



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case no: 039/10

MOEGAMAT YUSUF ISAACS

Appellant

and

THE STATE

Respondent

Neutral citation: *Isaacs v S* (039/10) [2010] ZASCA 87 (31 May 2010)

CORAM: Navsa, Bosielo JJA and Seriti AJA

HEARD: 5 May 2010

DELIVERED: 31 May 2010

SUMMARY: Murder charge — State's case built on circumstantial evidence — items on circumstantial evidence to be viewed cumulatively — evidence as a whole must prove accused's guilt beyond reasonable doubt.

ORDER

On appeal from: Western Cape High Court, Cape Town (Ndita J sitting as court of first instance).

The appeal is dismissed.

JUDGMENT

NAVSA JA (Bosielo JA and Seriti AJA concurring)

[1] On Sunday 6th July 2003, Priscilla and Michael Heneke, the doting maternal grandparents of eight year-old Sasha Leigh Crook, watched their granddaughter play in and around their house at 47 Adrian Road, Ottery, Cape Town. They could not have imagined that later that day she would disappear and that eight days thereafter, during the early hours of Monday 14 July 2003, her body would be discovered in the vicinity of a rubbish dump in Muizenberg.

[2] The appellant, Moegamat Yusuf Isaacs, was convicted in the Cape High Court (Ndita AJ, sitting with two assessors) of Sasha Leigh's murder. The conviction was based on circumstantial evidence and on statements he had allegedly made to his mother, Mrs Fatima Isaacs, in the presence of police. The question in this appeal, which is before us with the leave of this court, is whether the State had proved beyond reasonable doubt that the appellant had murdered Sasha Leigh.

[3] At material times the appellant, together with his wife and mother, resided right next door to Sasha Leigh's grandparents, at 45 Adrian Road, Ottery. He is the last known person to have seen her alive. It is common cause that some time after lunch on that fateful Sunday, Sasha Leigh had gone over to the front of the

appellant's house, after she had spoken to him over the low fence separating the two homes, and that she had then followed him through a gate into the backyard.

[4] According to the appellant, he had been under the influence of dagga and, although he had seen Sasha Leigh enter the yard behind him, he immediately went to sit at a table in the yard where he rested his head and had dozed off. He testified that he had no idea of what had happened to her thereafter. The appellant testified further that his mother's prospective tenant had come to drop off a refrigerator at the flat at the back of their house and that he had interacted with this person at about the time that Sasha Leigh had gone missing and that this had occurred before 14h00. According to the appellant he had departed the scene before 14h00 to be at a friend's house to watch a television movie scheduled to start at 14h00. This part of his testimony was directed at showing that he could not have murdered Sasha Leigh. Put differently, there had been no opportunity for him to have committed the foul deed - at material times he had been in the company of others. As will become apparent it was an alibi defence of sorts.

[5] From the time that she had entered the yard at house no 45, Sasha Leigh was not seen in public again until the discovery of her body on 14 July 2003 by Mr Daniel Geduld, an employee of a private security firm who was patrolling the veld in an area known as Pelican Heights in Muizenberg. By then dogs had torn at the face and neck of the body lying in the vicinity of a rubbish dump and near a sports field.

[6] As will be seen in due course, the degree of decomposition of the body is relevant, as is a tiny fragment of a pressed wooden board having the appearance of a marble finish (of the kind found on kitchen surfaces), that the police allege they had found between the clothes that covered Sasha Leigh's body. The assessment of objective evidence is of crucial importance to a determination of the appellant's guilt.

Sunday 6 July 2003

[7] It is necessary to attempt to get as full a picture as possible of what had occurred on the Sunday on which Sasha Leigh had disappeared. In doing so, the evidence of neighbours and the appellant's own evidence concerning his movements during that day will be dealt with.

