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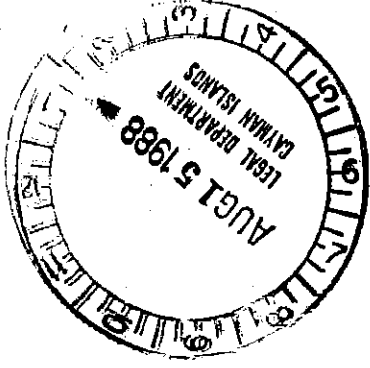
IN THE CAYMAN ISLANDS COURT OF APPEAL

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NOS. 479/86, 481/86

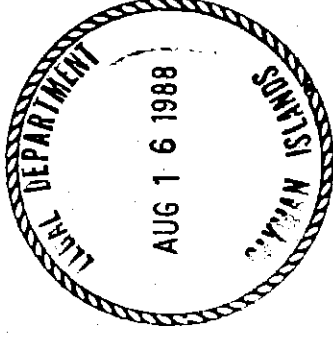
IND, NOS. 28/86, 30/86

C.I.C.A. NOS. 5 and 6 of 1987



BLANFORD DIXON v REGINA

LENSEL DIXON v REGINA



BEFORE: THE HON. PRESIDENT ZACCA

THE HON. MR. JUSTICE GEORGES, J.A.

THE HON. MR. JUSTICE HENRY, J.A.

Appearances are:

MR. B. SHARMAN FOR THE CROWN

MR. JOHN JUNOR FOR BLANFORD DIXON

MR. HOWARD COOKE FOR LENSEL DIXON

HEARD: March 21-25 and 28, 1988, April 4, 1988 and August 15, 1988

J U D G M E N T

On 20 January, 1986 at about 8:35 a.m. Sgt. Roger Doyle Ebanks arrived at Spotters Bay off the Queen's Highway where he saw the body of an adult male, later identified as that of Charles Rankine. As the scenes of crime officer, he began his investigations and the pathologist, Dr. March was summoned.

He arrived about midday. He described the body as lying on its left side with the limbs flexed in a fetal position. He saw six (6) wounds, five (5) of which were bullet entry wounds and one (1), a bullet exit wound. The position of these wounds is of importance, having regard to the evidence of the principal witness for the Crown on how the shooting actually took place.

There was a wound to the right cheek The entry was close to the right cheek-bone. It went through the mouth. There was blood

and a tooth on the left palm. The bullet had travelled at an angle of 45°. That shot had been fired from a range of 6 to 8 feet. The victim would have been prone when this shot was fired and the assailant would have been behind the body, near the shoulder.

There was a wound to the back of the neck, above the base and slightly to the left, with a matching hole in the shirt showing a scattering of powder. In his view, that shot had been fired within a range of 18 inches. The post-mortem examination showed that entry had been roughly perpendicular to the skin, and that the bullet had gone through the fifth cervical vertebra, severing the spinal cord. He recovered a jacketed bullet from that vertebra. The most likely position of victim and assailant would have been one in which both were standing, the assailant directly behind and shooting with the gun pointing at a 90° angle, approximately. The wound could have been inflicted with the body lying as the pathologist saw it. The assailant would then have to be stooping or kneeling down to get the gun in the appropriate position.

There was an entry wound to the right shoulder. The post-mortem examination revealed that the bullet had gone through the spinal ridge of the right shoulder blade, through the shoulder joint and out through the lateral edge of the right deltoid. This could have been inflicted while the victim was standing or while he was on the ground.

There was another wound in the lower end of the left shoulder blade with a corresponding hole in the shirt. The path of this bullet was downward and across to the right, piercing the diaphragm, the intestines and the liver and ending in the upper lobe of the right kidney from which it was recovered. It was most unlikely that this wound could have been inflicted when the victim was lying on his side in the position in which he was found.

There was a wound in the right side of the back at the level of the eighth rib. The path of this bullet was through the eighth rib, downwards and outwards at an angle. The bullet was recovered between the sixth and seventh rib on the right side. This wound could have been

inflicted while the deceased lay in the position in which he had been found.

There was thus the possibility that all the wounds could have been inflicted where the body lay. Had the deceased been standing, the shot to the left side of the back would have knocked him down, but he could have gotten up and travelled some distance after being hit. The wound severing the spinal cord would have been inflicted more or less on the spot where the body had been found and the wound to the cheek after the body had fallen.

Investigations led to charges of murder being laid against four persons - Owen Barrington Bruce, the appellants in this matter, Blandford and Linsel Dixon and the wife of the deceased and mother of the appellants, Natalie Dixon.

Owen Barrington Bruce (Bruce) was tried first by himself. He raised a plea of diminished responsibility but was convicted of murder. He was sentenced to death and appealed. While his appeal was pending, he testified as the principal witness for the Crown against the three other persons charged.

At the close of the case for the prosecution against the other three accused, a successful submission that there was no case to answer resulted in the acquittal of Natalie Dixon. The appellants were convicted as charged and have now appealed.

Both appellants contend in their grounds of appeal that the verdict was unreasonable and could not be supported having regard to the evidence. This necessitates a somewhat detailed summary of the evidence.

Bruce was a Jamaican who came to the Caymans in 1984. He had previous convictions beginning as a juvenile when he was convicted of unlawful possession of a firearm. In 1974, he was convicted of robbery with aggravation and sentenced to 15 years imprisonment. He was released in 1981, but shortly thereafter was convicted of store-breaking and larceny. He was sentenced to two (2) years imprisonment and eventually released in November, 1982.

In 1980, he had married in Jamaica and he had a child by his wife there. She was a witness in the case - Cheryl Joyce Bruce. Nonetheless, while in the Caymans, he bigamously married a Caymanian lady, Coralee Ebanks by whom he has a child.

Bruce met Linsel Dixon (Linsel) who worked at the George Town Hospital when he was a patient there in February, 1985. They became friends and through Linsel he met the other members of the family, Blandford Dixon (Blandford), Christopher Dixon (Christopher), their mother Natalie Dixon (Natalie) and the deceased Charles Rankine.

It was his evidence that as early as April/May, 1985, Natalie, Blandford and Linsel had a conversation in his presence in which they discussed killing the deceased. Each had a motive. Blandford's complaint was that Charles had destroyed his drugs; Natalie's that he ill-treated her and had other women and Linsel's that he resented the ill-treatment of his mother. This conversation appears to have been repeated in June/July, 1985.

Various schemes were discussed. Charles visited Jamaica in December over Christmas and Natalie was said to have sent Linsel to Jamaica to arrange for his murder there. Linsel did indeed go to Jamaica while Charles was there. Bruce's evidence was that Linsel reported that a lady whom Charles was visiting kept such close company with him that no opportunity for the murder arose.

There was also a discussion between Natalie and Linsel that Linsel should shoot Charles as he lay in bed. Since Natalie shared the bed with Charles this was not pursued. There was the likelihood that she might be shot in error.

Linsel considered shooting the deceased some night when he returned home late. This was abandoned. The vantage point behind the garage from which the shot could be fired was often lit up by the lights of an uncle's car as he drove in to his house.

