

**SUPREME COURT OF CANADA**

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| **Citation** : R. *v.*Allen, 2010 SCC 42, [2010] 2 S.C.R. 648 | **Date** : 20101027  **Docket** : 33558 |

Between:

George William Allen

Appellant

and

Her Majesty The Queen

Respondent

**Coram** : Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

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| **Reasons for Judgment** :  (paras. 1 to 2) | The Court |

R. *v.* Allen, 2010 SCC 42, [2010] 2 S.C.R. 648

George William Allen *Appellant*

v.

Her Majesty The Queen *Respondent*

**Indexed as:  R. *v.*** Allen

2010 SCC 42

File No.:  33558.

2010:  October 8; 2010:  October 27.

Present:  Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

on appeal from the court of appeal for alberta

*Criminal law* — *Trial* — *Charge to jury* — *Adequacy of trial judge’s instructions* — *Charge adequate* — *Jury instruction fair, balanced and accurate on matters of post‑offence conduct.*

*Held*:  The appeal should be dismissed.

APPEAL from a judgment of the Alberta Court of Appeal (Hunt and Watson JJ.A. and Belzil J. (*ad hoc*)), 2009 ABCA 341, 15 Alta. L.R. (5th) 1, 464 A.R. 208, 467 W.A.C. 208, 249 C.C.C. (3d) 296, 71 C.R. (6th) 226, [2010] 2 W.W.R. 63, [2009] A.J. No. 1116 (QL), 2009 CarswellAlta 1780, upholding the accused’s conviction. Appeal dismissed.

Hersh Wolch, Q.C., for the appellant.

David C. Marriott, *Q.C.*, for the respondent.

The following is the judgment delivered by

1. The Court — Following his trial by judge and jury, George William Allen was convicted of first degree murder in respect of the death of Garry Joseph McGrath. He appealed his conviction, alleging error in the trial judge’s instructions to the jury respecting the evidence of his post-offence conduct. More specifically, the appellant argued before the Court of Appeal of Alberta that it was legally objectionable and prejudicial for the jury to be told that they could consider whether his conduct after the offence was consistent with the existence of a pre-existing plan and intention to kill McGrath. Watson J.A., Belzil J. (*ad hoc*) concurring, rejected the appellant’s argument and affirmed his conviction (2009 ABCA 341, 15 Alta. L.R. (5th) 1). Hunt J.A. dissented, holding that the trial judge failed to explain sufficiently to the jury the limited way in which the appellant’s post-offence conduct might relate to the issue of planning and deliberation. Mr. Allen appeals to this Court as of right.
2. We are not persuaded that the jury instructions, read as a whole and in the context of the issues at trial, contained any such error. As the majority in the Court of Appeal concluded, it is our view that the trial judge’s “charge to the jury was fair, balanced and accurate on the challenged topics of post-offence conduct” (para. 93). The appeal is dismissed.

*Appeal dismissed.*

Solicitors for the appellant:  Wolch, Hursh, deWit, Silverberg & Watts, Calgary.

Solicitor for the respondent:  Attorney General of Alberta, Edmonton.