[8] Sasha Leigh had spent the week preceding Sunday 6 July 2003, which was part of her school holidays, at her grandparents' home. It appears that her mother regularly allowed her to spend time with them. Thus, she was not a stranger in the neighbourhood. It is common cause that Sasha Leigh often played in the neighbourhood and had befriended, amongst others, the appellant's two year-old niece Ashiema, who at one stage lived at *her* grandmother's home, next-door.

[9] On that Sunday morning, upon her return from Church with her grandmother, Sasha Leigh played in and around the house. Her grandmother prepared lunch whilst her grandfather watched television. They saw her intermittently. She had repeatedly remonstrated with her grandmother because she was unhappy that the latter was preparing steak, vegetables and roast potatoes for lunch. She extracted an undertaking from her grandmother that her preferred meal of roast chicken would be on the menu for supper that night. Sasha Leigh and her grandparents were all conscious of time as they were all scheduled to attend a party at 15h00.

[10] After lunch, in anticipation of attending the party, Sasha Leigh dressed herself in the tracksuit in which her body was later discovered. According to her grandmother the first time she discovered that Sasha Leigh was missing was after 14h00. That time largely accords with what neighbours testified was the time they saw Sasha Leigh enter the premises next door.

[11] Sasha Leigh's grandmother immediately went searching for her granddaughter in the neighbourhood. Her first port of call was the house next door, house no 45. The windows and the front door were closed. It appears that no-one was home. She then went to house no 43 and was told that Sasha Leigh was not there. She looked at the house directly across the street, where Mrs Antoinette Jacobs and her three daughters were having tea on the front porch. An enquiry directed at them elicited the answer that Sasha Leigh had been seen a short while earlier at the appellant's home and that she had entered the backyard through a side gate.

[12] Sasha Leigh's grandmother went back to house no 45 and this time approached the side-gate leading to the back yard. The gate was made of steel and one could not see through it. She called out her granddaughter's name and the appellant came to the gate. He told her that Sasha Leigh was not there.

[13] When Sasha Leigh's grandmother testified it was never put to her that the appellant had told her that Sasha Leigh had been there earlier. In his evidence in-chief the appellant did not testify that he had done so. It was only later, during cross-examination that he said he had told her that Sasha Leigh had been there earlier. That part of his evidence was in response to the prosecutor putting to the appellant that it could reasonably be expected of him to have told Sasha Leigh's grandmother about her earlier presence in the yard. It was clearly an afterthought and was brought about by pressure from the cross-examiner.

[14] A continued frantic search by Sasha Leigh's grandparents, in the immediate neighbourhood and beyond, during the remainder of that Sunday, proved fruitless.

[15] Ms Martina Jacobs, who, after lunch on that Sunday, had been drinking tea on the porch with her mother and two siblings saw the appellant and Sasha

Leigh converse over the fence and then saw the latter cross over to the front of the appellant's house. Ms Jacobs saw Sasha Leigh follow the appellant towards the backyard. She did not see Sasha Leigh re-emerge. She was the one who had told Sasha Leigh's grandmother that she had seen Sasha Leigh at house no 45.

[16] According to Ms Jacobs, a short while after Sasha Leigh's grandmother had left house no 45, the appellant emerged and stood at the front of the house, wearing a white t-shirt. He went back into the yard, came out a short while later wearing a jersey and proceeded to walk down the road.

[17] During the time that she and the other members of her family had been on the front porch Ms Jacobs did not see a bakkie arrive at the appellant's house to offload a refrigerator. She, her mother and two sisters remained on the porch until approximately 15h00. Although Ms Jacobs conceded that she might have missed seeing the bakkie, she was adamant that she would have noticed a refrigerator being offloaded.

[18] Mrs Antoinette Jacobs, who had been standing on the front porch with her daughters that Sunday afternoon, had noticed that when the appellant left his house that afternoon, after talking to Sasha Leigh's grandmother, he had failed to greet as he usually does. The last time Mrs Jacobs saw Sasha Leigh was when the latter was walking behind the appellant on the front porch of house no 45. She didn't see a white bakkie offloading a refrigerator during the time she was on the front porch.