There was also talk of Linsel procuring poison from the hospital with which to kill the deceased.

A plan to kill Charles when he returned from Jamaica was also conceived. This involved the use of two cars. One, in which the killer

would ride, would park along the route which the deceased would take, another would follow the car in which he was driving and at an appropriate time pass that car and alert the waiting car of the approach of the car with the deceased. That car would then intercept the car with the deceased and he would be shot. There was no time to make these arrangements before the deceased in fact returned.

Bruce's evidence was that the plan which was eventually executed was agreed upon on the Saturday before it was executed - Saturday, 18 January, 1986, but he had in a previous statement placed the date as the Wednesday or Thursday before that Saturday. On the Saturday when the plan was agreed, he had been at Blandford's house. Blandford had said that he was going to a policeman at Northside to get the gun. He had set out in a red and black Volkswagen, which he normally drove and had returned with a .38 revolver with a longish barrel and a black plastic handle with carvings.

The plan was to get the deceased to a beach where he would be shot. A car would be needed for that purpose. It was thought that the car Linsel drove, a white Honda Civic, could too easily be recognised so it was decided that Blandford's girlfriend would rent a Mazda, which would be used to collect the deceased and take him to the place where he was to be killed.

Blandford's girlfriend, Anna Joy Ebanks, had rented a gray Mazda. She had used it for certain domestic errands on Saturday, 10 January, and then had parked it at Blandford's house. It was Bruce's evidence that it was parked behind the house where it could not be too easily seen.

Bruce testified that Linsel had driven him home on the Saturday, apparently at 2 - 3 p.m. On the way he had told him that the plan was to get Charles Rankine out of the house by telling him that a drug boat was coming in off Queen's Highway, that his assistance was needed and that he would be given \$10,000.00 for his help. While Charles was against drugs, he could not refuse such an offer.

It was Bruce's evidence that Linsel had picked him up on the Sunday evening, though there had been no previous arrangement that he

should do so. Bruce lived in West Bay. They had left in Linsel's car and had driven to Blandford's, reaching there about 8 p.m. Blandford was home and so was Christopher. Blandford had been concerned that Christopher should not notice when the gray Mazda parked behind the house was moved. Blandford had arranged to meet Linsel at Club Inferno.

Bruce and Linsel had gone to Club Inferno shortly after 10 p.m. He had seen Blandford's Volkswagen, driven there by Christopher. They had left the club at midnight and had gone to Blandford's home at Red Bay with stops on the way. Blandford was either at home when they got there or had arrived shortly afterwards. At that stage, he had given Linsel the gun, the same one he had picked up the day before, and bullets. Bruce said he recognised it. Blandford had again expressed his concern over Christopher who he said was out and whom he did not want to notice that the car had been moved. For that reason he said he could not go with Linsel to fetch Charles. He suggested that Bruce accompany Linsel.

Linsel had removed the Mazda from the back of the house and they had set out. He had moved from the car he had been driving to the Mazda a pair of surgical gloves and some beers. As they moved, Bruce stated that he had heard Blandford's Volkswagen leaving. He recognised the distinctive sound of the exhaust.

They had headed towards the Queen's Highway. Linsel told him (Bruce), that he and Blandford had selected the spot where the killing would take place. It was quiet and no one would hear the shots when fired. Linsel had driven the car some distance down the Highway then had turned off the main road towards the beach. That, he said, was where it would be.

Linsel had then decided that he would not go to fetch Charles, but that Bruce should do so. Bruce agreed and drove off in the Mazda. He had gone to the house at East End and had knocked. Natalie had replied and had opened. He had asked for Charles and Natalie had replied he was lying inside. She had gone in and shortly after, Charles had come out. Bruce told him that Linsel had asked him Bruce to pick him

(Charles) up because the boat was coming in tonight and he was needed. Charles agreed. He had then dressed and put together some fishing gear to take along. Bruce said he spent a half hour more or less in the house.

They had driven back to the spot where Linsel had remained. As Bruce got out of the car, Linsel had emerged from the bushes. He asked if Bruce had brought Charles and Bruce said he had. Linsel had then come to the car and had talked to Charles who was taking the fishing gear from the car.

Charles had then gone down to the beach looking out to sea. He had turned towards Bruce and Linsel and made a remark to the effect that he had not seen the boat. At that point, according to Bruce, he (Bruce) had walked back to the car and had sat on it for a while. Shortly after, Linsel had come up to him and had sat on it as well.

Bruce had then walked down to the beach where Charles was and had seen on the sand a fish which Charles said he had caught. Linsel who was close by the car had called him. He had gone to Linsel who had asked whether or not he was going to shoot the man, meaning Charles. Bruce replied he would not. Thereupon, Linsel had pulled the gun and had pointed it at him threatening that it would be either he and Charles, or Charles alone. Bruce said he became nervous as he knew the gun was loaded. He had taken the gun, pointed it in the direction of Charles and fired a shot. He saw Charles drop and he was making sounds. He dropped the gun. Linsel ran to where he had dropped the gun, picked it up and said: "You no see the man no dead". Bruce had moved to the car and as he did so, he heard more shots. He could not say whether the shots hit Charles or not. Shortly after, Linsel had run up to the car and had told him that the man was dead. He got in the car and so did Linsel.

When Linsel had given him the gun on the scene he had noted that Linsel was wearing a pair of surgical gloves.

Linsel had driven to the main road and while driving he had emptied the revolver and had thrown away the shells. He said he had taken Charles' wallet. Natalie had insisted that he do this so that there could be money for flowers for the burial.

They had driven to Blandford's house. As they drove in he saw no one, but after a few minutes Blandford had driven up in the Volkswagen. The Mazda was driven to the back of the house. Linsel had returned the gun to Blandford. They had spoken but Bruce did not hear what was said. Linsel had then left in the white Honda. This would have been about 4 a.m., before or after. Bruce had stayed at Blandford's house.

In the morning Blandford had taken him home in the Volkswagen. He had seen the gun in that car. Blandford spoke of leaving it at his girlfriend's.

Later that morning a friend gave him a ride to Blandford's house. Blandford and Christopher were there and Blandford told him that he had just gone to the hospital. His mother was there. Bruce asked what he was there for. He said Charles' body had been found. He left with the friend who had brought him and returned to West Bay where he lived. Before he left Blandford had given him two firearms to hide, one of them a revolver which was tendered in evidence as exhibit 10. Blandford had asked Bruce to do this so that his house would be clean if the police came.

About midday that day, Blandford had come to his place at West Bay and had asked him to go along to East End. Blandford was driving the Volkswagen. On the way they had stopped at Blandford's girlfriend's house where Blandford had picked up a paper bag. They had driven to Blandford's house, paused there a while, then headed for East End. At Bodden Town they had seen Linsel and picked him up. Blandford had given Linsel the paper bag he had picked up from his girlfriend's house. Some distance before the Northside intersection they had stopped. Linsel had got out of the car and had thrown the gun, which he had removed from the paper bag on the sea side of the road, over in the bushes. They had driven on further towards East End, then had turned back to Blandford's house. Linsel had left hitching a ride and Blandford had driven Bruce to his house.

