

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEALS NOS. 32 & 33 of 1981

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE ROWE, J.A.
THE HON. MR. JUSTICE WHITE, J.A.

R. v. BRANDFORD BUCKLEY & ELI BROWN

Mr. B. E. Frankson for Brandford Buckley
Mr. Leon Green for Eli Brown

April 12 & 13, 1983;
September 27, 1984.

WHITE, J.A.:

At the end of the submissions by attorneys for the appellants, the court decided to treat these applications for leave to appeal as the hearing of the appeals. The appeals were dismissed, the convictions and sentences of death were therefore affirmed. As we promised then, we now put our reasons in writing.

The appellants were charged jointly and convicted before Parnell, J., and a jury on an indictment containing three counts for the murders of Princess McKenzie, Silvera Williams and Adolphus Somers. The first two died on the 18th day of October, 1980, and the third died on the 19th of October, 1980. These deaths followed on the ingestion by each of the deceased of the contents of a bottle of Guinness stout which was first handed to the deceased Adolphus Somers by the appellant Brown. When Mr. Somers, then in his 88th year, tasted the contents of the bottle, he passed it on to the deceased Silvera who was himself the cousin of Somers. Princess McKenzie was the third person to taste the contents of the bottle. The Crown's case was that this bottle contained poison and was procured by the appellant Buckley, and Brown, as a result of a conspiracy with Buckley, deliberately gave this bottle of stout to Mr. Somers well-knowing its deleterious, if not deadly contents. These deceased persons each ingested the contents within minutes of each other on the 17th day of October, 1980.

Dr. Satynarayann Parvateneni gave evidence that he saw the three deceased in the Port Antonio Hospital on the 17th October, 1980. Princess McKenzie died on the 18th October, at about 7:00 a.m. Silvera Williams died on the 18th October, at about 12:45 p.m. and Adolphus Somers died on the 19th October, at about 12:45 a.m. He performed the several post-mortem examinations; all the organs in the body of each deceased were normal. He was not able to say from the post-mortem examination what^{was} the cause of death; but he opined that the clinical signs made him conclude that death was due to poison. Among these clinical signs were, constricted and pin-point pupils, sweating, fasciculation (twitching) of the muscles and extra salivation. There was also vomiting and loose bowels. The stomach contents of Adolphus Somers smelled of an organo-phosphorous compound, which was evidence of the presence of poison.

According to the doctor, when he saw her in the hospital before death, Princess McKenzie was always unconscious. His medical opinion was that she would not have been able to speak. The only sounds she was able to make were groans and breathing sounds. Compared with Williams, who clinically improved at one stage and then died, she never regained consciousness. Adolphus Somers was able to talk and he was able to give an account of what caused his condition. He too showed satisfactory signs, but complications set in and he subsequently died.

The doctor said he took viscera from each of the deceased, and those were submitted to Dr. David Lee, the analyst at the Government Forensic Laboratory. Also submitted to Dr. Lee was a Guinness stout bottle containing some liquid - a third of the content capacity. Dr. Lee said that when he tested the contents of the bottle, he obtained evidence of the presence of a certain compound commonly called Azodrin, alternatively Monocrotophos which is an agricultural pesticide used for killing mites on plants. He said that if a sufficient quantity of this miticide was consumed by a human being death would result. His attempts to discover whether the viscera disclosed the same compound as found in the liquid were unsuccessful. This was due to the quick metabolising of the compound, i.e., it is changed by the body chemistry to a level which would be beyond the sensitivity of the equipment in the Forensic Laboratory. Added to this was the time lapse between death, and the time

when he received the viscera. He accordingly took the viscera to the University of Miami School of Medicine, where by means of special instruments it was discovered that Azodrin was present in the body of each of the three deceased. Dr. Lee asserted that he was present on this occasion when the definitive tests were made.

The Crown presented evidence that there was a civil suit filed in the Supreme Court by the deceased Somers against the appellant Buckley. This case was down for hearing on the 21st October, 1980. This action was to recover the sum of One Thousand Nine Hundred and Fifty Dollars with costs in respect of the conversion of a cow. At the trial, Buckley himself, in an unsworn statement supported this aspect of the Crown's case by agreeing that the deceased Somers, a man with whom he "moved good all the while," had given him two cows and a calf "to turn out in the forest to get feeding." It was mutually agreed between them that the two cows needed drench, but the deceased insisted that they should be taken out as he had directed, and they would be drenched at a later date. Apparently, after three days, they searched for the cows but could not find them. Some time after, Buckley said, he saw the calf on the premises of another man. On Mr. Somers' instruction Buckley took possession of the calf and took it to Mr. Somers. However, despite further diligent search the two cows were not seen alive. Buckley's statement continued to the effect that Somers wished him to give evidence in Court that it was the district constable in the district who sold his cows. Because of his refusal, and to his surprise, Somers brought the aforementioned action against him. As a fact, according to Buckley, the case had been called up some time in June, but Somers did not appear, so costs were awarded against him in favour of Buckley who was then present at Court. The 21st of October, 1980, was the second time that the case was listed for trial. Their erstwhile friendship was thereby tarnished.

