

10.45am: The day will commence with a closing address from barrister Michael Byrne QC, for the accused.

He opened his address with the aid of a power point slide.

He told the jury this was a murder trial, not a “great big media event” or a soap opera.

“Your task as jury is to assess the evidence and do it coldly, not passionately, and objectively,” he said.

Mr Byrne said the prosecution case was that he somehow violently ended her life in the very home that they shared with their three, young daughters.

“This man, Gerard Baden-Clay, who on the evidence that you have heard has never displayed violence, whose acquaintances, friends, family and children have never seen to have been violent or indeed argue with his wife, the Crown say on that night in April 2012, he violently murdered her,” he said.

Mr Byrne asked the jury to look at the evidence and whether it satisfied them beyond reasonable doubt of the guilt of the accused.

“It’s not about what the media has said, things that have been raised that were swept away during the course of the trial, it’s about the evidence,” he said.

He said Baden-Clay was confronted with an “angry and abusive” Toni McHugh.

“Once you have carefully considered the evidence, it is my submission to you, you will not be satisfied beyond reasonable doubt that Gerard killed Allison and once you do that, it is your duty to find him not guilty,” he said.

Mr Byrne said the burden rests on the prosecution to prove the guilt of Baden-Clay.

“He does not have to prove anything to you, particularly his innocence, he relies on the evidence which is brought before this court,” he said.

“He is, as is anyone, again we are not talking about favours to anyone or putting him in a special position ... a person charged in our society with a criminal offence is presumed to be innocent,” he said.

Mr Byrne said it was on the prosecution to prove beyond reasonable doubt a person was guilty of the offence charged.

“A fundamental proposition, if you are left with reasonable doubt, your duty is to acquit,” he said.

He said the prosecution case was circumstantial.

Mr Byrne said it meant there was no direct evidence Baden-Clay killed his wife — no eyewitnesses or admissions.

He said it was necessary that guilt should not only be a rational inference based entirely or substantially upon circumstantial evidence, but also that it should be the only rational inference that could be drawn from the circumstances.

“What you have to find ... the prosecution theory, which you may think has waxed and waned throughout the evidence, is the only rational inference that can be drawn from the circumstance,” he said.

He said if there was a reasonable possibility consistent with innocence, it was the duty of the jury to acquit the accused.

Mr Byrne told the jury it could draw inferences, make deductions and draw conclusions but it should not indulge in speculation.

Mr Byrne said, for example, Ms Baden-Clay’s blood was found in the Holden Captiva.

“But there is no blood found anywhere else in the car port where the Captiva was,” he said.

“There’s no blood found in the car port, in the garage, along the side of the house, along the back patio — so how do you join those dots?”

He asked the jury if it was possible someone injured their hand and cut themselves pulling the seats up.

Mr Byrne showed the jury a slide from Wednesday in which Crown prosecutor Todd Fuller QC fired a volley of questions at the accused, with the words “perhaps” and “probably” highlighted in bold.

“If you are going to rely on matters to convict any person of any offence, here it is an offence of murder, but before you can convict anyone you have to be satisfied that the evidence establishes that person’s guilt beyond a reasonable doubt,” he said.

“Not with perhaps, or maybe, or probably.”

He asked the jury how Baden-Clay killed his wife.

“You might think that the primary starting point in an allegation of murder is for the Crown to prove beyond reasonable doubt how Allison Baden-Clay died. How did she die? What caused her death? How do the prosecution say, let alone prove beyond reasonable doubt, she was violently — let’s make no mistake this was a killing with intent, intent to kill or cause grievous bodily harm — ... does the evidence even reveal how she did in fact die?,” he said.

Mr Byrne said on day two of the trial, a forensic pathologist who gave evidence was unable to establish a definitive cause of death.

He said there was also no determination of any definite injuries to Ms Baden-Clay's body.

"It is alleged there has been a violent, intentional murder. There's no cause of death and there's no injuries able to be found on that level of examination," he said.