Next day Blandford had come to his house and had told him that the police were in East End asking a lot of questions. On the Wednesday,

he had returned and told him that the police had picked him (Blandford) up and had tested his hands for gun powder. He had said it was best that Bruce leave the island. Bruce was reluctant, but Blandford had given him \$300 and had told him to go through Miami. He had bought a ticket and had left on 23 January, 1986 for Jamaica.

In Jamaica he had stayed at the home of his wife Cheryl. Linsel visited Jamaica. He had gone there to take his daughter to the funeral of her mother who was a Jamaican. Bruce met him at the airport and he had passed in to Bruce's house on the way to his boarding house. Three days later he had called again.

Sgt. Brady of the Caymans' Police visited Bruce on 25 February, 1986 and took a witness statement from him. In that statement he gave a completely different account of the events at the beach off the Queen's Highway (which will be referred to as Spotter's Bay), from that which he gave from the witness box and which has been outlined above.

He said then that Linsel had dropped him off that early Monday morning when they had reached the Barn Club near Northside. He had driven off heading towards East End, telling him (Bruce) to await his return. He had returned about an hour later, picked him (Bruce) up and said Charles was there. When he had asked where, Linsel had replied on the beach fishing. They had driven towards the Queen's Highway and on reaching a turn-off just before Tortuga, on the left, he had dropped him (Bruce), asking him to stay there and look if any car was coming. About 20 minutes later he had heard six shots fired in quick succession from the direction in which Linsel had driven - more towards Tortuga. A few minutes after the shots had been fired, he had heard the sound of a car coming. The headlights were off. When it reached where he was he had seen that it was Linsel. Bruce acknowledged in cross-examination that this was all a lie.

Bruce agreed to return to the Caymans from Jamaica. In Caymans he gave a cautioned statement which, in relation to the events at Spotter's Bay was, in its essentials, substantially similar to his evidence on oath.

Apart from this obviously important divergence there was one other aspect of his testimony which should be mentioned here. In cross-examination he indicated the position from which Linsel had fired at Charles. Dr. Marche's evidence was totally inconsistent with the position he indicated.

Witnesses were called to establish the hiring of the gray Mazda by Anna Joy Ebanks on Saturday, 18 January, 1986. The time of hire is not noted. In her evidence she stated that Blandford had driven her in the Volkswagen to Marie's Car Rental about 1 p.m. There was evidence of the return of that car on Monday, 21 January, 1986 and a complaint that the steering was faulty. Another similar car was substituted. The manager of Marie's Car Rental did not confirm any defect. It was contended, however, that little reliance could be placed on that as she had not driven the car complained of, for a distance of more than 60 yards.

There was evidence from Kendal Whittaker of his having received from Blandford some time in May, 1985 a Brazilian made .38 pistol with a barrel some 6 inches long. Blandford had asked him whether he wanted to buy it and he had pleaded lack of funds. Nonetheless, Blandford had given it to him and had from time to time come back and taken away the gun then returned it. The last time he had taken it away was on 18 January, 1986 at about 2 or 3 p.m. Blandford had come to Northside Police Station where he was then posted and had collected it. He had never seen that gun again, but on 27 February, 1986, Blandford had asked him whether he wanted the thing back. He replied okay and Blandford had handed him a pouch. When he had opened the pouch later at his home he saw it was another gun, the one marked exhibit 10. There had also been in the pouch some rounds of ammunition. He had never seen that gun before.

There was expert evidence that the bullets found in Charles' body and one found in the sand could, from the markings on them, have come from one of four revolvers. One of these was a .38 special calibre revolver manufactured by Llama and INA. INA revolvers are manufactured in Brazil.

There was also expert evidence that one of the bullets found on the scene was indistinguishable in its chemical composition from two of the bullets found in the pouch with the revolver, exhibit 10, which Blandford had handed Whittaker on 27 February, 1986 and that another bullet found on the scene was indistinguishable in its chemical composition from another of the bullets in the pouch. This indistinguishability arose from the fact that the bullets would have been cast from the same batch of molten lead. Some 50,000 bullets are made from each batch and bullets in a box of 50 could come from the same batch or from different batches.

Myrtle Marie Henry testified that she had seen Blandford drop Bruce at Bruce's house about 7:15 a.m. on Monday, 20 January, 1986. She is a neighbour of Bruce. He had done so in his Volkswagen and he was driving. In her statement to the police she was recorded as having said that she could not recognize who was driving. She maintained that she had not said this. Inspector Brauch who recorded her statement testified that he had faithfully recorded what she had said.

Helen Francis Moore testified that about 1 a.m. on Monday, 20 January, 1986 she had been driving home when she had seen a red and white Volkswagen registration number 21240 driving ahead of her. She had attempted to pass it but had not been allowed to. This had been in the Prospect area. She had last seen the car on Spott Straight. She stopped at her home in Bodden Town. She could not tell who the driver was or whether there was any person other than the driver in the car.

Alida Fisher gave evidence of a conversation which she said had taken place at a card game at her house at which Linsel and Blandford were present. Blandford had said that if the deceased did not leave his mother alone they, "were going to kill the son of a bitch". Linsel had told her the same thing in August, last year. He had said he was sick of the rowing. She had not mentioned these remarks to the deceased who was her second cousin. In her statement to the police she had not mentioned that the November conversation had taken place at a card game.

Marina Christian, a policewoman, had spent Christmas 1985 in Jamaica and had shared a room with Linsel who was also visiting Jamaica then. She gave evidence of Bruce having gone to the airport to meet Charles and of his having travelled with him in the taxi which dropped him off at an address in Spanish Town where he was to stay. Next day he had gone off telling her that he was taking Winston cigarettes to Charles. On 28 December, 1985, Linsel went out for some time and told Marina that should his mother call while he was away, Marina was to tell her that he had gone to do what she had told him to do. Marina Christian also gave evidence that one evening at the Guest House where they stayed, Linsel had said in her presence and that of a member of the Jamaican Police Force that it was easy for a man to come to Cayman from Jamaica, bump someone off and leave on the next plane. The remark apparently had shocked her, indicating as it did, a criminal mind. In a statement which she had made to the police on 2 March, 1986, she had not mentioned that remark. It had surfaced in her memory from time to time between the date of that statement and the date on which she gave evidence, but she had not mentioned it to prosecuting counsel until the day before she had given evidence.

On 20 January, 1986, Linsel was interviewed in connection with the death of Charles and asked to give an account of his whereabouts on 19 January, 1986. He said he had gone to Bertram's Bar but had not stayed there too long. He had not checked the time of his departure. He had got home at 10 p.m., and had watched T.V. He could not tell whether or not Charles was home when he got there. He might have been in his room. He had last seen him about 5 p.m. on Sunday. He had awakened at about 5:30 a.m. on Monday, had gone to his father's place and had reached work shortly after 6 a.m. He could not say whether Charles was home when he had left nor had he heard anyone calling him. The interview ended when a lawyer representing him arrived and advised him not to answer any further questions.

