

# Jaidyn leskie case essay



**ASSIGN  
BUSTER**

I. The Main Facts of the Case The main facts of the Jaidyn Leskie case are as follows: ? Jaidyn Leskie disappeared while in the care of Greg Domaszewicz on the night of 14 June 1997.

? Mr. Domaszewicz said that Jaidyn went missing after being left asleep at his house while he went out to pick up the child's mother. ? On the night of Jaidyn's disappearance a pig's head and rocks were thrown at the windows of Greg Domaszewicz's house. ? Senior Constable Evans said he could find no evidence that anyone entered the windows. A teenage boy discovered the boy's body on 1 January 1998, at the Blue Rock Dam. A small sleeping bag with a crowbar tied to it and a plastic bag containing baby's clothes, a bib, elastic-sided boots, a baby's bottle and an apple were found in the dam.

? Dr Shelly Robertson, a senior forensic pathologist who performed an autopsy on Jaidyn, said that the boy probably died from a direct blow to the head while he was in extreme pain from a fractured left arm. II. Outline the Law relating to murder/manslaughter. Explain who has the burden of proof in a trial and outline in general terms what is required to get a conviction in a murder trial.

You will need to point out the law here and list and explain the recognised defences available to the accused. In the law, the killing of another person could fall under two categories, one could be murder or it could be manslaughter. Murder is when a person kills another person with malice aforethought. Malice aforethought is one of the six principals of criminal liability that the prosecution must prove for someone to be convicted of murder. The principals of criminal liability are as follows: ? The killing was

unlawful: this is about if the killing of the person was lawful or not, such as a soldier killing an enemy soldier in battle which is lawful.

? The accused was a person over the age of discretion: this means that only a person over the age of discretion (10 years of age) can commit the crime of murder. ? The victim was a human being. ? The accused was of sound mind: this means that for the crime to be murder, the accused must have been sane at the time of committing the act. The victim's death was caused by the accused: there must be a causal link between the action/s of the accused and the death of the victim.

? Malice Aforethought: malice aforethought is where the accused must have had the intention of committing the crime (mens rea). For malice aforethought to exist, the accused must have had one of the following states of mind when committing to the crime: ? An intention to kill. ? An intention to assault a person making a lawful arrest, which resulted in their death. ? An intention to cause Grievous Bodily Harm (GBH). Or, ? Reckless indifference.

On the other hand manslaughter is when there is, in some situations which result in death, but where there was no intention to kill or cause GBH. A person may be charged with manslaughter if their actions fall into one of the following categories: ? The accused intentionally inflicts harm. ? The accused's actions/inactions fall below the expected level of care ? The accused's actions were unlawful. In defence to the charge of murder the accused could use one of the following defences: ? Self-defence: to be acquitted of murder the accused must prove he/she: ? ad the belief that it was necessary to act to defend themselves or another person.

? had reasonable grounds for this belief. ? Duress: duress is where a person committed murder while under the impression that if they did not commit the crime they or someone else would be seriously harmed. ? Mental Impairment: the accused was unable to understand the consequences of their actions or was beyond reason. III.

In the Domaszewicz trial, outline the role of the police throughout the whole episode. Detail the key arguments/evidence of the defence and of the prosecution. The role of the police throughout the Domaszewicz case was as follows: ? To investigate the suspicious death of Jaidyn Leskie. ? To question Mr.

Domaszewicz, the prime suspect. ? Breath-test Mr. Domaszewicz when he was pulled over. Evidence/Arguments for the Prosecution. ? Greg Domaszewicz collects Jaidyn from his mother Bilynda Murphy early in the afternoon. ? Ms Murphy calls Mr.

Domaszewicz at his house about 4. 00 p. m. and is told Jaidyn is about to be showered. ? Between 5. 30 and 7.

40 p. m. telephone calls to Mr. Domaszewicz's home are not answered.