It is noteworthy that this was one of those bits and pieces of evidence upon which the prosecution relied to weave a web of circumstantial evidence against the accused Buckley on the allegation that he conspired with Brown to cause the death of Somers. Whether the factor of the civil suit is interpreted as a cause for revenge or the murder itself is regarded as a preventative step to forestall the continuation

of the civil action, it can be inferred that the Crown did present this as indicating a motive for the killing of Somers even though unwittingly and uninvited the death of the other two occurred in the chain of consequences from the action of both appellants.

On the morning of the 17th October, 1980, Franklyn Williams was walking along the River Beach, Windsor in the parish of Portland. It appears that it was in the early hours of the morning, because according to Mr. Williams "sun didn't rise up at the time." As he walked along he saw the appellant Eli Brown, also known as "Brown Jew" walking ahead of him. They were both coming from Windsor where they both lived. The appellant Eli Brown continued along the dirt road to its intersection with the John's Hall Road. There he sat on a stone. Ransford Buckley approached Eli Brown from the direction of John's Hall, where Buckley lived. He sat down with Brown, and both of them had a conversation for about five minutes. They parted. Brown came back up the track and Buckley went through his cultivation. The foregoing observations of Mr. Williams concluded with the appellant passing Williams where he was bathing in the river, from which point he was able to see Brown as he passed him. He saw Brown holding 'a twenty dollar money in his hand'; he kissed the twenty dollar bill and he heard Brown say "he going to fly the derricks today." Note should be taken of the fact that Mr. Williams had seen the two appellants together the day before.

At about 2:00 p.m. on the 17th day of October, 1980, Constable Noel Garrick was at Kings Lee Bar along West Street, Port Antonio, in the parish of Portland. When he entered the bar, the constable said, he saw customers including Brandford Buckley. Afterwards Eli Brown came into the bar, called to the constable, who had known the appellant for about six years before, and thereafter went to Buckley. These two talked while they were drinking a beer. Brown first left the bar. The witness did not observe whether he had anything with him when he left the bar, but according to the constable, Brown went towards the market which is next door to the bar. Buckley remained in the bar.

The evidence of Wilbert Wallace related to the presence of Adolphus Somers at Williams Street in Port Antonio on the 17th October,

1980. At about some time after 2:00 p.m., on that date, Mr. Wallace stated, he saw Adolphus Somers on the piazza, Somers "bend down on the piazza vomiting." Beside Mr. Somers was a Guinness stout bottle, which had some liquid in it. Mr. Wallace had the presence of mind to take up the bottle and hide it; he handed it over to the police on the following day. Mr. Somers was eventually taken to the Port Antonio Hospital where he was admitted.

Zephaniah Lodge gave evidence that on the 17th October, 1980 while he was in the Port Antonio Market he saw Adolphus Somers and Silvera Williams. While the witness was speaking to Silvera Williams, Adolphus Somers came to them and Williams and Silvera went a little distance off. They engaged in a conversation with a third man (not either accused man). Mr. Lodge said that he observed that Williams took a drink from a black bottle which appeared to be a Guinness bottle. Williams handed the bottle to Somers who corked it and put it in his pocket. About fifteen minutes after, according to the witness, Williams complained to him that he was not feeling well. The witness put him to sit on a stool; Williams began to vomit so Mr. Lodge sent for the ambulance. This witness did not see Adolphus Somers after Williams had taken the drink from the bottle.

Another witness was Cetira Brown, who knew the three deceased. On the 17th October, 1980, at about 3 o'clock in the afternoon, she saw Princess McKenzie at a supermarket. Princess McKenzie was rubbing her belly with her two hands. She was conscious and was taken to the hospital where she was admitted. Miss Brown saw her in the hospital; she was still rubbing her belly. The witness spoke to her at the request of the nurse.

It is appropriate to quote her evidence at this point:

"Q. When you went to her bedside you spoke to her?

A. A call to her. I said, 'Princess.'

Q. Just a minute. When you called to her she responded to you?

A. Yes, sir.

Q. What she said?

A. She said, 'Aunt Cetira me a dead.'

Q. What happened after?

"A. And I said, 'What killing you?' and she said to me ...