On 22 January, 1986, he signed a written witness statement. He stated that on Sunday, 20 January, 1986, he had come home and had found his father lying in bed, his mother in the kitchen and a brother watching

T.V. The telephone had rung. It had been for his father. He had told the caller that he was still going fishing in the morning. Fishing was apparently his favorite pastime.

He had left shortly after returning home at about 10:10 p.m. The door of his mother's room was closed. A brother was watching T.V. He had watched till he was sleepy and had gone to bed at 11 p.m.

At 5:30 a.m. next day he had awakened and had got out of bed. While he slept he had heard no one calling at the house. He had left for work in his rented car after calling out to his mother. He had tooted his horn on the main road to see if his father wanted a drive, but his father had not appeared, so he had driven on to work reaching there about 6:40 a.m.

At some minutes to 9 a.m. his beeper had gone off indicating that he was needed in Casualty. There he had been told he was wanted on the telephone. It was Lena Powell who had told him that a body had been found at which was thought to be that of his step-father. He had begun crying and had been led away to a chair. He sat there for a few minutes and on turning around he saw his mother and he told her what he had been told about his step-father. He had then set out for the scene of which he had been told, but was prevented from viewing the body.

His testimony was completely different. He stated that on Sunday, 17 January, 1986, having dropped at Blandford's house some food in bowls which Natalie had sent there, he had gone on to see a friend who lived at North West Point. He had a chat there then at about 7 p.m., he had stopped at the home of Bruce who lived nearby. He was driving a rented white Honda Civic.

From Bruce's house he had left for Blandford's to collect the bowls he had left there, Bruce accompanying him for the ride. Blandford and Christopher were there when they reached. They had spent some time winding and viewing tapes. Blandford and Christopher had left and they had remained for some 15 minutes after.

From there he had driven to South Church Street to a home where he had expected to receive letters. There had been none. On

Bruce's request he had driven to Bruce's house. Bruce had gone in and he had turned the car around. Bruce had spoken to his wife as he had gone in. Shortly after he had come out and had asked to be taken to Inferno to buy cigarettes. They had driven there but he had not got out of the car while Bruce had gone in for the cigarettes. While waiting he had seen Christopher arrive driving Blandford's Volkswagen.

He had left Inferno with Bruce about 10:20 p.m. Bruce wanted a drive to East End. They had stopped near the public beach on West Bay Road, as Bruce had wanted to urinate. As Bruce left the car he had noticed a "pak", that is a walkie-talkie receiver transmitter and a black gun on the front seat where Bruce had been sitting. When Bruce returned he had asked him where he had got the gun from. Bruce had replied that he had stolen it from a man's house on Thursday night.

They had driven on and shortly after Bruce had asked him how long he had had the white Honda Civic, to which he had replied, January 15. Bruce had then said he wanted him to go along to Queen's Highway to pick up a package off a boat. He had figured that the package would contain drugs, and had said he wanted to have nothing to do with the drugs. Bruce had told him to relax and he had continued driving.

Bruce had then told him that he had had the white Civic too long, that Blandford had a car and that they should use that car instead. He wanted no part of that as he wanted no trouble with Blandford. Bruce had insisted and, in the end, he had said that Bruce could do what he wanted, he would have nothing to do with it.

He had then driven the white Civic to a spot near the Red Rooster, some 900 yards from Blandford's house where he had parked it. Bruce had then left and had returned driving Blandford's car. He had got into that car and Bruce had driven East through Frank Sound into Old Man Bay, then had headed towards the Queen's Highway. He had taken a track off that Highway and had eventually parked near a beach.

When the car stopped he had got out and sat on the bonnet. Bruce had placed the pak-set on the bonnet. He had figured this was where the package would be picked up.

Bruce had spoken into the pak-set saying that everything was okay. The pak-set had transmitted that they were having engine trouble. It was then nearly midnight. He had asked Bruce why he had a gun, to which he had replied that one had to secure oneself when on these runnings.

Bruce had not remained on the beach. After about two and a half hours during which he had been sitting on the car making some transmissions, he had left, asking him, Linsel to await his return and to listen to any messages transmitted. Bruce had not told him where he was going nor had he asked. He had thought he was going to get assistance from the boat.

Bruce had returned some 20 minutes later. He had Charles Rankine with him. Bruce had come out of the car, then Charles. Charles had taken a basket from the car, and they had exchanged greetings, each saying "Yah". Charles and Bruce had walked to the beach. He had drawn Bruce's attention to the fact that the set was transmitting and had handed it to Bruce. He had remained near the car. Charles and Bruce were on the beach some 100 to 120 feet away. He had been paying no particular attention to them. They had been talking. After about half an hour he had heard Charles tell Bruce that that was the agreement they had made. Bruce had replied that if he did not take this he would get none. About half an hour after he had heard this snatch of conversation he had heard an explosion. He had looked and had seen Bruce standing up facing a westerly direction with the gun in his hand facing forwards and he was firing. He had heard five explosions in all. He could not tell what had been happening in the half hour before he had heard the explosions. The gun was the gun he had previously seen in the car. He could not see Charles Rankine.

After firing Bruce had come to the car. He had asked Bruce what he had done using an obscenity. Bruce had replied that Charles would not take the money he had offered so he had got rid of him. He had pointed out the trouble Bruce had put himself in as well as he Linsel, himself. He would have to report the matter to the police, to which

Bruce had replied that if he reported he would give him the same he had given Rankine.

As he had walked to the car Bruce appeared to be emptying shells from the revolver. They had got into the car and Bruce had driven off towards the Queen's Highway. Before leaving the Highway he had thrown to the side some shells he had in his hand. This was near a little monument marking the opening of the Highway. They had driven towards George Town and at Breaker's Point, Bruce had stopped. He had got out, walked to the pond and thrown away the gun and a hand of glove which he had between his legs.

Bruce then had returned to the car and had driven on. Stopping in front of a house slightly west of Blandford's house. He, Linsel, got out and had walked towards his car, parked in front of the Red Rooster. He had got into the car when Bruce came running up and he had to take him home. He had reached there at 3:05 a.m. and had dropped him.

He had then driven on to East End to Natalie's house where he lived. Natalie was home. He had begun to tell her what had happened to her husband, his step-father when she stopped him saying that she had taken some tablets for what she suffered from and would talk to him in the morning.

On 20 January, 1986 he had stopped his car near Blandford's house, tooted his horn and told him that Charles had been found dead and Natalie had dropped down. He had spoken to him through the bedroom window. He had not told Blandford what he knew because he was on his way to East End. He had never told Blandford what he knew. Sometime in February, he had told Blandford, Bruce had used his car. This happened when Blandford had raised with him rumours he had heard. Blandford had shown him a glove which had been found in the Mazda. He had burnt the glove but not in Blandford's presence nor to his knowledge.

