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| cid:image001.jpg@01D72252.19B69DE0  **SUPREME COURT OF CANADA** | | | |
| **Citation:** R. *v.* Lawlor, 2023 SCC 34 | |  | **Appeal Heard:** December 15, 2023  **Judgment Rendered:** December 15, 2023  **Docket:** 40500 |
| Between:  Derrick Michael Lawlor  Appellant  and  His Majesty The King  Respondent  **Coram:** Rowe, Martin, Kasirer, O’Bonsawin and Moreau JJ. | | | |
| **Judgment Read By:**  (paras. 1 to 5) | O’Bonsawin J. | | |
| **Dissent Read By:**  (paras. 6 to 8) | Kasirer J. | | |
| **Majority:** | Rowe, Martin, O’Bonsawin and Moreau JJ. | | |
| **Dissent:** | Kasirer J. | | |
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**Derrick Michael Lawlor** *Appellant*

*v.*

**His Majesty The King** *Respondent*

**Indexed as: R. *v.* Lawlor**

**2023 SCC 34**

File No.: 40500.

2023: December 15.

Present: Rowe, Martin, Kasirer, O’Bonsawin and Moreau JJ.

on appeal from the court of appeal for ontario

*Criminal law — Charge to jury — Evidence — Murder — Intent — Accused’s mental health — Post-offence conduct — Accused convicted of first degree murder by jury — Accused appealing conviction on basis of alleged deficiencies in jury charge — Court of Appeal upholding conviction — Trial judge did not err in failing to provide limiting instruction on permitted use of evidence of accused’s after-the-fact conduct but erred in failing to mention relevance and use of evidence relating to accused’s mental health when instructing jury on element of intent for murder — Conviction set aside and new trial ordered.*

**Cases Cited**

By Kasirer J. (dissenting)

*R. v. Abdullahi*, 2023 SCC 19.

APPEAL from a judgment of the Ontario Court of Appeal (van Rensburg, Nordheimer and George JJ.A.), [2022 ONCA 645](https://www.ontariocourts.ca/decisions/2022/2022ONCA0645.htm), 418 C.C.C. (3d) 87, [2022] O.J. No. 4053 (Lexis), 2022 CarswellOnt 13061 (WL), affirming the conviction of the accused for first degree murder. Appeal allowed, Kasirer J. dissenting.

*John M. Rosen* and *Amy J. Ohler*, for the appellant.

*Benita Wassenaar*, for the respondent.

The judgment of Rowe, Martin, O’Bonsawin and Moreau JJ. was delivered orally by

[1] O’Bonsawin J. — This is an appeal from *R. v. Lawlor*, 2022 ONCA 645, 418 C.C.C. (3d) 87, in which the majority dismissed an appeal by Derrick Lawlor of his conviction for first degree murder by a jury. The majority in the Ontario Court of Appeal dismissed the appeal; Justice Nordheimer would have allowed the appeal and ordered a new trial.

[2] Only two grounds of appeal are before this Court. The first is whether the trial judge erred in his instructions to the jury regarding the use of evidence as to the accused’s mental health and the requisite intent for first degree murder. The second relates to evidence of after‑the-fact conduct.

[3] A majority of this Court would allow the appeal on the ground relating to the requisite intent for murder and for first degree murder, but not on the ground relating to after-the-fact conduct. As to the first ground, we are in substantial agreement with the reasons of Justice Nordheimer. As to the second ground, we are in substantial agreement with the reasons of the Ontario Court of Appeal majority. We would add the following comment.

[4] As has been stated on many occasions, and we repeat here, courts need to be mindful of evidence as to mental health where this is relevant to issues of criminal responsibility. This is especially so in instructing a jury, to assist them in the proper use of such evidence.

[5] Accordingly, the appeal is allowed, the conviction is set aside and a new trial is ordered.

The following are the reasons delivered orally by

[6] Kasirer J. — I would dismiss the appeal. I allow myself two observations.

[7] First, I agree with my colleagues that courts need to be mindful of mental health evidence in criminal matters, including in instructions to the jury. As the majority in the Court of Appeal wrote, there is no question that evidence of mental health problems may be relevant to issues of intent and planning and deliberation, including in an assessment of the adequacy of a jury charge (see paras. 41 and 44‑48).

[8] Second, and with the utmost respect for other views, I conclude that the trial judge’s charge properly equipped the jury, in light of all the circumstances, to decide the case according to the exacting standard set forth in *R. v. Abdullahi*, 2023 SCC 19. In sum, in respect of both the mental health and the after-the-fact evidence, I see no reviewable errors in the jury charge and, on these points, I would adopt the majority reasons of van Rensburg J.A. as my own, without reserve.

*Judgment accordingly.*

*Solicitors for the appellant: Rosen & Company, Toronto; Amy J. Ohler, Barrister, Toronto.*

*Solicitor for the respondent: Ministry of the Attorney General for Ontario — Crown Law Office — Criminal, Toronto.*