Q. Don't go too fast now. She said what?

A. She said to me ... a said to her, 'What killing you' and she said to me, 'Brown Jew give Uncle (Adolphus Somers) something in a pint ...'

His Lordship: Brown what?

A. Brown Jew give uncle something into a pint."

Counsel voiced an objection to this evidence being given on the ground that it was inadmissible on the ground of hearsay. But the learned trial judge overruled the objection. Thereafter the witness continued:

"A. After she said Brown Jew gave uncle something into a pint and tell him that is Guinness

HIS LORDSHIP: And told him that it was Guinness?

A. Yes, sir. 'And that is what him have to give him and uncle taste it and uncle say, 'but this thing don't taste good.' And uncle gave it to Uncle Silly and said, 'Uncle Silly, you taste it.' And Uncle Silly taste it and say, 'no Uncle, it don't taste good. And Uncle Silly handed it to Princess and Princess taste it.'

HIS LORDSHIP: And she tasted it?

A. Yes, sir. And she said to me, all three of them is undying now."

Cross-examination elicited that the deceased, Princess

McKenzie, had said she saw when Brown Jew gave the bottle to Somers at the market square. The witness said:

"She told me that she saw when Brown Jew gave her uncle the bottle, but they were so like to drink that she said it was Guinness because he told him it was Guinness."

In the like vein was the evidence of Florence Taylor, the daughter of the deceased, Adolphus Somers. She spoke to him on the 18th October, 1980, while he was in the hospital, he was very sick -

"and he was just blowing hard. He told me that Mr. Brown gave him a Guinness to drink, and he did not know that it was a poison Guinness. And the Guinness poison him and he gave Princess some to taste ... and Uncle Silly some to taste ... and him know that they are dead, and him is going to dead too and I must go up to the home up John's Hall to get some cedar board - cedar board was up there - to get some to bury him."

Detective Corporal Neville Warmington carried out investigations into the deaths of the three persons abovementioned. Important points in his evidence were that on the 18th October, 1980, he received from Wilbert Wallace an open Guinness stout bottle with some liquid in it - about half of the bottle. The detective corporal said later on, he went to the Port Antonio Hospital, where he saw Adolphus Somers who from all appearances, was very ill, but seemed to be mentally stable at the time. Mr. Somers declared:

"I can't live, I must die."

He took a statement in writing regarding the illness of Mr. Somers. This statement was admitted in evidence as Exhibit 3 and reads as follows:

"I, Adolphus Somers, having the fear of death before me and being without hope of recovery, I make the following statement:

"Me leave me house hearty, me come down to Port Antonio. A man come to me name Brown Jew. Silly Williams know him name. Him come to me and ask me if me wouldn't take a drink."

"I (Detective Warmington) asked a question:

'What did you say to him?' and he answered."

"Me say yes, me tell him fi bring me a pint of Guinness. Him bring it to me at market square before Mr. Lodge and plenty people. Him open it and carry it come give me. Me tek off the cork, me drink it and when me drink it me gave Silly Williams some of it and gave me daughter some. I taste it first and give them the rest. Them drink and give me back some and me drink. Me drink most of it. Me move and go up a the shop before the Lottery Shop. Me feel bad and vomit same place. I said to Mr. Wallace, 'a man just poison me.' Me drop the bottle same place. I feel like me gwine dead same place. Wallace take me up and carry me to the hospital."

Question: "Where Brown Jew buy the Guinness?"

Answer: "Jack know where him buy the Guinness and where him live."

Question: "Did you and Brown Jew have anything?"

Answer: "No, but Brother Buckley and him family set the hand. Brother Buckley take me three cows and don't give me a penny. Me put Buckley a law; go Court a Port Antonio already and me fe go a Supreme Court Tuesday. Mr. Hamilton is on the case."

In pursuit of his further investigations, Corporal Warmington said he went to Windsor in Portland in search of Eli Brown o/c "Brown Jew." When he found him, the corporal said he cautioned Eli Brown and informed him that he had received information that he and Brother Buckley

conspired together and gave poison to Adolphus Somers resulting in him being seriously ill in the Port Antonio Hospital. He also told the appellant Brown of the deaths of the other two persons. Brown's reply was: "Me no give nobody nothing." Brown was invited to go with the detective to the Port Antonio Police Station. On the way to the Police Station, according to the detective, Brown said he wanted to tell him what happened. Brown offered some yam and crayfish to the detective who told him not to bother. After their arrival at the Police Station, the appellant Brown repeated his desire to give a statement. The outcome was that a written statement under caution was taken from the appellant in the presence of Mr. Colin Harris, a Justice of the Peace for the parish of Portland. The statement was voluntarily and freely given. This statement was admitted in evidence. The statement is extracted (pp. 214 - 215):