[19] The appellant, who at the time of the incident in question was 26 years old, testified that he had a drug problem and that he owed drug dealers a large sum of money and had been threatened by them. The threats were directed at his family. This part of the appellant's evidence was directed at showing that there was a possibility that Sasha Leigh had been snatched by the drug dealers

in the mistaken belief that she was the appellant's two year-old niece Ashima. This is an aspect that will receive further attention later in this judgment.

[20] At the time of Sasha Leigh's disappearance the appellant had been living with his mother and wife in the main house. They had recently moved from the flat at the back of the yard. The appellant's mother's prospective tenant had been given the keys to the flat. According to the appellant he did not himself have keys to either the flat or the main house. His wife and mother kept a set of keys to the main house.

[21] On that disastrous Sunday the appellant awoke at 11h30. His wife had already gone to work and his mother was busy in the kitchen. The appellant went over to his friend Kashief's house. Kashief lived six houses away from him, in the same street. The appellant and Kashief smoked dagga at the latter's house. At approximately 13h00 the appellant went home for lunch. On his way home he had seen the Jacobs family on the front porch of their home. Upon his arrival he discovered that his wife and mother were not home and that he had been locked out. He sat in the driveway awaiting his mother's return.

[22] The appellant testified that whilst he sat in the driveway Sasha Leigh approached and spoke to him over the fence. She told him that she was getting ready to go to a party and that she was waiting for her grandmother to get dressed. Sasha Leigh then came over to their property and asked him if Ashiema was there. He told her that Ashiema and her mother had moved and no longer lived there. He got up and walked into the backyard and she 'probably walked behind me and played into the yard'.

[23] According to the appellant he then took off his top and went to sit at a table in the yard. He laid his head on the table and, probably because he had been under the influence of dagga, dozed off. Suddenly, he heard Sasha Leigh's grandmother call out her name. He got up, went to the gate and, upon enquiry

from her, first looked briefly into the yard and then told her that Sasha Leigh was not there. He suggested that she look for Sasha Leigh at another neighbour's house. He went back into the yard and five minutes later the new tenant, accompanied by another person, arrived with a bakkie to offload a refrigerator. He spoke briefly to the new tenant who departed shortly thereafter.

[24] After the tenant's departure the appellant put his top back on. Tired of waiting for his mother, he left and went back to Kashief's place. The appellant told Kashief he had not had lunch, whereupon the latter sent two of his friends to buy food. The appellant was adamant that all this had occurred before 14h00, because the television movie scheduled to begin at that time had not yet started. They watched television until his wife hooted outside. He accompanied his wife to the Muizenberg flea-market where they had lunch.

[25] The extent to which the dagga affected the appellant's awareness and the quality of his evidence are aspects that will be dealt with later in this judgment. The post-mortem findings which bear on what might have happened to Sasha Leigh on that Sunday will also be referred to in some detail later on.

Subsequent events

[26] Sasha Leigh's disappearance and the discovery of her body were widely publicised. First there had been pressure on the police to find her and then to find her murderer.

[27] When the police arrived at the scene where Sasha Leigh's body was discovered they found certain items, which they collected as exhibits for forensic testing and which were referred to in evidence at the trial. They obtained the tiny fragment of a pressed wooden board, of the kind used in kitchen tops, and referred to earlier in this judgment, in-between the items of clothing that covered Sasha Leigh's body. In the vicinity of Sasha Leigh's body they found two white

bags of the kind used by builders. In one of the white bags they found traces of Sasha Leigh's DNA. The police found similar bags at the appellant's house during a search conducted there. According to the appellant his late father, who had been a builder, had used such bags. It is common cause that such bags are freely available commercially. The bags found at the scene could not be directly linked to the appellant.

