

***R v Adams (No 6)* [2016] NSWSC 1565 (4 November 2016) – New South Wales Supreme Court**

‘Evidence’ – ‘Judge-alone trial’ – ‘Murder’ – ‘Physical violence and harm’ – ‘Sexual and reproductive abuse’ – ‘Tendency’

Charge/s: Murder.

Hearing: Judge-alone trial judgment.

Facts: On 27 September 2016, the accused pleaded not guilty to the murder of Mary Wallace (the deceased) on 24 September 1983. A significant part of the Crown’s circumstantial case was that the accused possessed a tendency at the time of the alleged murder to choke or strangle women in order to force them to submit to having penile/vaginal sexual intercourse with him. The Crown led evidence of three women who had alleged that they had been sexually assaulted by the accused.

Issue/s: Whether the accused was guilty of the charge of murder.

Decision and Reasoning: In reaching this decision, His Honour first listed the legal matters he took into account in reaching the verdict (see [320]-[359]). Most relevantly, Justice Button noted that it would have to be proven beyond reasonable doubt that at the time of offence the accused possessed a tendency to strangle women to cause them to submit to intercourse with him. This was for at least two reasons: (1) there was authority that tendency must be proven to the criminal standard in order to be taken into account (see the discussion of *HML v The Queen* in *DJV v R* at [30], and *R v Matonwal & Amood* at [92]). (2) In the circumstances of this case, it was agreed between parties that the alleged tendency was an indispensable intermediate fact with regard to the guilt of the accused (*Shepherd v The Queen*)(see [337]-[339]).

Justice Button then stepped through his sequential reasoning for reaching the verdict of guilty (see [360]-[493]). One of the steps in this reasoning was that His Honour found that the accused possessed a tendency to rape women and to strangle them ancillary to that crime. This was after considering the evidence of three women (see [419]-[420]).

In light of the following evidence, at [491]-[492], Justice Button held that the accused’s guilt had been proven beyond reasonable doubt:

'the proven tendency of the accused to rape and strangle women; the marked similarities between his interaction with the deceased and his interactions with women whom, I am satisfied, he had raped and strangled; the fact that the deceased has never been seen again after she was in the company of the accused; the fact that, within 48 hours of his interaction with the deceased, the accused undertook an activity relating to his boot that featured the use of a hose; the fact that hairs (which shared a reasonably rare profile with those of the deceased) were seized from the boot of his vehicle, and not disputed at trial to be from the deceased; and the fact that, on any analysis, the accused had ample time to dispose of the body'.

Justice Button concluded: 'the accused treated the deceased very much as an object, just as he had treated three other young women'.