"On Thursday the 16th of October, 1980 at about five o'clock in the evening, 'Brother' of John's Hall come to my work place at the boat stand at Windsor. Him ask me if me a goh down town any time this week. I tell him yes, Friday. Him sey him going down deh too. Brother tell me him going to beg me do a favour for him. Me ask him like what soh. Him sey him a give me a bottle of liquor fi give Dolphus because him a give him trouble. Me know sey him and Adolphus deh a law. Brother sey Dolphus sey him sell him cow; me tell him sey him have to give me a money. Brother tell me say him son have some weed fi sell and him weh give me a big money out deh. I agree to do it. Me tell him say me coming a pay bill Friday. Him say him coming too and will meet me up and him will give me the thing when him come to Port Antonio. Me come down on Miss Kitty bus on Friday morning. When me come down me noh bother look fi him. Me goh straight to Parish Council office down bottom office after you pass public works. Me down there between eleven and twelve. Me noh get noh pay soh me come back up.

"At about 2:00 p.m. me see 'Brother' in Kings Lee bar. Brother said, 'Come here man. You nah do the thing for me again?' Me tell him sey me deh pon haste. Me can't bother with it again. Him tell me sey him just see the man up market square so me fi goh find out if the man will take a drink and find out what type of drink. I go to Dolphus. I see him at the market piazza near to the tobacco man. Me ask him if him having a drink. Him seh him want a Guinness. Me goh to Brother in the said bar. I tell him whey Dolphus say him want.

"Brother buy me a red stripe beer and me see a Guinness on the counter and brother tek it up and give me to give Dolphus. It was open but have on the cork. I take it to Dolphus and give him but me never wait till him drink it. I tell him I was on haste and want fi catch the bus. Dolphus sey him want to see Miss Pet. Me left him same place. Me

"see Mr. Locksley car coming. The car stopped. Went to him and beg him a drive as I never have no money. Mr. Locksley gave me a free drive to Stanton. I walk to my house, change my clothes and go to my work at the ferry boat stand.

"Shortly before the police come to me today me hear say Dolphus drink Guinness and dead. I ask a man name Bruce of John's Hall if a true say Dolphus dead and him say a soh him hear.

"Dolphus a me cousin and me and him never have nothing."

On the 19th of October, 1980, Det. Cpl. Warmington went to John's Hall in Portland where he saw the appellant Brandford Buckley o/c "Bredda." He cautioned Buckley and then told him that he and Eli Brown conspired together and gave Adolphus Somers poison, resulting in his death and the death of two other persons. Buckley replied - "Me nuh know nothing about that." He too was taken to the Port Antonio Police Station and was again cautioned. Det. Cpl. Warmington recorded the details of the consequent interrogation of Buckley. The learned trial judge did allow some but not all these questions and answers as recorded to be put in evidence, as he was not happy with this lengthy questioning of these accused men. From the questions and answers allowed, it transpired that having ascertained that the appellant Buckley knew the appellant Brown, the corporal asked Buckley if he saw Brown on Thursday, the 16th October, 1980. Buckley said no. When asked if he had seen Brown on the Friday the 17th October, 1980, Buckley replied, no. More specifically he did not see Brown at 6:30 a.m. on the 17th October, 1980. When the detective repeated the question which elicited the last reply, Buckley now said, "Yes, same Friday at about 6:30 a.m. at the boat stand." Said the detective: "I asked him if he gave twenty dollars to Brown Jew that Friday morning," the answer was - "I give him twenty dollars and him come to his brother-in-law shop and change it. I owe him a long time." He was asked if he had seen Adolphus Somers on that Friday in Port Antonio. His answer: "Him pass me on a piazza." He denied that Somers spoke to him then, because "Him do me wrong, we not speaking." He admitted that he saw Princess McKenzie in the terms, "Yes they pass me on the piazza."

Det. Cpl. Warmington arrested both appellants. When cautioned after being charged for the murder of the three deceased, Buckley said, "Me ready fi dead." Brown when similarly charged remarked, "Look how Bredda Buckley put me in trouble."

In answer to the Crown's case, the appellant Buckley made an unsworn statement from the dock, and he called three witnesses. His account of his movements admitted that he was in Port Antonio. On the 17th October, 1980, he had gone from John's Hall with one Roy Crawford. He had left home at 7:15 a.m., and walking to cross the river, he had met Crawford. They apparently took the bus from Windsor to Port Antonio. According to Mr. Crawford, after reaching Port Antonio apart from each of them going about their private business which had taken them to Port Antonio, he and Mr. Buckley met again at his lawyer's office. Within fifteen minutes of leaving there, they were able to get the bus to take them back to Windsor. According to this itinerary, at the time when Buckley was supposed to have been in Kings Lee bar, the appellant Buckley and this witness were travelling by bus back to Windsor. Mr. Crawford said that he did not see Buckley speak to Brown Jew on that day, nor did he see him go into Kings Lee's bar on that day. The evidence of Maud Hayles supported the appellant Buckley as to his having gone to her house on the 17th before going to Port Antonio, and as to the time when he returned from Port Antonio on that same day. His daughter, Violet Buckley, said her father left home at about 7:00 a.m. on the 17th October, 1980, and returned home at 3:30 p.m. on the same day.