[28] It is necessary to record that the place at which Sasha Leigh's body was found is frequently used by members of the public to dump refuse. A set of motor vehicle tyre tracks leading to the body was seen by the police. They decided to take a mould of the tyre tracks for possible linkage to a motor vehicle that might have been used to transport the body. The police did not make moulds of other tyre tracks in the vicinity, which are clearly visible from photographs taken by the police photographer.

[29] During the afternoon of 14 July 2003, the day on which Sasha Leigh's body was discovered in Muizenberg, the police sought and obtained a search warrant entitling them to search the appellant's house. The police forensic team assisted in obtaining exhibits from the house for possible use in their investigations. They conducted the search whilst the appellant, his wife and his mother were home. A garden shed with two entrances, located in the backyard of the appellant's house was searched and the police found a wooden board which had a marble finish and which could possibly be linked to the fragment found on Sasha Leigh.

[30] On the same day on which the police had conducted the first search they confiscated the appellant's wife's motor vehicle and decided to arrest him. He was taken into custody and transported to the Parow Police Station.

[31] Two days later, on 16 July 2003, the police obtained a second search warrant to search the premises where the appellant lived. This time they

conducted a search of the garage on the premises, which they had omitted to do on the first occasion. The appellant's mother was home when the second search was conducted. This time, however, they took as exhibits swabs and filter paper samples of what appeared to be blood they had discovered on a plastic shopping bag in a paint container in the garage. Part of a white T-shirt was found under a plastic bag in the paint container. The police also found a piece of pink cloth under a plastic bag in the paint container. Other objects were also seized by the police. On the same day they confiscated a second motor vehicle belonging to the appellant's mother to enable them to conduct forensic tests.

[32] After Mrs Fatima Isaacs, the appellant's mother, had agreed to release the car to the police she accompanied Captain Pragasan Naidoo to the Serious and Violent Crimes Unit's offices at Bishop Lavis. Mrs Isaacs intended to visit the appellant and Captain Naidoo required a statement from her in relation to the use of her motor vehicle. According to Captain Naidoo, upon their arrival at Bishop Lavis they passed the office of the investigating officer, Inspector Anna Cilliers. When Mrs Isaacs saw the appellant she immediately went to him. Mrs Isaacs and her son both burst into tears and hugged each other. Captain Naidoo testified that Mrs Isaacs had asked the appellant whether he had killed Sasha Leigh and he had responded in the affirmative. She asked him how he had done it and he replied: 'I choked her'. Inspector Cilliers confirmed this aspect of Captain Naidoo's evidence and also that he had instructed her to take notes of what had been said.

[33] At the time of the alleged exchange, Director Joseph Makhura, a member of SAPS, was also stationed at the Serious and Violent Crime Unit in Bishop Lavis. He too, confirmed that he had overheard the exchange between Mrs Isaacs and the appellant referred to above.

[34] According to Captain Naidoo he later took Mrs Isaacs to his office and asked her if she was willing to make a statement about the exchange between

her and the appellant and she agreed. He proceeded to write the statement and read it out to her. She hesitated for a minute before signing it. The statement was written in English and was produced at the trial.

[35] The appellant and his mother, whilst admitting that they had cried and comforted each other, both denied the exchange in question. Mrs Isaacs claimed that she was illiterate. She testified that she could understand some English but was not proficient in that language. She testified that as far as she was concerned, the written statement she had signed related only to the use of her motor vehicle by the appellant

[36] The appellant's former wife (they were divorced after his arrest), Ms Fagmeda Isaacs, testified and supported his version of events of her interaction with him on the Sunday on which Sasha Leigh had disappeared. She confirmed that he had worn a white t-shirt on that day. She testified further that he did not have keys to either the flat or the main house. Ms Isaacs was aware of the appellant's drug problem.

