

THE QUEEN v BADEN-CLAY (B33/2016)

Court appealed from: Court of Appeal of the Supreme Court of Queensland
[2015] QCA 265

Date of judgment: 8 December 2015

Special leave granted: 12 May 2016

On the morning of 20 April 2012 Mrs Allison Baden-Clay was reported missing by her husband, Mr Gerard Baden-Clay. Mr Baden-Clay told police that he had last seen his wife the previous night, when she was watching television when he went to bed. Mr Baden-Clay said that his wife had apparently gone for an early-morning walk but had not returned. Ten days later Mrs Baden-Clay's body was found by a creek under a bridge, 13 kilometres from her home. A likely cause of her death was unable to be determined by autopsy.

Mr Baden-Clay was charged with having murdered his wife. The Crown case against him was that he had killed Mrs Baden-Clay on the night of 19-20 April 2012, after a build-up both of financial pressure from his business and of emotional pressure due to an extra-marital affair he was having. Evidence in the trial included that Mr Baden-Clay had told police that the affair had ended in 2011 whereas his mistress testified that the affair was continuing in April 2012. The mistress had also become upset with Mr Baden-Clay on 19 April 2012 when he told her that Allison was to attend a seminar the following day, which she too would be attending. Mr Baden-Clay told police that he had slept soundly through the night of 19-20 April 2012, though testing of his mobile phone indicated that it had been placed on a charger next to his bed at 1:48am on 20 April. Expert evidence was given in relation to small cuts and abrasions that were on Mr Baden-Clay's cheeks, which he said were caused by his having shaved hurriedly on the morning of 20 April. The expert evidence was to the effect that one set of abrasions was likely caused by fingernails, not by a razor.

The jury found Mr Baden-Clay guilty of his wife's murder, whereupon Justice Byrne sentenced him to imprisonment for life. Mr Baden-Clay appealed against his conviction.

The Court of Appeal (Holmes CJ, Fraser & Gotterson JJA) unanimously allowed the appeal and substituted a verdict of manslaughter for the jury's verdict. (Resentencing has been postponed pending the outcome of the appeal to this Court.) Their Honours held it was open to the jury to conclude that Mrs Baden-Clay had died as a result of an injury suffered during a violent altercation with her husband and that he had then dumped her body in the creek where it was found. The Court of Appeal held however that even if Mr Baden-Clay had lied about various matters and had disposed of his wife's body, those factors did not enable a jury to infer that he had an intent to kill Mrs Baden-Clay or to cause her grievous bodily harm. Their Honours found that Mr Baden-Clay's post-offence conduct was neutral on the issue of his intent, due in part to an absence of evidence of any motive to kill his wife. A reasonable hypothesis for Mr Baden-Clay's post-offence conduct was that he had panicked upon realising he had accidentally killed Mrs Baden-Clay.

The grounds of appeal are:

- The Court of Appeal erred:
 - 1) in concluding that the evidence of the respondent's lies, disguising his wounds and his disposal of his wife's body was "intractably neutral" on the issue of intent and that the jury could not properly have been satisfied beyond reasonable doubt that the element of intent to kill or do grievous bodily harm had been proved without first considering the significance of that evidence in the context of the other evidence in the case; and
 - 2) in concluding that there was no evidence of relevant motive; and
 - 3) in concluding that a hypothesis consistent with innocence, which had not been raised as an issue at the trial and which was inconsistent with the respondent's case, was nevertheless a hypothesis which the jury were not entitled to reject.