Eli Brown gave sworn evidence during which he told of Buckley coming to him at his work place and ascertained that he (Brown) was going to Port Antonio on the Friday. Brown, by this sworn evidence, said that Buckley requested of him a favour while he was in Port Antonio. Buckley wanted him "to give Adolphus something for him." He further said, "I asked him if something will hurt Dolphus and him tell me no." But Buckley told him that "it is something to throw away the case towards him and Dolphus," which case was set for the Tuesday following. They discussed how he (Brown) would be paid to which Buckley offered "some weed and money." On the Friday he left home; journeyed by bus to Port Antonio; there he went to the Parish Council Office to collect his fortnight's pay. On his way to that office he met Princess McKenzie and Miss Pets.

Brown said that when he left the Parish Council Office, he returned to the market. He saw Adolphus Somers and another man standing on the piazza in front of the bar. He heard the appellant Buckley call his name. Buckley was inside the bar. Reluctantly, Brown said, he stopped, and Buckley offered him a bottle of beer. After this he, Brown, went and spoke to Somers who was still outside the bar. Somers asked Brown to put down a glass on the counter, which he did.

After Brown re-entered the bar, the appellant Buckley came to him and gave him another bottle of beer. Buckley gave Brown a bottle of stout "to pass on to Dolphus." He passed it on to Dolphus. He again went back into the bar, spoke to Buckley that he was in a hurry to catch the bus. Thereupon he left the bar and was fortunate to obtain a drive in a motor car to a district adjoining his.

He admitted seeing Constable Garrick in the bar. He denied that he ever went to the boat stand or the crossing on the morning of Friday, the 17th, as Franklyn Williams testified. On the Saturday afternoon at about 4:00 p.m., while he was at the boat-stand one of his passengers told him "that she heard that Buckley give me a liquor to give Dolphus, and Dolphus got poison out of it." On his return from taking these people across the river he was accosted by Det. Cpl. Warmington. He admitted that he signed the earlier mentioned statement before Mr. Harris, who witnessed it. At the time when he handed the Guinness to Dolphus, he said he did not know that it contained poison.

Under cross-examination by counsel for the appellant Buckley, he said he did not tell Somers who was offering him the liquor. On previous occasions he and Somers used to exchange drinks, and on this occasion when he was asked to give the bottle to Somers he was in a hurry. He thought the bottle had in only Guinness stout. He had accepted the assurance given by Buckley that it was something to throw away the case without hurting Dolphus. He denied the suggestion by counsel for Buckley that he (Brown) was the person who concocted whatever was in the bottle, and that he had wrapped it up in his pocket from in the early morning. The whole idea was not of his making. He said he had nothing to do with Somers' death. It was suggested to him that he was under a nine days' threat from Somers and that was the reason he had put up his story against Buckley.

The foregoing summary of the basic facts shows that the case to a great extent against each appellant rested on circumstantial evidence. Mr. Frankson first submitted that this being the case, in so far as the appellant Buckley was concerned, the learned trial judge should have directed a verdict of not guilty at the end of the Crown's case, because at p. 380 of the transcript, the learned trial judge remarked "Brown said that the Guinness bottle that he gave to Somers, he got it from Buckley to give it to Somers. You see up to the stage when Brown gave his evidence yesterday, the Crown could not put the case higher than in general circumstances to suggest that the bottle was coming from Buckley."

We did not interpret this statement of the learned trial judge as recognising that there was no case for Buckley to answer. His use of the phrase, "the general circumstances" did not indicate that had a no case submission been made to him it would necessarily have succeeded. Up to the end of the Crown's case the judge had for his consideration the following facts: the pending lawsuit between the deceased and the appellant Buckley: the meeting of the two accused at the river side, coupled with the conversation which they held; their drinking together in the bar, the statement by Buckley - "Me ready to be dead" - when he was cautioned by Detective Corporal Warmington. These were bits and pieces which would have had to be considered by the jury in the long run. Indeed, the summing up goes on to point out that the judge's view was the very opposite of that being put forward by counsel. Thus at p. 380, the learned trial judge continues:

".... but although Brown is a co-accused in the case, he having given evidence from the witness box, his evidence is part of the case, and he is telling you plainly now where he got the bottle from. So the Crown's case now, when it is examined will go beyond the pale of circumstantial evidence is so far as Buckley is concerned with regards to that bottle. If you believe Brown, Brown is getting it from Buckley and the liquid in there is the thing that killed the people."