Mr Byrne said Dr Nathan Milne found Ms Baden-Clay was dressed in a purple singlet, wearing three-quarter length pants socks and sneakers.

"As he described it, it was a fully clothed body with everything in place," he said.

He said Dr Milne could not exclude the body had been in water, such as the creek, and could not determine for how long it may have been submerged.

Mr Byrne said the skeletal bone structure was uninjured and there was no evidence of haemorrhage to the scalp or dura (outside of the brain), the larynx or voice box was intact, and the hyoid bone in the throat was not fractured, bruised or damaged.

"That is important when you talk about how she was killed because it's not damaged. No evidence of being crushed, fractured or bruised. It's not," he said.

He said there was no evidence of fracture to the ribs, although identified a "possible bruise" between the fifth and seventh ribs.

Mr Byrne said Dr Milne called in a radiologist to assess CAT scans of Ms Baden-Clay, but they were also unable to find evidence of a defect or injury.

He found alcohol in the body, but at least half and possibly all of it was due to decomposition.

Mr Byrne said Dr Milne and his associates were unable to determine a cause of death.

He said the possibilities he looked at were death due to alcohol or sertraline toxicity, which he said was "unlikely but I cannot exclude it"; and drowning "even the absence of diatoms does not exclude drowning as a possible cause of death" and thirdly, a fall from a height, which "could not be excluded", particularly if it was into water.

He said Dr Milne could not exclude the body being moved by water.

"He could not determine a place of death and he could not determine whether the body was moved after death either by tidal movement or by a person, he couldn't determine a time of death," he said.

Mr Byrne said Dr Milne could not determine a cause of death for Ms Baden-Clay.

"Other means of death such as, if you like, toxicity, drowning or falling from a height, cannot be excluded," he said.

“The Crown has to exclude all reasonable theories, all reasonable possibilities, beyond a reasonable doubt.”

Mr Byrne said a forensic dentist found a chipped tooth but could not determine when it took place.

He said the dentist found no cracking or fracturing in the jaw or other teeth, and no evidence of movement in the teeth.

“So, you would think, no blunt trauma to the face,” Mr Byrne said.

He said in a circumstantial case, like this was, it might be considered a “roadblock” for there to be no detectable injuries to show the place or cause of death.

11.49am: Mr Byrne told the jury in his closing address, there was, on the evidence, “a complete absence of a crime scene” at the Baden-Clay home on Brookfield Rd at Brookfield.

He said police were invited to the house early on April 20, 2012.

Mr Byrne said the accused rang police three times that morning.

He said one of the first police to the scene searched cars and inside the property after being granted permission to do so by Baden-Clay.

Mr Byrne said the police officer told the jury he found nothing.

“He found no signs or any evidence of a struggle, no damage in the house,... he thought there might be blood he told you and he looked for it, but he found none, and he was doing all that, he told you because he was fulfilling his job to see if he could find, as first response officer,... and the evidence is quite clear, he did not,” he said.

Mr Byrne said although a violent killing was alleged to have taken place the night before, by the next day there was no evidence of it.

He turned to the evidence of Sen-Constable Ashley Huth, who searched the garage at Brookfield where the Baden-Clay Holden Captiva was parked.

Mr Byrne said Sen-Constable Huth did a thorough visual inspection of the area and saw nothing that looked like blood.

“He then undertook chemical testing, that is a presumptive screening chemical to see if there was anything like blood... and there was, in his words, nothing that reacted positively,” he said.

“It’s one thing to say there is blood in the Captiva and therefore you can conclude that it is the accused. It’s not that simple... what this evidence shows is there are no droplets of blood, no visual or positive presumptive testing for blood,” he said.

Mr Byrne turned his attention to the evidence of Sen-Constable Cameron Simmons.

He said a crime scene warrant was executed over the Baden-Clay home on April 20, 2012 and remained in force for seven days.