[37] Mr Ashaan Williams, the prospective tenant for the flat at the back of the appellant's house, testified in support of the appellant's case. He confirmed that he had delivered a refrigerator at the appellant's home on a Sunday but could not recall the date. He testified that he had been accompanied by two other persons and that he had encountered the appellant in the yard leading to the flat. Mr Williams could initially not recall the type or colour of the bakkie which he had used to deliver the refrigerator. However, after an adjournment during the trial those particulars came to him. According to Mr Williams, he had delivered the refrigerator between 14h00 and 15h00 that Sunday. He was adamant about this. Importantly, he initially testified that Mrs Fatima Isaacs had written out his rental receipt. When it was put to him that she had claimed to be illiterate he responded by stating he had not meant that she had written it herself. He sought to excuse his initial answer by stating that he had misunderstood the question. Under cross-

examination, Mr Williams stated that he had not wanted to be in court and was there only because he had been subpoenaed. He went on to state the following:

'I didn't want to get involved, because it's been such a while back that I don't remember everything as in detail.'

This is contrary to an earlier part of his evidence that he was testifying because he had a contribution to make.

The post-mortem report, the testimony of the pathologist and other expert evidence

[38] Dr Denise Lourens conducted the post-mortem examination on Sasha Leigh. She testified that the body was in an early state of decomposition. She found a penetrating incised wound which indicated a stab wound caused by a weapon like a knife. This wound was situated over the right anterior lower neck. The right common carotid artery was completely transected with the well defined clear lines or edges, in keeping with a stab wound or a cut.

[39] According to Dr Lourens, the index of suspicion of throttling or strangulation is very high but, because the flesh in the region of the neck had been eaten away by animals, probably dogs, potential evidence in this regard in that area of the body had been lost. However, there was evidence of throttling or strangulation in the form of petechial haemorrhages in other parts of Sasha Leigh's body, particularly in the heart and lungs. Petechial haemorrhages are seen most frequently where there is anoxic damage, due to a lack of oxygen.

[40] Another important post-mortem evidential feature is that Sasha Leigh's body showed scalp bruising. She had sustained two types of brain haemorrhages indicating blunt trauma to the head. Significantly, she was alive when it was inflicted. There would have been no sign of any haemorrhage had she already been dead before the blunt trauma to the head.

[41] Dr Lourens, in dealing with her estimation of the time of death, made several points. First, she dealt with traces of food found in Sasha Leigh's stomach. She took into account that Sasha Leigh had consumed steak and vegetables for lunch. Had Sasha Leigh been killed immediately after her disappearance it could be expected that one would see remnants of her last meal, particularly of the steak. Red meat like steak would show individual fibres that would be easily identifiable. According to Dr Lourens one could expect such traces up to four hours after the meal. No such traces were found in Sasha Leigh's stomach.

[42] In relation to decomposition of the body and its significance, as far as time of death is concerned, Dr Lourens had the following important comments:

- (i) Considering the flaccidity and body temperature alone, the indications are that Sasha Leigh had been dead for at least 36 hours;
- (ii) However, the temperature to which the body was exposed and the conditions under which it was kept are very important features. Airflow, open windows and general exposure to the elements are all relevant factors. If, for example, she had been kept in a freezer, that fact alone would impact on an accurate assessment of the time of death.

[43] In Dr Lourens' view, the lack of insect activity on the body indicated that Sasha Leigh had been kept in a hermetically sealed place for a period of time before being left in the field and could have been kept in a freezer. There had been testimony about a freezer in the appellant's house.

[44] Captain Frans Maritz, a ballistics expert employed by SAPS, testified in support of the State's case. At the commencement of Captain Maritz's evidence, counsel representing the appellant readily admitted his expertise. Captain Maritz testified convincingly that the tests he had conducted proved that the fragment found on Sasha Leigh matched the board that had been found in the shed behind the appellant's house. The tests he had conducted showed that it had broken off

from the board. It is uncontested that the fragment matches the mock-marble surface of the wooden board in appearance and colour. In heads of argument filed in this court, by the appellant's counsel's predecessor, the admission concerning Captain Maritz's expertise was sought to be withdrawn. The appellant's present counsel rightly did not persist in this submission.