The argument that there was no prima facie case against Buckley is to ignore the relevance of the evidence which the prosecution had presented up to the end of its case. We did not accept that the appeal could succeed on this ground.

Grounds 2 and 3 were argued on the basis that firstly, the evidence of Dr. Lee regarding the discovery made in the University of Miami School of Medicine was hearsay and should not have been accepted as credible evidence by the learned trial judge; and secondly, the learned trial judge erred as a matter of law in that he failed and/or misdirected the jury as to the approach to be taken in evaluating the evidence of an expert witness.

Dealing first with the tests at the University of Miami School of Medicine, Dr. Lee said that he did not personally make the tests, but was present when those tests were made by personnel of the School of Medicine, to whom he himself had delivered the specimens. The transcript discloses that neither of the defence attorneys at the trial raised any objections to this piece of evidence, nor was Dr. Lee cross-examined to the extent of ascertaining what he meant when he said "I was present when the tests were made." In fairness, it must be pointed out that counsel for the Crown did not seek to elaborate these words of Dr. Lee's evidence. Be that as it may, it is a reasonable interpretation upon a fair reading of the evidence, that Dr. Lee was present in the room, and at the bench where the tests were carried out and his evidence was based on personal observation of the tests performed and the results obtained thereby. Accordingly, the submission that this evidence was hearsay is not accepted. Its strength, however, is to be considered in the context of Dr. Paravateneni's clinical opinion. In that regard, we are mindful of the observations of Lawton, J., in R. v. Turner (1975) 1 All E.R. at p. 74, when that learned trial judge said:

"... an expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge and jury. If on proven facts a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary."

At p. 73 of the same judgment, Lawton, J., outlined the approach which a court ought to adopt in relation to the evidence of an expert. He said:

"Before a court can assess the value of an opinion it must know the facts on which it is based. If the expert has been misinformed about the facts or has taken irrelevant facts into consideration or has omitted to consider relevant ones, the opinion is likely to be valueless. In our judgment counsel calling an expert should in examination in chief ask his witness to state the facts on which his opinion is based. It is wrong to leave the other side to elicit the facts by cross-examination."

In dependence on cases of R. v. Ahmid (1962) 46 Cr. App. R. 169 at p. 276; Ramsay v. Watson (1961) 108 C.L.R. 642 at pp. 646, 649, and R. v. Turner (1975) 1 All E.R. 70 at pp. 73 - 74, to support his arguments against the admissibility of Dr. Lee's evidence, Mr. Frankson has overlooked the essential and common feature of each of those decisions, viz., that the evidence which the doctor there sought to give was not based upon any factual observation by him in the particular case, and that in each of those cases, the expert - the doctor - was being encouraged to give an opinion on what he was told by an interested party. The doctor's projected views were not formed independently and in the exercise of a professional examination.

We are not of the view that the judge's remarks as to the approach to be taken by the jury in evaluating the evidence of the experts, Dr. Parvateneni and Dr. Lee were inadequate, or for that matter a misdirection. According to Dr. Parvateneni his conclusions as to the cause of death in each deceased was due to the clinical signs mentioned above, and just as important was the smell of the contents vomited by Somers. This was a conclusion not based upon a report of facts to the doctor, but was contemporaneous with his treatment of the patients before their deaths. He had first seen them within fifteen minutes of their arrival at the hospital. There was little time difference in the time of their arrival at the hospital. He had them under prolonged and constant observation and treatment. It was he who said that he had found, from the smell, that organo-phosphorous substance had been ingested, and he concluded that it was this substance which had been in the body of all three patients he had attended. Mr. Frankson complained that the judge's description of the relevant evidence as "clear evidence" was a wrong direction to the jury. This complaint concentrated only on the evidence of Dr. Lee and

did not sufficiently take account of the content and tenor of the relevant passage where the judge was dealing with the expert evidence as a whole. At pp. 394 - 395, the learned judge said:

"So Madam Foreman and Members of the Jury, I think I have, to a large extent, referred to the evidence of the civilian witnesses. I mean witnesses to the case. We will now turn quickly to the medical evidence.

You remember Dr. Lee who came here - I think on the first day - he seems to be a brilliant scientist. He holds a Doctor of Philosophy degree in Chemistry.