“They thoroughly examined and searched that property for seven days... they had the State Emergency Service conducting a shoulder to shoulder search in the property and the only thing of interest found was a black NAB pen,” he said.

Mr Byrne said he was asking the jury to consider all of the evidence.

“The evidence here is the police did their job, they did it thoroughly looking for blood, for a crime scene, looking for damage. They found none,” he said.

Mr Byrne turned to the evidence of forensic co-ordinator Sen-Sgt Ewen Taylor.

He said Sen-Sgt Taylor told the jury he was very experienced at forensic searching and there was “no obvious indication of a clean-up” inside the house.

He said police went over the house with a “fine-toothed comb”.

Mr Byrne said Baden-Clay was a real estate agent and accountant, not a forensic expert.

“They looked and again, nothing there,” he said.

Mr Byrne said Baden-Clay and his wife were not alone in the house on April 19, 2012.

He said their three young children were also home, asleep.

Mr Byrne recalled the evidence of the accused, who told the jury last week if any of his daughters called out in the house it could be easily heard from another room.

He said the three girls were interviewed by police on April 20, 2012.

Mr Byrne said the eldest child, aged 10, told police she last saw her mum the night before, “on the couch, watching television”.

He said the girl told police her father told her to “be nice to mum, because she’s sick”.

Mr Byrne said the girl told police her mum was wearing a sloppy jacket and pyjama pants.

“The girls are innocents who have been in the house when these events are said to have occurred,” he said.

He said the eldest girl told police the family had been happy.

Mr Byrne said the girl told police she heard no noises, including the sound of a car starting, even though her bedroom was situated directly above the car port.

“If you listen carefully to this young girl who is missing mum, who is relating to the police as best she can, what she saw and heard, there’s none of that... Was there an argument? No there wasn’t. It was just a night, like any other night,” he said.

Mr Byrne turned to the evidence of the Baden-Clay’s middle daughter, then aged six.

He said she told the police in an interview played back to the jury that her parents never fought.

Mr Byrne said the girl shook her head in response to a question from police asking if her parents fought the night before.

“From the mouths of babes,” he said.

He said the youngest girl told police she never heard her parents talk loudly to each other, either.

“Three children, three unanimous, unprompted, unscripted, raw accounts of what did not happen the night before in the house of Brookfield Road,” he said.

Mr Byrne reiterated it was important the jury not take grabs from headlines and assess the evidence of the girls.

He said none of the children heard the car start up that night, a central tenet to the Crown’s case.

Mr Byrne said the jury heard evidence of screams in the night but a witness who lived near to the Baden-Clay home had since claimed her daughter ran into a spider’s web and screamed that night.

“That puts a sword through any theory about screams or bumps in the night,” he said.

He said the prosecution case was that Baden-Clay somehow caused his wife’s death without leaving a crime scene with blood, then loaded the body into the Holden Captiva and take it to Kholo Creek where it was “unceremoniously dumped”.

“Is that what the evidence on examination shows? Or does it paint something quite different to that?,” he asked.

Mr Byrne said Ms Baden-Clay was wearing pyjamas on April 19, 2012 but when her body was found, it was fully dressed in walking gear.

“How does that come about? Is the Crown theory that after he has violently murdered his wife, he somehow dresses the body – that is, a dead, inert body - ... Is the Crown theory that he has undressed her and dressed her, meticulously, even to the extent of putting a jumper on the dead body because we’ve heard from the witnesses it was cold in April?,” he asked.

He asked the jury whether it might also be feasible for Ms Baden-Clay to have worn her running gear to bed or whether the “violent killing” took place early in the morning of April 20, 2012, after she was dressed in her walking clothes.

Mr Byrne asked why there was no blood if the accused dragged his wife’s body through the house and down to the car port.

He told the jury to be certain the blood in the car was from Ms Baden-Clay.

He said the body was moved through foliage in such a manner that leaves had attached to it and that 10 days later, remained on or near the body, but were not found in the car.