Developments during the trial and admissions made in terms of s 220 of the Act

[45] At the commencement of the trial appellant's counsel said the following on his behalf:

'To a large extent he chooses to exercise his right of remaining silent at this stage, but is prepared to give a short explanation through me of his defence to the charges. Inasmuch as he is charged with on 6 July 2003 having committed the offences, his defence will be that of an alibi.

...

The accused's defence will be . . . that at the times when he is alleged on that day to have in some way abducted or murdered the deceased, he was with a friend of his one Kashief from two o'clock in the afternoon.

We will also seek to show that if a murder of the young lady in question took place in the manner alleged by the State, we seek to show that it is not possible that that could have happened.'

[46] When the first witness, Ms Priscilla Heneke, was cross-examined the following was put to her by appellant's counsel:

'[T]he first thing that I must put to you is that the accused doesn't remember perfectly what was happening or what happened on that particular afternoon, because he had partaken of dagga.'

[47] As stated above, at one stage during the trial, it was suggested that drug dealers to whom the appellant owed money might have snatched Sasha Leigh, mistaking her for the appellant's two year-old niece, Ashiema. There were tentative suggestions, during the cross-examination of some members of the SAPS that they had conspired to build a case against the appellant. It was built on speculation and suggestion without any evidential foundation.

[48] A few days into the trial the appellant made certain admissions in terms of s 220 of the Criminal Procedure Act 51 of 1977 (the CPA) . The most important are as follows:

- (i) DNA testing proved that the pink cloth found in the paint container in the appellant's garage had traces of Sasha Leigh's genetic material.
- (ii) A swab and a filter paper that had been applied to what appeared to be blood on the plastic Pick 'n Pay bag found in the paint container were tested and similarly proved to have traces of Sasha Leigh's genetic material.
- (iii) A portion of the white t-shirt found in the paint container and which also appeared to have blood on it, was also found by DNA testing to have traces of Sasha Leigh's genetic material.

[49] It is necessary to record that neither the appellant's mother's car nor his wife's could be positively linked to the tyre tracks leading up to Sasha Leigh's body.

[50] Even though there were suggestions of a police conspiracy to implicate the appellant neither he nor any other member of his family expressly disavowed any knowledge of the paint container and its contents. Put differently, none of them, at any stage, protested that the container or its contents were foreign items, unknown to them. It was not contested that traces of paint evident in the container were of a similar colour to the outer wall of the appellant's house.

Conclusions

[51] In addition to facing a murder charge the appellant had also been charged with the rape of Sasha Leigh. He was rightly acquitted, in terms of s 174 of the CPA, on the latter charge. In relation to the count of murder, the court below carefully considered the contact between the appellant and Sasha Leigh on the day of her disappearance, the forensic evidence and the alleged exchange between him and his mother.

[52] The court below, having regard to Dr Lourens' evidence, took the view that the time frame during which Sasha Leigh disappeared on that Sunday was less crucial than suggested on behalf of the appellant.

[53] Ndita J, in the judgment of the court below, rightly took into account that it was only after several key witnesses had testified that the appellant revealed that Sasha Leigh had followed him into the backyard. As pointed out above this was only done during a late stage under cross-examination.

[54] It is correct, as noted by the court below, that in a police bag containing the fragment of the chipped board referred to earlier, there was an additional piece which could not be conclusively accounted for. This, however, does not detract from the fact that the crucial fragment in question was undoubtedly proved to have been taken off Sasha Leigh's clothes and linked to the board found in the shed at the appellant's house.

[55] The DNA testing and the results referred to in para 48 above were also taken into account by the court below.