He denied that his trip to Jamaica at Christmas had had anything to do with arranging Charles' death. He denied making the remark about which Marina Christian had testified. He also denied asking her to tell his mother if she rang that he had gone to do what she had asked him to do. He had met Charles at the airport on that visit to collect

money which he needed and which his mother had sent him. His visit to Charles in Jamaica had been to give him packets of Winston cigarettes which were difficult to get in Jamaica and which he knew Charles particularly liked.

His trip in February had been in connection with the death of his child's mother. He had seen Bruce who had sought him out but he denied any friendly association. He was afraid of Bruce.

He denied having made the remark to which Alida Fisher testified. His relationship with Charles had been good.

Blandford also gave evidence. He denied being a party to any plot to kill Charles. He denied having stated at any time that he intended to kill him. He agreed that he had given Whittaker a revolver. Whittaker had asked him to procure one. He had done so but Whittaker could never find the money to pay. He had taken the gun from Whittaker but not on Saturday, 18 January, as Whittaker testified, but on the Wednesday before that. That gun had been stolen from his house when it was broken into on the Thursday, the day after he had retrieved the gun from Whittaker.

On Saturday, 18 January, 1986 his Volkswagen was being repaired in the afternoon and he had asked his girlfriend Anna Joy Ebanks who lived with him to rent a Mazda to go grocery shopping and to make the weekly trip to the laundromat.

He had spent Saturday night at a club. Thereafter he had slept at a girlfriend's house, returning to his home at Red Bay after 9 a.m. on the Sunday. Anna was at his house and they had a quarrel over his sleeping out. She had asked to be taken to her mother's home and he had done so, returning immediately to Red Bay. He had gone to sleep. At 12:30 p.m. he had gone out again visiting hotels and had got back home at 4 p.m. He had found food there in a bowl which he assumed Linsel had brought. Linsel and Bruce had turned up about 7 - 7:15 p.m. and Linsel had asked for tapes.

He had left Linsel and Bruce looking at tapes and had driven to Anna's home in his Volkswagen. Christopher had gone with him. While

at Anna's he had allowed Christopher to drive the car to go play pool. Christopher had returned at 10 p.m. and Blandford then had left with him and two friends who had been visiting. He had dropped them at a Drive-in-Theatre and then had gone home. He had not, however, remained there. He had visited a number of night spots, ending up at Inferno. At midnight when he had left for home. Christopher had accompanied him throughout. At home he had watched television till 1 a.m. when he had gone to bed. He had not checked whether the Mazda which had been parked behind the house had been moved.

At 9 a.m. on Monday, he had been awakened by a car horn. He had opened his window and had seen Linsel across the street. Linsel had told him that they had found Charles dead in East End. He had asked which Charles and was told his mother's husband and that she was in hospital as she had dropped down. He had dressed and had gone to the hospital.

From the hospital he had returned to Red Bay. He had taken his gun, exhibit 10 from under his pillow where he had left it and had asked Christopher to hide it across the road as he expected the police would be there. As Christopher set off to do so he had seen a lady across the road which made it unwise to proceed. Bruce who was there had offered to take it to West Bay. Blandford had handed him the gun in a pouch. He had also given Bruce \$200.00, money he had made from the sale of cocaine, which Bruce had left with him.

From Red Bay he had gone to East End, then to town where he had stopped at Anna's workplace. She had taken the day off and they had gone to the hospital and then to Red Bay. There she had driven off in the Mazda and he had gone to the hospital. From there he had gone to town where he had seen Christopher, picked him up and returned to Red Bay. Anna had returned in the Mazda while he was there. She had complained about the steering. Christopher had decided to clean it so that they could return it. While cleaning, Christopher had found a side of surgical glove which he showed him. It was yellowish brownish. He had picked it up and thrown it away. Anna had driven the Mazda to the car rental place and had changed it that day for another gray Mazda.

That evening the police had taken him in for questioning. His question and answer interview was tendered and it sets out substantially the same account of his movements as that contained in his testimony.

He denied ever having made any statements of his intention to kill Charles. He had very little to do with Charles and seldom saw him. He had not arranged to have the Mazda rented so that it could be used in the murder of Charles.

Towards the end of January or early February, he had had a conversation with Linsel. He had told him something a police officer had passed on. Linsel had said it was not he but Bruce. Linsel had asked him whether he had found any blood in the rented car, by which he understood teh rented Mazda. There had been a heated argument between them as he was made to understand that the car had been used to commit a crime. He had told Linsel of Christopher's finding of the glove with blood in the car and that he had thrown the glove away. He had said he would have to tell Anna about it and he would also have to tell the police.

After Bruce had taken the gun away to West Bay on 20 January, 1986, he had next seen him on the Tuesday or Wednesday and he had asked for the gun. Bruce had replied that Coralee had it and he should check later. He had asked Coralee for the gun on several occasions. At first she ahd denied all knowledge of any gun, and had said that Bruce was in Cayman Brac working. She had given him two telephone numbers to give Linsel so that Linsel should call Bruce. The telephone numbers had not been Cayman Brac numbers. Eventually, he had got the gun from her. That gun he had loaned to Kendall Whittaker on the Monday before he was arrested. Whittaker had asked him for the gun which he had earlier given him. He had told Whittaker that that gun had been stolen, whereupon Whittaker had asked for the loan of another and he had given Whittaker the gun marked exhibit 10 in a pouch.

Anna Joy Ebanks testified as to the events of Saturday, 18 January, 1986. She had slept at Blandford's house the night before and had spent the morning there doing major house cleaning. At 1:00 p.m. she had left in Blandford's Volkswagen to Dave

Rent-a-Car to rent a Mazda. Work was to be done on Blandford's car that day and she needed a car to do her shopping and laundry. She had completed these tasks and had returned to Red Bay about 6 p.m. Christopher, Bruce and Blandford were in the yard about the Volkswagen. She had reported that the steering on the Mazda appeared to be bad.

Later that evening her brother had visited and she later had dropped him off at the Church Hall returning to Red Bay at 8:30 p.m. Blandford and Christopher were there and had left shortly after she returned.

She had next seen Blandford at 9 a.m. on Sunday. She had been angry with him, quarrelling over his having spent the night away from home. He had eventually driven her to her mother's. She had not used the Mazda because she could not find the key. The next day she had found it under the television.

On Sunday about 8 p.m. Blandford had come to her parents house in the Volkswagen. Christopher had been with him but had driven off. He had returned at 10 p.m. and at 11 p.m. Blandford and himself had left in the car. She had next seen him about 10:30 - 11 a.m. on the Monday at work. He had told her that Charles was dead and his mother was at hospital. They had gone to hospital and then to Red Bay. She had left Red Bay in the gray Mazda, having located the key while she was cleaning up.

She had driven to a number of places, including the airport, finally returning to Red Bay at about 3 p.m. Christopher and Blandford were there and she had complained that while driving on West Bay the Mazda had nearly thrown her away. Blandford had reminded her that he had told her to change the car. She had returned it that afternoon and had taken another. She had needed a car because with his mother in hospital and Charles death, Blandford had to use his car.