Mr Byrne asked how the moving of the body and the car pulling out of the driveway was not heard by the three girls.

“The prosecution case is that Gerard Baden-Clay after violently killing his wife, leaves his young children alone, while he drives his wife’s deceased and freshly dressed body the distance it has to go to Kholo Creek,” he said.

Mr Byrne said the accused must have stopped his car on the road and, “in the middle of the night” he manages to get the body out of the car and carry it, or drag it, down through the grass, mud to the creek.

“He then climbs back up that bank, walks through the mud, walks through the grass and drives the car home and parks it in the car port,” he said.

“Ask yourselves the critical question. Do you, as reasonable members of the community and persons with common sense and experience, do you think such a scenario is even possible?”

He showed the jury a photograph of the Kholo Creek Bridge on Mt Crosby Rd at Anstead.

Mr Byrne read from the evidence of Sen-Constable Ashley Huth, who was rappelled down from the road to the bank where the body was found on April 30, 2012.

He said the mud of the bank of Kholo Creek was so thick it reached his mid-lower leg.

1.01pm: Mr Byrne asked the jury to consider the evidence of transportation of the body, including the absence of mud in the Captiva, on the wheels of the car, on shoes, around the house or on Gerard Baden-Clay’s clothing.

He asked the jury how the accused would have carried a body down the steep embankment at Kholo Creek, at night, when police officers had trouble traversing the same area during the daylight.

“This essential point of the Crown case, namely the transporting of the body and the dumping of it in the creek, just did not happen,” he said.

Mr Byrne said Baden-Clay was on trial for murder and the evidence was the key.

“You do not ignore evidence, you don’t make excuses for the complete absence of any link between Kholo Creek and the house on Brookfield Rd because Allison is dead and someone must be punished,” he said.

“Our system presumes people to be innocent unless the evidence overwhelms...”

Mr Byrne said Baden-Clay phoned police at 6.53am on April 20, 2012.

He said the accused invites the first police to arrive into the house, its surrounds and the cars shortly afterwards.

“That conduct, you might think, is only consistent with a man who is anxious for his missing wife and wants her found and located as soon as practicable,” he said.

“You might think it’s completely at odds with a man attempting to conceal a crime and a man attempting to conceal a crime scene, because there is no crime scene at the house. A crime scene that wasn’t there.”

Mr Byrne took the jury to a power point slide on why the accused would kill his wife.

“Gerard and Allison had been married for 14 years, their life together over that period of time has been unmarked by any sense of violence, any history or violence and Gerard Baden-Clay, as he told you and as you heard from various professionals... they had gone through together years of her depressive illness,” he said.

“It’s fair to say, you might think, that their marriage and life together was not a passionate view. Allison told one of the treating doctors they had no intimacy for years.”

He said marriages and people were different, as all people and relationships were.

“The picture that the evidence paints is that there was between Gerard and Allison, this companion type relationship, the sexual passion is gone, so that’s what they are going through at this stage of their life,” he said.

“It is true and I don’t shirk from this, that many people in the community... may find it abhorrent that a partner in a marriage would be sexually unfaithful to their partner. Fair enough. That’s a moral judgment, we all have our own compasses in that regard.

“It may be some of you, or all of you, may think less of Gerard Baden-Clay because he told you he wasn’t sexually faithful to Allison but he is a person who has been unfaithful, not once but more than once and maybe, you would think you find his morals despicable.

“That is a far cry though, from labelling him, a murderer.”

Mr Byrne said the Crown contended a motive that Baden-Clay intended to leave his wife to be with mistress Toni McHugh.

“Again, my submission to you is that when each of you... scrutinise the evidence, when you do that you will see clearly that not only was that not the case, that is, he did not want to leave his wife for Toni McHugh, but even Toni McHugh knew in her heart, that was not the case,” he said.

Mr Byrne turned to the evidence of Ms McHugh on the nature of her relationship with the accused.

