

## ***DPP v Ristevski (Ruling No 1) [2019] VSC 165 (15 March 2019) – Victorian Supreme Court***

‘Children’ – ‘Evidence’ – ‘Physical violence and harm’ – ‘Post-offence conduct’

Charges: Murder x 1.

Case type: Ruling as to evidence.

Facts: The prosecution alleged that the accused killed the deceased at their home on the morning of 29 June 2016, put her body in the boot of her car and drove it to Macedon Regional Park where he concealed it between 2 logs in a forest. It was discovered approximately 8 months later. The accused and deceased had been married for over 20 years and had a daughter. There was no prior history of physical violence on the part of the accused. However, he admitted to pushing the deceased on occasions if she ‘got in his face’ during arguments ([34]). The prosecution conceded that the evidence at most supported an inference that their financial difficulty was significant and may have fuelled an argument between them ([24]).

Issue: Whether the prosecution was entitled to rely on evidence of post-offence conduct to prove not only an unlawful killing but also murderous intent.

Held: Beale J noted some similarities with *R v Baden-Clay* [2016] HCA 35. However his Honour found that the differences between the two cases were ‘more striking’. At [37], his Honour stated -

*‘First, there was compelling evidence of a motive for Baden-Clay to kill his wife – a desire to be rid of her so he could be with his lover. Second, the post-offence conduct in that case included lies and other conduct directed at concealing his ongoing extra-marital affair. In other words, the post-offence conduct was intertwined with his motive to kill and thus it is easy to see how the High Court, viewing the post-offence conduct on the basis of the evidence as a whole, reached the conclusion that it did.’*

In the present case, the prosecution submitted that the accused’s post-offence conduct was inconsistent with his having unintentionally killed the deceased, as one would expect him to report the incident, and not bundle her body into the boot of a car, drive to a remote location, conceal the body and lie about the circumstances of her disappearance to family, friends and investigators ([35]). Counsel for the accused submitted that he could well have feared that the unlawful killing of the deceased would attract a substantial prison term and cause permanent damage to his relationship with his daughter ([36]). Beale J found that those submissions made it difficult to see how a jury could properly find that the only reasonable explanation for the post-offence conduct was that the accused was conscious of having killed his wife with murderous intent ([36]).

Beale J held that while the evidence of post-offence conduct referred to in the prosecution's amended Notice of Incriminating Conduct could be relied on as evidence that the accused killed his wife, it could not be relied on to prove that the accused did so with murderous intent ([31]–[39]).