It was pointed out to her that in a statement to the police she was recorded as saying that she had spent the night of Saturday, 18 January, 1986 at Blandford's house and that he had taken her to her mother's home on Sunday, 19 January, 1986 at about midday. She said she did not recall saying that to the police but she saw it in the

statement signed by her.

On this evidence the appellants were convicted and they challenge their conviction on a number of grounds.

Ground 8 in the case of both appellants is identical and complains of a ruling by the trial judge in which he refused an application on behalf of both appellants to direct the prosecutor to call Coralee Bruce, the wife of Owen Barrington Bruce.

Her name had appeared as one of a long list of persons on the back of the indictment who were to be called as witnesses. Mr. Sharman explained that when the indictment had been prepared it was not certain that Bruce would be available as a witness. When it was clear that he would be a witness, it was no longer necessary to call witnesses to prove events which would be difficult to deny once his evidence was available. Mr. Sharman informed Mr. Cooke and Mr. Junor of the names of the witnesses he did not intend to call. The name of Coralee Bruce was not among them. The defence did, however, have a copy of her statement.

In cross-examining Bruce, Mr. Cooke put to him material contained in that statement. Bruce had agreed that he had told Coralee of the shooting but had not told her the truth. He had not told her that he had killed Charles, putting two in his head and three in his back. He had also denied that on Saturday, 18 January, 1986, Coralee had given him a black handled gun.

When the Crown closed its case without calling Coralee, Mr. Cooke, supported by Mr. Junor, applied to the judge to have the prosecution call her. The prosecution merely stated that she was available but that they did not wish to call her.

Section 138 of the Criminal Procedure Code, provides:

"If the court is of the opinion that any witness who is not called for the prosecution ought to be called, it may require the Crown to call him and, if the witness is not in attendance may make an order that his attendance be procured ..."

It is not in dispute that this introduces into the code a power which exists at common law and was defined by Lord Parker, C.J. in Reg. v

Olliva, [1965] 1 W.L.R. 1008 at p 1035:

"The prosecution do not, of course, put forward every witness as a witness of truth, but where the witness's evidence is capable of belief then it is their duty, well recognised, that he should be called, even though the evidence that he is going to give is inconsistent with the case sought to be proved. Their discretion must be exercised in a manner which is calculated to further the interest of justice, and at the same time to be fair to the defence. If the prosecution appear to be exercising that discretion improperly it is open to the judge of trial to interfere and in his discretion to call a particular witness, and, if they refuse, there is ultimate sanction in the judge himself calling that witness."

It appeared from the parts of Coralee's statement put to Bruce that she may have testified that Bruce had given her a third version of events at Spotter's Bay, thus further damaging his credibility. There was also the possibility that she may have testified that Bruce had left the house that Sunday evening with a gun, thus supporting Linsel's version of events. For those reasons Mr. Cooke contended that the prosecution had not exercised their discretion in such a way as to further the interests of justice and for that reason the judge ought to have exercised his power and ordered the prosecution to call her.

Additionally, since the defence had not been told early on that Coralee would not be called when they had been given the names of the other witnesses who were not going to be called, they had been taken by surprise and had been placed at a further disadvantage. This was not, in fact, a further disadvantage. Coralee was available and the defence could have called her had they wished.

In replying to the submissions at the trial, counsel for the Crown stated that the prosecution did not believe that Coralee was worthy of credit. Since making her statement she had been interviewed and had disowned it. Until the cross-examination it had not occurred to the prosecution not to call her.

The trial judge ruled that he would not interfere with the discretion exercised by the prosecution. He must have accepted the Crown's statement that the witness was of doubtful credibility. There is nothing to indicate that the trial judge exercised his discretion unreasonably and he acted on correct principles. This ground cannot succeed.

In ground 7(a) and (b) it was contended on behalf of the appellant Linsel that the trial judge had failed to leave with the jury the issue of manslaughter. The judge did leave the issue to the jury on the basis that the jury may have concluded that whoever shot Charles may not have had an intention to kill or do grievous harm, though understandably he stated that that was hardly a realistic view.

Mr. Cooke contended that this was not an adequate presentation of the case for the appellant Linsel. On one view of the evidence he submitted the jury could have found that Linsel had gone along with Bruce to fetch a package which presumably contained drugs which were being illegally brought into the Caymans. He was aware that Bruce was armed with a revolver. He was aware that this firearm could be used in the course of the enterprise; and this could occur in the most unusual circumstances. In such a situation the liability of each party would be determined by the state of his mind at the time the offensive weapon was used. In the case of Linsel his intention and understanding were that the weapon should be used as a security measure in relation to the enterprise.

We do not agree that the issue of manslaughter could possibly arise in the manner suggested. The trial judge did direct the jury that they should acquit Linsel if they accepted his evidence, or if it raised doubts in their minds. This was correct, since in that event the jury would have had doubts as to whether there was any joint enterprise

acted upon by Bruce and Linsel to import drugs into the Caymans.

Even if they were satisfied that Bruce and Linsel were parties to an enterprise to import prohibited drugs into the Caymans, the killing of Charles would not appear on Linsel's evidence to have been in any way a part of that enterprise. At best, it would have arisen out of a dispute between Bruce and Charles, the reason for which can only be a matter for speculation. Linsel as a co-conspirator in the importation of drugs could not in any way be liable for that death. We are satisfied that the trial judge would have erred had he left open the possibility of manslaughter in the manner for which Mr. Cooke contends.

At the basis of the case for the Crown was the existence of a common design and flowing therefrom the definition of persons who can be held to be participants to an offence. Both appellants complained of the directions given by the judge on these issues. Ground 1 and 5 of the grounds filed on behalf of Blandford formulated these complaints as did grounds 3 and 5 of the grounds filed on behalf of Linsel. In essence, it was contended that the directions were inadequate and that the evidence was not closely analysed to relate it to the directions given.

It has not been suggested that anything that the trial judge said was wrong. He pointed out that mere presence on the scene of a crime did not make a person a party to that crime - even if that person could have prevented it, did not try to do so and was, in fact, pleased that the crime had been perpetrated. Wishing that a crime be committed did not make a person party to that crime if it was committed. He then read section 18B to the jury. This he pointed out made the person who actually carried out the crime a party - in the instant case Linsel, it also made a party every person who did an act for the purpose of enabling another person to commit the offence - in this case Blandford who had supplied the gun and ammunition. The trial judge then defined the concept of common design.

We are satisfied that these directions were correct and adequate. The complaint relating to the failure adequately to relate the

facts to these directions can more conveniently be considered when dealing with issues relating to the failure adequately to analyse the evidence of Bruce and Whittaker in particular.

In grounds 9(a) and 10 of the grounds filed on behalf of Blandford, it is alleged that the learned trial judge erred in admitting exhibit 10, which was the gun Blandford admittedly gave to Whittaker on 27 February, 1986 and exhibit 20 which was a photograph of an INA .38 special made in Spain.

