

***R v Gardiner* [2015] SASCFC 107 (5 August 2015) – Supreme Court of South Australia (Full Court)**

‘Circumstantial evidence’ – ‘Evidence’ – ‘Expert testimony’ – ‘Grievous bodily harm’ – ‘Intent’ – ‘Murder’ – ‘Physical violence and harm’ – ‘Post-offence conduct’ – ‘Relationship evidence’

Charge/s: Murder.

Appeal Type: Application for permission to appeal against conviction.

Facts: The applicant was convicted of the murder of his domestic partner. The applicant had camped with the victim in his car in an isolated location. The victim’s body was found in the car. Medical evidence relating to the nature of the injuries and the cause of death was led at trial. The trial judge found on the basis of this evidence that the victim suffered a severe beating. There was no dispute that the injuries were caused by the applicant. The trial was concerned with whether the evidence could prove that the injuries that the applicant inflicted caused her death and whether they were inflicted with an intention to cause grievous bodily harm.

Issue/s:

1. Whether the guilty verdict was unreasonable because the evidence did not prove beyond reasonable doubt the requisite intent for murder.
2. Whether the judge misinterpreted the medical evidence in concluding that severe force was required to cause a certain injury.
3. Whether the judge misused evidence of the applicant’s post-offence conduct, such as not calling an ambulance while claiming he had.

Decision and Reasoning: Leave to appeal was granted but the appeal was dismissed.

1. There was a long history of violence in the relationship. The applicant had previously been charged with assaulting the victim. In this context and also taking into account the extent and number of injuries suffered by the victim, Kourakis CJ (with whom Blue J and Stanley JJ agreed) held that the trial judge was correct in concluding that the evidence showed beyond reasonable doubt that the applicant intended to cause grievous bodily harm.
2. The Court acknowledged that the judge did mistakenly conclude that the doctor’s evidence indicated that severe force was required to cause an injury to the victim’s liver. However, the judge did not reason from this misunderstanding to reach her conclusion. Instead, the judge reasoned that the applicant had the requisite intention from evidence of all the injuries, not just evidence of the liver injury. The judge then correctly reasoned from the nature and extent of the injuries that the applicant had intended to cause grievous bodily harm.
3. The applicant lied to various witnesses that he had called an ambulance but it had not arrived. In fact, he

did not call an ambulance. The Court found that the judge correctly used this evidence to show that he was aware how badly the victim was injured, and that his failure to call an ambulance showed he possessed the requisite intention.