[56] In dealing with the statements allegedly made by the appellant to his mother, the court below had regard to the quality of the testimony of the three members of the SAPS referred to above. It also had regard to the contemporaneous note made by Inspector Cilliers on the instruction of Captain Naidoo and which, in relation to Sasha Leigh's entry into the backyard, read as follows:

'Ek het haar laat kom.'

This, according to the State, is what was said before the appellant had told his mother that he had strangled Sasha Leigh.

[57] The court below found Inspector Cilliers a credible witness and, in my view, there is no basis to quarrel with that conclusion.

[58] The court below had regard to the fact that Inspector Stoffels, a policeman who, although he was not present during the alleged exchange between the appellant and his mother, testified that he had seen the two of them around that time and that neither had been emotional as testified to by his colleagues or indeed by the appellant himself and his mother. The court rejected Inspector Stoffels' evidence but found the evidence of his three colleagues to be acceptable.

[59] Whilst Director Makhura was in my view, a contradictory and unimpressive witness, I am unable to conclude that the court below was wrong in its conclusions concerning the quality of the evidence of Captain Naidoo and Inspector Cilliers. In contradistinction, the court below rightly found the evidence of Mrs Fatima Isaacs unsatisfactory in material respects. Like any mother, she was protective of her child. It is true, as noted by the court below, that her claim of illiteracy was dealt a blow by the evidence of Mr Ashaan Williams, who initially testified that she had written out a receipt, which evidence he later unconvincingly, sought to retract. It is also evident that although she asserted that she did not really understand English she repeatedly lapsed into that language when questioned, without any ostensible difficulty.

[60] In my view, the court below correctly found the appellant an unimpressive witness. He was evasive and contradictory. The appellant's counsel's warning to the very first witness that his client's memory was hampered by the fact that he had been under the influence of dagga at the time of Sasha Leigh's disappearance, was contradicted by the detailed nature of his evidence. One would not only expect his memory to have been affected but his perceptive powers at material times as well. He testified that he knew what time he had left Kashief's house on the first occasion on Sunday 6 July 2003 because of the time

indicator on the latter's video machine. His explanation that he had no proper recall of what had occurred until his detention and that during the time of detention his memory cleared and improved is unadulterated nonsense. A further negative feature of the appellant's evidence flows from his responses under cross-examination when he was questioned about time frames on the Sunday in question. A reading of the questions and answers will reveal that he attempted to tailor his answers to evidence adduced by the State and that he was not relying on his memory but was resorting to reconstruction. The appellant's case mutated during the trial, from the suggestion that drug dealers might have been responsible for Sasha Leigh's disappearance to the suggestion of a police conspiracy. The court below pointed out that the disclosure that Sasha Leigh had followed him into the yard came very late during the trial. The disclosure itself evolved from being speculative to being positive.

[61] Courts should always consider the cumulative effect of items of circumstantial evidence. In Schwikkard and Van der Merwe *Principles of Evidence* 3 ed (2002) p 537-538 the learned authors point out that this approach can also be put as follows: The state must satisfy the court, not that each separate item of evidence is inconsistent with the innocence of the accused, but only that the evidence taken as a whole is beyond a reasonable doubt inconsistent with such innocence.

[62] See also in this regard *S v Ntsele* 1998 (2) SACR 178 (SCA) at 182D-F where the following appears:

'Ons reg vereis insgelyks nie dat 'n hof slegs op absolute sekerheid sal handel nie, maar wel op geregverdigde en redelike oortuigings — niks meer en niks minder nie (*S v Reddy and Others* 1996 (2) SASV 1 (A) op 9*d-e*). Voorts, wanneer 'n hof met omstandigheidsgetuienis werk, soos in die onderhawige geval, moet die hof nie elke brokkie getuienis afsonderlik betrag om te besluit hoeveel gewig daaraan geheg moet word nie. Dit is die kumulatiewe indruk wat al die brokkies tesame het wat oorweeg moet word om te besluit of die aangeklaagde se skuld bo redelike twyfel bewys is (*R v De Villiers* 1944 AD 493 op 508-9). Dit is inderdaad wat die Verhoorhof in hierdie geval gedoen het.'