We do not think that there is any merit in either of these grounds. It was not and could not be contended that Whittaker's evidence that Blandford had given him a gun on 27 February, 1986 was inadmissible. Once this evidence was admissible there could be no objection to his tendering in evidence the gun which he had received. The oral evidence could be no more prejudicial to the appellant Blandford than the production of the weapon.

Blandford had described the revolver which Blandford had given him some time in May, 1985 as a ".38 special Brazilian made black handle". The bullets which were recovered from Charles' body could have been fired by a .38 special calibre revolver manufactured in Brazil by INA. Exhibit 20 was a photograph of such a revolver. Again if the oral evidence is unobjectionable, the photograph of the object referred to appears to us similarly unobjectionable.

Ground 7(b) deals with comments made by the trial judge as to the possibility of a switch of exhibit 10 for the .38 special made in Brazil. This can be more conveniently dealt with when considering the adequacy and fairness of the judge's comments on the facts.

In ground 16 of the grounds filed on behalf of Blandford it is contended that the trial judge erred in admitting the evidence of Helen Moore. Such a contention cannot be sustained. The evidence clearly goes to Blandford's credibility. If the witness was believed, then Blandford would not have been truthful in stating that he had reached his home after midnight and had been in bed by 1 a.m. There may be arguments as to whether Helen Moore should be believed or not, but not as to the admissibility of her testimony.

The remaining grounds of appeal can best be dealt with, not separately, but in the course of a general review of the summing up and the criticisms which they encapsulate.

In the opening passages the trial judge dealt with general directions as to burden of proof and the duties of judge and jury respectively. He then moved on to a general direction on the manner in which the jury should deal with inconsistencies and discrepancies. This is a ground of complaint in ground 4 of Blandford's grounds of appeal and grounds 2(a) and (b) of Linsel's grounds of appeal. It was contended that the directions were too general in their scope and because they did not focus specifically on the situations which arose on the facts of the particular trial were not helpful. This was not the type of case in which the important issue centred on accounts given by several witnesses of an event at which they were present and in which there were the inevitable discrepancies and inconsistencies arising from differences of perception, varying strengths of recollection and possible reconstructions from recollections after the event. In that regard the criticism is not entirely without merit, but the weight which can be attached to it must be seen against the summing up as a whole.

Both the appellants complained of the failure of the trial judge to analyse and scrutinise in sufficient detail the evidence given by Bruce. We have been referred to the number of pages devoted to his evidence-in-chief and the number of pages devoted to an exposition of the effect of cross-examination. This is hardly the criterion. The trial judge did adequately bring to the attention of the jury Bruce's lack of credibility on the essential issues.

He pointed out the fact that Bruce had given varying versions of the events. He asked how did it strike them that Bruce had given so many different variations of what happened on that fatal night. He did not set out the details, but it is inconceivable having regard to Bruce's central role that the variations would not have been present in the minds of the jury. He stressed the fact that Bruce's account of the actual shooting of Charles must be untruthful if they accepted the

expert evidence of Dr. Marsh and that there seemed to be no good reason why they should not accept the evidence of the doctor as an independent expert. He stressed that Bruce was an accomplice whose evidence was uncorroborated. He reminded them of his appalling record for crimes of dishonesty and of his demeanour in the witness box. He described his "studied answers", his "apparent calm" when he related "the appalling details and the circumstances of the incident on the beach at Spotter's Bay". He pointed out that Bruce had not seemed in the least bit perturbed as he told that story. He reminded them that Bruce had told numerous lies. He reminded them that Bruce was under sentence of death and that constituted a powerful motive to say what he thought the authorities wanted him to say, to minimise his own participation of the killing in the hope that the sentence would be commuted. These remarks were the prelude to his summary of Bruce's evidence and must have established the background against which the jury were being asked to evaluate it.

On behalf of both appellants it was contended that the trial judge prejudiced the case for the defence by directing the jury to:

"concentrate on the real issues in this case, and that is, primarily what happened on the night of the 19th/20th January of last year on that beach. Of course, you will have to remember incidents leading up to that - what happened that night - because that may give you the motive for what happened that night".

Immediately before beginning his review of Bruce's evidence he stated:

"And dealing with his [Bruce's] evidence, I am not going into all the evidence of the plots that he told you about. The so-called plots (if you would like to put it). You have heard a lot about that. I have given you some evidence of motive which is quite independent of anything that Bruce - etc - reminded you of evidence which is quite independent of anything that Bruce said".

These contentions were set out in paragraph 6 of the grounds filed on behalf of Linsel and the same paragraph of the grounds filed on behalf of Blandford.

It may well be that the trial judge in that direction may have thought that he was directing the jury to adopt a line favourable to the appellants. However, it is submitted that he was not, since it was fundamental to the case for the appellants that evidence of these plots had been concocted by Bruce and that that concoction was an essential part of the case for the prosecution since, as presented by the prosecution, the plan which was eventually executed was the last of the series which had been conceived. Further, it was submitted that it was incumbent upon the trial judge to assist the jury in analysing the evidence of these plots in relation to each appellant. Had he done so, the jury would have had no option but to conclude that there was no satisfactory evidence of any of the plots. Such a finding would have contributed to the destruction of Bruce's credibility as a witness.

On balance we do not think that the appellants were prejudiced by the approach adopted by the trial judge. The direction very clearly indicated that the trial judge attached little value to Bruce's evidence as to the so-called plots. Implicit in this was an unfavourable assessment of Bruce's credibility as a witness, an assessment which could not possibly be prejudicial to the appellants interests. As we have indicated, the trial judge in introducing his review of Bruce's testimony had made abundantly plain the important factors which undermined its credibility and these could hardly be reinforced by a painstaking review of his evidence on the issue of plots.

In dealing with the evidence of motive other than that given by Bruce, the trial judge did point to weaknesses in the evidence. He pointed out that the evidence given by Marina Christian of Linsel's remarks in Jamaica as to the ease with which a Jamaican hit man could arrive in the Cayman, kill a person and return to Jamaica was a late recollection. Even if believed, the judge added, it could well have been merely boasting in the ear of the law.

Reviewing the evidence of Alida Fisher he read passages which established that she had not in an earlier statement mentioned the fact that the statement had been made during a card game. He did add that a witness might not always remember everything when giving a statement. The issue had been brought to the attention of the jury and left for their decision. To that extent the generality of the directions or inconsistencies and discrepancies, was particularised in the relevant case.

Both appellants complained of the judge's direction on the issue of corroboration. In the grounds of appeal filed by Blandford it was ground 6, while in Linsel's it was grounds 4(a) and (b). Both grounds complained that the trial judge had confused the jury by failing to make clear that there was no room to find that there was any corroboration. In the alternative, it was contended on behalf of Linsel that the trial judge had treated parts of the evidence in such a manner that the jury may have been misled into thinking that such facts were corroborative.

The trial judge defined corroboration correctly as independent evidence from a source other than the accomplice himself which confirmed in some material particular, not only that the crime had been committed, but that the accused person or persons committed it or were parties to committing it. He then added:

"Now I have given very careful thought to this question ... I have come to the conclusion that there is no independent evidence capable of amounting to corroboration. There are straws in the wind so to speak but no evidence which in law is capable of amounting to corroboration of Bruce's evidence. That is a matter for me despite any submission that may be made".