Now you remember the evidence of the doctor who performed the post mortem examination, that he had given to Detective Corporal Warmington certain exhibits taken from the body of each - what Dr. Lee refers to as viscera parts of the organ, lung, brain, kidney, brain, liver, stomach contents and he took them to Dr. Lee, who did certain examinations and tests. Well his instruments were not sensitive enough to pick up anything from these parts, but he was able to make - rather to come to a conclusion from an examination of the liquid that was in the bottle. We still have a little drop left in here.

Remember he told you that when he got it, it was about a third full and he was able to make an examination of it and he found Azodrin, an agricultural pesticide to kill (mice) (sic) and weeds, and we understand that, from the address of counsel, apparently he has knowledge of it, that this pesticide is used by banana planters and it is strong enough, according to him, that if you dip the banana root in that mixture no disease would go near to it; it would kill it. The doctor found this pesticide, what he calls a substance. It is powerful enough, according to him, if taken in sufficient dose to kill; if a human should take it. and you remember a question that I asked of him, if a person drinks Azodrin, what signs or symptoms, if any, would generally follow. His answer was, certain twitching of the muscles, loss of intestinal control, difficulty in breathing, speech defect and you remember the doctor who performed the post mortem examination told you the same thing, that clinically each of these deceased persons had similar symptoms just like the twitching of muscles, loss of intestinal control, speech difficulty and so on, because the doctor had come to a conclusion as to the cause of death and not only from examination of the body, because he wouldn't find anything, but from the symptoms that he had observed before they died. What he did was to cut out certain parts and to hand them over to the Corporal. In the case of Somers you remember he told you that he smelt something from the stomach contents consistent with poisonous compound; he calls it Organo Phosphorous and in his opinion the cause of death was as a result of the compound poison from this substance that was in the bodies of all of them; and that wasn't challenged; clear evidence.

" You remember the doctor, Dr. Lee told you that the viscera that he had, he had to go to Miami University Hospital and he was present when they examined it, passed it through their machine or their instruments which are more sensitive than what we have out here and positive signs came out, meaning that poison was located in the body."

It is clear therefore that the learned trial judge gave a balanced and accurate direction as to the nature of the substance which caused the deaths and that the criticisms in grounds 2 and 3 do not form an acceptable basis for allowing the appeal.

Other aspects of the submissions seeking to set aside the convictions were complaints that the learned trial judge did not adequately instruct the jury as to how they should deal with circumstantial evidence. It was said that the learned trial judge failed to direct the jury that they could draw inferences favourable to the applicants, although, according to the submissions of both Mr. Frankson and Mr. Green, he drew the jury's attention to inferences which were adverse to the appellants and not to those which were favourable. Additionally, the way in which the learned trial judge dealt with the unsworn statement made by Buckley was criticised by Mr. Frankson.

Insofar as the summing-up explored the circumstantial evidence against Buckley, Mr. Frankson submitted that at no time at all was the jury directed in terms which would suggest to them, or to make it abundantly clear to them that in evaluating the evidence led by the prosecution it should lead them to come to the rational conclusion, or the inescapable inference that the appellant Buckley, was guilty of the offence as charged. Furthermore, insofar as the facts proven were concerned, there were no directions to the jury as to the proper inference to be drawn therefrom either for or against the appellants. According to Mr. Frankson, the judge lumped the evidence together and asked the jury to draw the inference against the appellants.

Appropriately, it must be taken into consideration that after Brown gave his sworn evidence, the state of the case was such that his evidence strengthened the Crown's case and put in perspective the respective roles of the appellants. That was the position at the end of the whole evidence, and certainly, the jury had been given the clear

warning that the case against each must be considered separately, especially on the basis that the prosecution case was directed to show that there was -

"a conspiratorial move ... a conspiracy well planned and executed in a way that Somers could not have suspected what was going to happen to him."

At page 393 the learned trial judge adverted the jury to this in the following words:

"When Brown, as he said, got this bottle of Guinness from Buckley to give to Somers, did he know that the bottle contained poison or some substance that could kill or cause serious injury to the organs of Somers if he took it? Because if you answer yes to that question, 'he knew quite well', you have no reasonable doubt about it, then he is guilty of murder. He too is guilty of murder."