At 12. 30 a. m. neighbours who live opposite Ms Murphy allege they see Mr. Domaszewicz's car stop outside her house.

? At 2. 00 a. m. Ms Murphy calls Mr. Domaszewicz and asks him to collect her from Ryan's Hotel in Morwell. ? Around 2.

00 a. m. a severed pig's head and stones are thrown at Mr. Domaszewicz's house. ? Between 2.

20 and 2. 40 a. m. Mr Domaszewicz picks Ms Murphy up in his car and they drive to his house. On the way he says Jaidyn is in hospital with burns.

? At 3. 20 a. m. Mr.

Domaszewicz drops Ms Murphy at her home. ? At 3. 35 a. . Mr. Domaszewicz is breath-tested by police and says nothing about an abducted child.

? At 5. 00 a. m. Mr. Domaszewicz drives to Ms Murphy's home and tells her Jaidyn has been abducted. Evidence/Arguments for the Defence.

? A time, place, manner or reason for the death of Jaidyn had not yet been established. ? Jaidyn's body was found on New Year's Day 1998, in a sleeping bag, weighted down by a crowbar, almost six months after Jaidyn's disappearance. ? DNA testing of the sleeping bag suggested that it was in the dam for no more than two months. According to senior defence counsel at the trial, Mr. Colin Lovitt QC, there was insufficient time for Mr.

Domaszewicz to take Jaidyn's body to the Blue Rock Dam where he was found, and return in time to inform Ms Murphy of the disappearance.

? The police maintained that he had fallen in the water when he dumped the body, which explained his wet wallet and money found by the police. If this were the case, he would have had to return home and change his clothes before going to Ms Murphy's home. ? Jaidyn's blood was not found in Mr. Domaszewicz's house or car. A concern to the police was Mr.

Domaszewicz's statement to Jaidyn's mother that Jaidyn was in the hospital. Mr. Domaszewicz claimed that this was a joke. ? Mr.

Lovitt said that he was known for his practical joking. IV. Do you think the accused should have been allowed to remain silent at the trial? Explain. The right to silence is a right that everyone has that will help some people from saying things that they shouldn't, when being questioned by the police the only questions that you have to answer are, " what is your name? " and " where do you live? other than that you do not have to answer anything. The police are supposed to tell you that you have the right to remain silent along with the other rights that you have. No, I do not think that the accused should be able to remain silent at the trial, because at the trial that is where all the truth should come out and if the accused is able to stay silent during the trial then there is no chance to get the total truth, and in trial the accused is sworn in and must tell the truth and in statements they may lie and only tell the truth if found out.

V. Why do you think bail was not granted in this case? When a person is charged with a serious offence, the police have two choices, one is to release the accused on bail until the time of the trial, or if there is too much of a risk that the accused will not turn up for the trial then the police can ask a bail justice and/or the Magistrates' Court to remand the accused in custody. Bail is the release of a person from legal custody on the understanding that they will appear at their hearing or trial. Bail can be granted by a senior police officer, a bail justice, a Magistrates' Court registrar or a court (usually the Magistrates' Court).

A bail justice is a person who has been appointed to deal with bail applications. Bail is usually granted because of the fact that the legal system says that everyone accused of a crime is to be perceived innocent until proven guilty. Bail may be refused: ? Where the accused person is charged with murder, treason or drug trafficking ? If the accused person is in custody for some other offence ? If the accused person is in custody for failing to answer bail ? If the court is satisfied that there is an unacceptable risk that the accused person, if released on bail, would: ? Fail to answer bail ? Commit an offence whilst on bail ? Endanger the safety or welfare of members of the public ? Interfere with witnesses ? Obstruct the course of justice, either in relation to him/herself or to others. Bail was not granted to Mr. Domaszewicz because he was charged with murder and because of the type of crime that he was accused of. VI.