[63] In the oft cited case of *R v Blom* 1939 AD 188, this court set out two cardinal rules in relation to inferential reasoning. The first is that the inference sought to be drawn must be consistent with all the proved facts. The second is that the proved facts should be such that they exclude every reasonable inference save the one sought to be drawn.

[64] Following the approach set out in the authorities that appear above and considering the totality of the evidence one is driven to the conclusion that the court below was correct in finding that the appellant was guilty of Sasha Leigh's murder. What follows are in my view the material parts of the evidence viewed cumulatively, that compel the conclusion that the court below cannot be faulted:

- the appellant was the last known person to see Sasha Leigh alive.
- it is undisputed that Sasha Leigh had followed the appellant into the backyard.
- when Sasha Leigh's grandmother enquired whether she was there the appellant had not offered to look to see if indeed she was still in the yard.
- the fragment of wood found on Sasha Leigh's clothes and the perfect match with the wooden board found in the shed in the appellant's backyard point an accusing finger at the appellant.
- the items found in the paint container in the garage are similarly damning, particularly when one takes into account that the appellant had not disclaimed any of the items or the container.
- the statements made by the appellant to his mother, that were correctly admitted and accepted by the court below, viewed contextually amount to a confession,¹ and are consistent with the evidence of the pathologist and with the evidence of the Jacobs family that Sasha Leigh appeared to have

¹ The challenge to the statements allegedly spontaneously made, were not in relation to their admissibility, but rather that they had not been made at all. They were made by the appellant not to the police but to his mother in their presence. For a discussion on whether or not a statement amounts to a confession see D T Zeffert, A P Paizes, A St Q Skeen *The South African Law of Evidence* (2003) pp 471-474. In the present case the distinction between admissions and confessions is not important.

followed the appellant into the yard. The recorded statement by Inspector Cilliers reflecting an invitation by the appellant to Sasha Leigh to enter the yard is consistent with that evidence. The confession is made all the more reliable thereby.

- had Sasha Leigh re-emerged from the appellants backyard, members of the Jacobs family would have been in the best position to see it. None of them saw her re-emerge.
- the suggested conspiracy against the appellant by the police is ludicrous. It would mean that the police, in anticipation of the discovery of the body, would have had to plant the wooden fragment which they would have had to acquire from the shed behind the appellant's house by stealth. In addition, they would have had to plant the items in the container in the garage and plant Sasha Leigh's DNA material on them. The investigating officer, Captain Naidoo, the forensic team and possibly the pathologist would have had to be part of such a conspiracy. It is so far fetched so as to be rejected out of hand.
- The unsatisfactory nature of the appellant's evidence completes the mosaic.

[65] It is true that there are some pieces of the puzzle of the precise nature of Sasha Leigh's death that will always be missing. However, in my view, in the light of all of the factors set out above it is safe to conclude that the appellant was responsible for her death. In my view, the state proved beyond reasonable doubt that the appellant murdered Sasha Leigh and the court below correctly convicted him.

[66] One further aspect remains. Counsel for the State was constrained to admit that the police investigation, particularly in relation to the collection and preservation of evidence, was flawed. Even though the search warrant in respect of the first search had a time limit one would still have expected to have included a search of the garage. Whilst the pressures under which the police operate are

appreciated it is nevertheless necessary to warn against sloppy investigation. Victims and accused persons deserve better.

[67] For all the reasons set out above, the following order is made:

The appeal is dismissed.

M S NAVSA
JUDGE OF APPEAL

APPEARANCES:

For Appellant: C Stamper

Instructed by
D A J Uijs SC Cape Town

For Respondent: C van der Vijver

Instructed by
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