" Mr Mitchell would not interfere with the investigation as he had not contacted the woman since Saturday night and the cadet would take his obligation to the court "very seriously".

"He is someone with a chance to go further in life," he said. "I can assure your honour I spoke to him in the cell downstairs and explained to him what's at stake here, it's his liberty."

When granting Mr Mitchell bail over the "serious offence", Ms Doogan said she took into account his age and lack of prior criminal history.

The matter will return to court on June 23.

Defence would not comment further while the matter remained before the court.

"However, updates on the progress of these matters will be provided when it is appropriate to do so," a spokesman said.

Last year, 21-year-old [ADFA cadet Harlan Agresti was found guilty of raping a fellow cadet](#) in her quarters after a night out in Canberra.

The cadet is [appealing the decision](#), arguing directions given to the jury were flawed and its final verdict was "unreasonable".

The Australian Defence Force has been criticised for its treatment of women in the past, rocked by a [2011 Skype scandal](#) in which a cadet secretly filmed himself having sex with another cadet and broadcast it to several of their colleagues.

Following the scandal, army chief David Morrison published a speech - written by co-Australian of the Year nominee and transgender advocate Cate MacGregor - on YouTube warning those who disrespected, demeaned or discriminated against women were unwelcome.

Lieutenant-General Morrison was named the 2016 Australian of the Year for his championship of women's rights and diversity.

# ADFA cadet Jack Toby Mitchell not guilty of rape

By [Alexandra Back](#)

Updated 5 July 2017 — 4:51pm first published at 3:28pm

The family of an ADFA cadet acquitted of rape will make a complaint to the ACT government after they say he was prosecuted in the face of "overwhelming evidence" the woman had lied.

A jury found Jack Toby Mitchell, 19, not guilty on Wednesday of raping a fellow cadet in his room in the early hours of May 28, 2016.



ADFA cadet Jack Toby Mitchell leaves the ACT Supreme Court after the verdict with his solicitor (far right) and parents.

*Photo: Alexandra Back*

It took the jury just over an hour to return the unanimous verdict.

Outside court the man, a former captain at his regional Victorian high school, faced the media as his father read a statement on his behalf.

Jack Toby Mitchell (centre) leaves court with his father (left) and solicitor Adrian McKenna.

*Photo: Alexandra Back*

The statement said the last year had been the worst of his life.

"I'm very relieved this ordeal is over, but I'm also angry that it had to come this far when the evidence clearly showed that the allegation made against me was totally false.

"Not only did the prosecution continue to run this case when it was clear the complainant was not telling the truth, but they only agreed to disclose crucial evidence to my lawyers after they threatened to have the trial stopped for unfairness."

The evidence Mr Mitchell referred to was data, including messages, downloaded from the phones of the woman and a mutual friend.

Jack Mitchell rests a hand on his father shoulder as he reads a statement to the media after the verdict.

*Photo: Alexandra Back*

The information was provided to the defence Monday last week, the day the trial was to start. The start was then pushed back to Tuesday for the defence to consider the new material.

Mr Mitchell's father Russell continued with a statement on behalf of he and his wife Michelle, who both sat through the trial. He said they were "immensely proud of Jack".

"There's something to be said for the jury system": Defence barrister Steven Whybrow leaves court after the verdict.

*Photo: Alexandra Back*

He said they intended to make a formal complaint to the ACT Attorney-General "about the conduct of the police and the prosecution" in handling his son's case.

The court heard the two 18-year-olds had been messaging for several weeks prior to the alleged incident, and had kissed one evening after a run to the top of Mt Pleasant. They returned to his room early one Saturday morning after a night at Civic bar Mooseheads.

ADFA cadet Jack Toby Mitchell has been acquitted of rape.

*Photo: Alexandra Back*

It was alleged she was heavily intoxicated that morning and woke to Mr Mitchell having sex with her. It was further alleged when she tried to push him away he had continued. He told police when arrested a week later the sex was consensual, and that when he asked her if it was okay she said yes and kissed him.

They were two different accounts of the night that the man's defence barrister Steven Whybrow described as "chalk and cheese".