Explain the process of a committal hearing. Committal hearings are held in the Magistrates' Court before a case is tried in the County Court or Supreme Court. Their purpose is to find out if a prima facie case exists, that is, whether the police evidence is of sufficient weight to support a conviction. If there is enough evidence to support a conviction then the accused then goes to trial.

Under the amendments, preparation of a hand-up brief (where evidence is presented in written form) is the norm. Committal hearings can have a number of stages. ? Special Mention hearing In the hearing the court sets a timetable for the proceedings. If the accused pleads guilt to all charges then the magistrate commits the accused to trial in the County or Supreme Courts

based on the evidence in the plea brief (a summary of charges and evidence).

If the defendant does not plead guilty or does not enter a plea, then the prosecution must prepare a hand-up brief containing all the evidence, including witness statements, interview transcripts, documents, photos and a list of exhibits. ? Committal Mention Hearing The defendant receives the hand-up brief prior to this hearing and both parties then submit a direction notice indicating their intention to question witnesses or seek an adjournment. VII. Do you think the double jeopardy rule should be abolished? Discuss In my opinion the rule on double jeopardy should be abolished because although it protects the innocent from being prosecuted, it also protects criminals that have been let of for that crime from being tried again if new evidence has come up linking them to the crime.

The double jeopardy rule should only be abolished with strict guidelines which ensure that the reason that it was first installed for still applies (to protect the innocent). One way that we could do this is by not completely abolishing the double jeopardy rule, instead just change it so that the double jeopardy rule still applies but with one small change, that a person acquitted of an indictable offence can only be re-tried if there is new evidence that connects the accused to the crime unquestionably. VIII. Discuss the outcome.

Was justice done? Give your opinion on the events and point out any inconsistencies/problems surrounding the case. In my opinion justice was not done, because after the trial Bilynda Murphy, the mother of Jaidyn, ask for a full inquest to be held into the death of her son, to try and find out what



happened to him, and in this inquest it was found that Greg Domaszewicz, although found innocent of his murder, was said to have played some part in the child's death, if not being the direct cause of it. Being the last person to see Jaidyn alive, and to have left Jaidyn alone in his house, and then saying that he had been abducted, Greg Domaszewicz should have been able to help police find out what happened to Jaidyn. Mr.

Domaszewicz while taking Ms. Murphy home from the Ryan's Hotel, he told her that Jaidyn is in hospital burns, which was played off as a joke by Mr. Domaszewicz and his lawyer, but what person in their right mind would make a joke like that to a mother who is clearly intoxicated, that statement was not a joke, that was Mr. Domaszewicz trying to make up a plausible story to use as a cover-up for his crime, but when he saw that that story wasn't a plausible one, he decided to make up another story, about Jaidyn being abducted.

And the Pig's Head group was a likely group to set up, since they, on the night of the crime, threw a pig's head through the window of Mr. Domaszewicz's house. But although the story might have been good in theory it was not so good in real life, because when they were questioned about the disappearance of Jaidyn Leskie they admitted completely about throwing the pig's head through the window but strongly denied that they had anything to do with the disappearance of Jaidyn, and said that they only threw the pig's head through the window of Mr. Domaszewicz's house but did not enter the house at all, and this was supported by the evidence, because no evidence was found that suggests, even in the slightest, that someone entered the house through the broken window. The defence argued

that Mr. Domaszewicz could not have made it to the Blue Rock dam to dump the body, and then come back to tell Ms.

Murphy that he son was missing, but how does that defence argue about his pants being wet from the waist down and his wet wallet that was handed to police when Mr. Domaszewicz was pulled over for a breath-test. All the evidence was there but was not acted upon. Although the case was weak, there was still evidence linking Mr. Domaszewicz to Jaidyn's death and after the inquest it showed that he did play a part in the death of the child, he was the last to see Jaidyn, he was left in his house, if this was not murder then he should get charged with something because, he may not have been the direct cause of the child's death but he most likely played a part in it.