Further, on the same page he identified the position of each appellant in the following manner:

"In the case of Buckley, as I have already told you the case against him is one of murder or nothing, if he did hand the Guinness to Brown to give Somers well-laced with poison that will kill or cause serious injury to the man, he is guilty of murder and if Brown knowing too the same position he is guilty of murder too. It is only if Brown wasn't aware of it, the nature of the substance in it, that it could kill or cause serious injury, then you would ask yourselves another question. The other question would be: did he know that short of killing or causing serious injury it was likely to interfere with the man in the sense that it would do him some harm, or not a serious harm? If yes, then he is guilty of manslaughter and he wouldn't be guilty of murder"

In our view, the judge's further directions in the way the jury should evaluate the circumstantial evidence upon which the case rested were adequate and relevant when the record at pp. 408 - 410 is considered. He said:

"Then Madam Foreman and members of the Jury, I am not going to be too long now. I am at what you call the closing stage and I will remind you of something. When the Prosecution closed its case, the evidence in so far as it touched Buckley I regard it as circumstantial only. Where circumstantial evidence is being relied on alone, that is nothing more, no eye witness, the jury should be told that there are three elements that they should expect to find; and those elements are opportunity, interest, conduct; opportunity, interest, conduct. In the case of opportunity,

"up to that stage we had the evidence of Franklin Williams with the meeting at 6:30 a.m. on the 17th of October between the two of them; and we have the evidence of Corporal Warmington that in the course of the enquiry, of his investigation and under caution, the accused Buckley admitted that he did meet, did see Brown at 6:30 on that very morning; and still dealing under heading of opportunity, up to that stage we had the evidence that the accused Buckley and Brown were seen together in a bar, Kingslee Bar a short time before Mr. Somers was seen with his Guinness bottle. That he has denied (of) (sic) the evidence of Garrick that while both men were together in the bar he saw Brown leave the bar and left towards the direction of the market and we are told that Kingslee Bar and the market adjoins each other; the evidence of these two eye witnesses that they saw Mr. Somers ill and down, as it were, on the piazza vomiting, with a bottle of Guinness beside him and that bottle is rescued by an old man who, as I said yesterday, seemed to have had some knowledge of proceedings, he went and hid the bottle because he said he considered that it would be of use some time. That would be under the heading of opportunity.

"Under the heading of interest, at the end of the Prosecution's case where the interest would come under would be the heading of motive. I need not go over it. The Prosecution has given evidence to show what the motive was. He, too, Buckley from the dock gave a story from which the motive could be inferred; and under the heading of conduct, which I told you yesterday, a subsequent conduct or prior conduct before the act is a relevant factor for the jury to consider. The reason for it is this, that however wicked a man is, however good he is, there is a thing inside him called conscience and that conscience is part of his make-up. When he has done something of a serious nature he may behave in such a way as to give away the game and let people know that he is behaving under suspicion because normally people don't behave that way. Because of the inside working and the consciousness of guilt, it causes him to do foolish things, or to say foolish things and to lie his head off. The prosecution is saying in the case, very simple question asked of him by Mr. Warmington and he first want to put him off

'You didn't see the man at all the Friday morning?
A: 'Oh, yes; oh yes.' The very first or very important question asked there, he is trying to avert suspicion, that is a factor dealing with subsequent conduct along with his stand now of an alibi in the sense that - 'I didn't have the opportunity on that Friday; didn't meet Brown at all.' As far as he was concerned although Brown is saying that he was there, he didn't touch Brown or near to Brown. So as far as Buckley is concerned that was the state of his evidence at the end of the prosecution's case. Crown Counsel didn't know, couldn't know because defence counsel is under no duty to disclose to the prosecution or to the Judge before the end of the prosecution's case, what he intends to do. So Mr. Brown took the stand and gave evidence along the lines that

"I have outlined to you, and his evidence is part of the case."

In effect the learned trial judge, has thereby put before the jury the essential matters which they should look for, and think upon before they could return a verdict adverse to the appellants.

The learned trial judge had earlier directed the jury that insofar as the written statement (Exhibit 3) given by Brown to the police was concerned, there was no evidence that, when Brown was making the statement, Buckley was present; no evidence that he was there at all. He emphasized that "what is in the statement here would not be evidence against Buckley, but Brown having taken the stand and repeated what he told the police at this particular point is part of the evidence in the case."

In the light of this, we did not agree with Mr. Green that the judge's ruling to allow into evidence only parts of the written record of Buckley's statement, was to leave for the jury's consideration only those parts as would contradict the evidence of Brown. Such a submission was miscast, bearing in mind that Brown himself had given sworn evidence implicating himself as a co-actor in the tragedy of this case. His only exculpatory assertion was that he did not know that there was poison in the drink which had to be set against his evidence of the preliminary discussion he admittedly had had with Buckley, and the assurances he had received that whatever the drink was it would not harm Adolphus Somers, but would only result in "throwing away the case."

The fact of the matter is that on any rational examination of the facts in this case, the evidence points to the two appellants as the persons who perpetrated the death of the three deceased. We did not accept that the summing-up of the learned trial judge was confusing and likely to mislead the jury in their deliberations. The convictions were consistent with the evidence and accorded with the proper inferences which could have been drawn from the evidence.