He said Ms McHugh said her relationship with the accused was “up and down all the time, year after year” and although he entertained her plans for their future together, he “never really got practical about anything”.

Mr Byrne said the accused spent time with Ms McHugh during the week, while he spent time with his family on the weekends.

He said Baden-Clay had not even been faithful to Ms McHugh.

“It’s not like, you might think on the evidence, that this was his grand passion. The love of his life that he would abandon his family for. To be brutally frank with you, Gerard Baden-Clay was not faithful, full stop,” he said.

He said Ms McHugh said Baden-Clay was “good at making promises” and when he told her he would be separated by July 1, 2012, she thought he was “just pulling a number out of thin air” and “didn’t believe it at all”.

Mr Byrne asked the jury if Ms McHugh did not believe Baden-Clay would leave to be with her on July 1, 2012: “How could you?”

He said Baden-Clay told Ms McHugh his wife and an employee Kate Rankin would attend a real estate conference the following day during a phone call on April 19, 2012.

Mr Byrne said Ms McHugh told the jury she felt like she had “just been played again”.

He said she told the jury it was “a symptom of an affair”.

“Gerard Baden-Clay... had no intention of leaving his wife and three young daughters for Toni McHugh,” he said.

“There was no reason to, no need to. There certainly wasn’t a sexual need, there certainly wasn’t a passion to overflow and ignite, none of those things.

“Did he kill his wife to be with Toni McHugh? Not likely.”

He said when he spoke to Ms McHugh the next day she asked him what had happened: “Did you argue?”

Mr Byrne said the accused told her no, that she had just gone missing.

He said Baden-Clay told her “quite simply, tell the truth” when she asked him what she should do.

“Ms McHugh is not a motive. She is, like the blood, an artefact: someone who was there in the background, in the wallpaper,” Mr Byrne said.

“I know it’s cruel to say something like that but that’s what the evidence paints.”

Mr Byrne said if there was no “explosion” or fraying of tempers when his wife found out about his affair with Ms McHugh in late 2011.

He said there were tears, but no raised voices.

Mr Byrne said when Baden-Clay told his mistress that same day, she threw things at him and called him a “low life”.

He told the jury to reject any “premeditated killing or murder” on that night and equally to reject “any sudden surge of passion or emotion”.

Mr Byrne told the jury the only emotion it saw on the stand from the accused was when he relived his life with his wife and the shock of her disappearance.

He asked the jury whether financial pressure was a “reasonable motive” for killing or murdering his wife of 14 years.

“It’s ridiculous. Leave aside that common sense approach, when you drill down, when you look at the evidence, it does not disclose any financial hardships,” he said.

Mr Byrne said his friends who invested money in his business did not say the accused was under financial pressure.

He said all that was outstanding was \$2000-odd owed on a credit card.

The jury was shown a copy of the couple’s assets and liabilities report, totalling \$74,663.11.

He took the jury to the evidence of Robert Cheesman who said Baden-Clay’s finances were structured so that personal and business assets held separately.

Mr Byrne said for personal assets, including bank accounts, super, investments and shares, the couple held \$190,082.78.

He said the Baden-Clay real estate company held \$83,960.

He said World of Top Step Pty Ltd, the company the accused started together, with an investment property at Paradise Point, held \$235,000.

Mr Byrne said Baden-Clay’s two companies, Settled property Sales held -\$155,000 as its net assets position while Settle Westside held -\$278,000.

“Gerard Baden-Clay held substantial personal assets at April, 2012,” he said, adding it would have amounted to around half a million dollars.

Mr Byrne referred to the jury the evidence of Baden-Clay’s three financially-savvy friends, Mr Cheesman, Peter Cranna and Stuart Christ.

The trio each loaned him \$90,000 after doing a thorough examination of the business books in 2011.

He said Mr Cheesman told the jury “we expected to get the money back based on our investigation” and “wouldn’t have lent him money unless we’d get it back”.

He said any suggestion Baden-Clay was under financial pressure was a “furphy”.