In closing arguments earlier on Wednesday, Mr Whybrow said the woman had lied about being attracted to Mr Mitchell when many of her friends told the court she liked him. She also lied to other cadets, he said, telling one who was making sure she was back on base by midnight curfew that she was in Mr Mitchell's room when she was still at Mooseheads on the night of May 27.

He cautioned the jury that he was not suggesting that, because she liked Mr Mitchell and had been flirting with him for weeks leading up to the incident, that meant she consented to sex that morning.

"None of that implies consent in his room," he said.

Instead, he said, her lies on oath would give the jury considerable pause on accepting what she said had happened in that room.

"The difficulty is she's told so many fibs about so many things," he said, "that you could not believe that's what happened."

Presiding judge John Burns reminded the jury it was the Crown's onus to prove the elements of the offence beyond a reasonable doubt.

He instructed that in reality they only had one issue to decide. "Are you satisfied beyond a reasonable doubt that the complainant did not consent to sexual intercourse with the accused?" he said.

In acquitting the man the jury determined there was reasonable doubt.

Outside court Mr Whybrow declined to comment, save for a short statement: "There's something to be said for the jury system."

Mr Mitchell's first act after the verdict was delivered was to hug his defence solicitor Adrian McKenna of Ben Aulich and Associates and Mr Whybrow. Not present on Wednesday was barrister Prue Bindon, who completed the man's trial defence team.

Justice Burns thanked the jury on behalf of the community for what is never an easy task, and discharged them from their duty.

He also sent Mr Mitchell home.

"The accused is discharged."

**JACK MITCHELL'S FULL STATEMENT:**

The last twelve months has been the worst year of my life. I'm very relieved this ordeal is over, but I'm also angry that it had to come this far when the evidence clearly showed that the allegation made against me was totally false.

Not only did the prosecution continue to run this case when it was clear the complainant was not telling the truth, but they only agreed to disclose crucial evidence to my lawyers after they threatened to have the trial stopped for unfairness.

My lawyers wrote to the DPP last October pointing out all the flaws in this case but they refused to stop the prosecution.

It is difficult for me not to believe the police and prosecution deliberately tried to suppress evidence that helped to prove my innocence.

I would like to thank my friends and colleagues who continued to support me throughout this difficult time and always believed me when I said I would never behave in the way alleged.

I would like to thank my lawyers for their commitment and passion in defending me and for fighting the DPP to make them hand over the crucial evidence they refused to disclose.

I would especially like to thank ADFA for the support it has given me in the last year. Although I was removed from ADFA the day I was arrested and prevented from continuing my military training in Canberra, I completely understand that in the circumstances I could not continue to stay at ADFA with the complainant until this case was over.

ADFA could have just assumed I was guilty, kicked me out and moved on. I'm grateful that the defence force allowed me the presumption of innocence and took steps to allow me to continue my studies remotely until this court process was concluded.

I'm looking forward to resuming my ADFA training as soon as possible and trying to make up for the year of my life I have lost and can never get back.

Finally, I would like to thank my parents and other family who have never doubted me and without whose love and support and financial assistance I would not have had the strength or means to properly defend myself from this false allegation.

## **RUSSELL AND MICHELLE MITCHELL'S FULL STATEMENT:**

We'd like to say we are immensely proud of Jack and the way he has handled this terrible ordeal.

We have raised our son to have respect for women and the evidence clearly showed he only ever treated this woman with dignity and respect.

Sexual assault and the mistreatment of women is a terrible problem in our society. It does nothing to help those genuine victims of sexual assault for the authorities to waste valuable resources running hopeless cases like this.

We intend to make a formal complaint to the Attorney-General about the conduct of the police and the prosecution in continuing this prosecution in the face of overwhelming

evidence that the complainant was not telling the truth, and for refusing to disclose evidence that helped to prove she was lying until they were forced to do so.

Source:

<https://www.canberratimes.com.au/national/act/jury-finds-adfa-cadet-jack-toby-mitchell-not-guilty-of-rape-20170705-gx5640.html>