He warned particularly that lies told by an accused did not amount to corroboration. There were all sorts of reasons why people lied and then concluded:

"But here I have taken the view that there is no corroboration of Bruce's evidence and I have to tell you plainly that there is no corroboration on the essential features and that is my direction to you".

This direction appears quite plain and Mr. Cooke did not pursue ground 4 of Linsel's grounds in which it was alleged that there was error on that issue. Mr. Junor did, however, pursue his ground 12 which was in similar terms.

He contended that the trial judge should not merely have said that there was no corroboration but should have indicated what parts of the evidence did not amount to corroboration. We do not think that there is any such obligation on a trial judge.

The difficulty arises because there are bits of evidence, more so in relation to Blandford, which support elements of Bruce's story. Thus Bruce speaks of Linsel wearing what appeared to be surgical gloves on the scene of the killing and of his having thrown one away. Christopher Dixon found such a yellowish brown glove in the Mazda when cleaning it. The trial judge's comments on the glove constitute a separate ground of appeal which will be briefly discussed. We are satisfied, however, that the trial judge made it clear that the glove had significance only in so far as the reactions of Blandford and Linsel to its being found can be said to have significance.

The other matter related to the gun which Whittaker testified that Blandford collected on 18 January, 1986. Bruce's evidence was that on that day Blandford said he was going to get a gun from a policeman. In commenting on Whittaker's evidence the trial judge remarked that it "dovetailed" with that of Bruce. The comment, in our view, is justified and accurate.

If Whittaker's evidence is accepted it makes it likely that Bruce was being truthful on that issue. Evidence may not be corroborative but may tend to show that a witness is credible. We do not think this comment by the trial judge in any way detracted from the clear statement he had made. Bruce's evidence remained uncorroborated and as such

had to be approached with caution and should not be acted upon except after keeping in mind the danger of so doing.

In canvassing that ground of appeal Mr. Junor drew our attention to a passage close to the end of the summing up which read:

"Now just one observation that I actually have to make and that is this. There is one thing that may have struck you about the evidence as a whole and this does not really rely on Bruce's evidence in any way. You might ask yourselves if two people go in a car in the small hours of the morning, and they go to a deserted lonely beach, and then one goes and fetches another man, Charles, to that beach and he is shot there, and left there, then these two persons drive off-together and say nothing of what has happened to anyone, even to the deceased person's wife. And they forget about the boat they were expecting to come with the drugs, as they say, indeed you may ask whatever happened to that boat which is alleged perhaps to have some drugs. And those two persons maintain friendly relations after that. You'll ask yourselves if there is any inference - any irresistible inference you can draw from that set of facts. Most of that evidence comes from the mouth of Linsel himself, that is not relying on Bruce.

And of course if you couple that evidence with Whittaker's evidence about the swap of the gun, and if you believe Whittaker, that is, you may draw another inference. It is entirely a matter for you, Mr. Foreman and members of the jury".

Mr. Junor correctly points out that whereas the matters outlined in the first paragraph of this passage are matters which are independent of Bruce's evidence, the movement of that gun from Blandford to Linsel cannot be established without Bruce's evidence. Since the entire passage was based on the case that could be made out without

adverting to Bruce's evidence, the jury may well have been misled into thinking that an inference could be drawn from Whittaker's evidence without the support of Bruce's evidence. The jury may have decided that Bruce totally lacked credibility so that they could not act on anything that he said. In effect, as we understand Mr. Junor's contention, the trial judge was treating Whittaker's evidence as corroborative of Bruce's evidence linking the murder weapon with Blandford.

There is merit in that criticism and it will have to be considered in deciding whether on the whole, the conviction in his case should be supported.

In ground 9 of Linsel's grounds of appeal and ground 7 of Blandford's grounds of appeal it was alleged that the trial judge had misdirected the jury on the facts relating to the glove found in the Mazda. We do not think he did. He made it clear that the evidence, such as it was, was not particularly significant and would need to be considered only from the standpoint of the reaction of Blandford and Linsel to the finding.

Ground 11 of Blandford's grounds of appeal alleged that the trial judge was equivocal in his assessment of the evidence of the ballistic experts and thereby confused the jury. The trial judge reviewed the evidence in some detail and concluded:

"Well I felt it necessary to assist you to analyse that evidence. I notice it was not mentioned in any detail in closing addresses but the evidence is there and it is for you. Except this, Mr. Ground, I don't think in closing placed any weight on that evidence, (not that I can remember any way) and, therefore, would suggest that you do no more than see that there is some consistency - an element of consistency only in that evidence. There is nothing from which you can draw any strong inference, I suggest, once you analyse it. But there is an element of consistency which you can take into account ...

But, of course, before I leave that I should say that you will bear in mind in the grey area of illegal trafficking in firearms, you may imagine that ammunition can come from all sorts of sources. You don't just go dealing illegally in firearms and ammunition. You don't go into a shop and buy them, you have to buy them clandestinely; and so you probably can't, I suggest you can't draw much of an inference from that evidence as it was put forward."

We are satisfied that this direction was clear and adequate.

The jury could not have been misled into giving undue weight to the expert evidence in the area of ballistics.

In ground 9(b) of Blandford's grounds of appeal it was contended that the judge prejudicially commented to the effect that there was a "switch" of the guns given by Blandford to Whittaker.

The trial judge stated:

"The significance of that revolver exhibit 10 is first of all, the prosecution case is that it was switched from the original gun which Blandford had arranged to sell to Whittaker. The inference being that the original gun had been used in the murder of Charles Rankine and had then been disposed of and that this had been switched for it. Again, the inference you are invited to draw is that it was done in order, I suppose, to cover his tracks."

The trial judge was there putting the case for the prosecution, in our view, correctly. In reviewing the evidence of Blandford the trial judge read at length what he said on the subject. Blandford's testimony differed from Whittaker's testimony as to the circumstances in which Blandford had handed exhibit 10 to him. Both accounts were put to the jury. It should be noted also that in the passage earlier quoted near the end of the summing up, the trial judge described the events as a "swap", a word which may have less sinister

implications than "switch". We see no merit in this ground.

Mr. Cooke alleged that the trial judge had not put Linsel's defence to the jury. We do not think there is a basis for that criticism. Linsel's defence was clearly set out in his testimony, large parts of which the trial judge read to the jury from the notes he had made.

There was also criticism of the format of the summing up - the allegation being that the judge had concentrated in the beginning on getting out of the way matters which may have seemed important to the jury, but which were, in fact, only marginally relevant. The approach may have been unusual but we are unable to state that the appellants were in any way prejudiced. The trial judge was thoroughly familiar with the manner of presentation of the evidence and may well have thought that unless these peripheral issues were cleared, the jury may well have placed too much emphasis on them. The approach was favourable to the appellants.

In the result, we conclude that the summing up was fair and accurate and that the only valid criticism which could be advanced was that of the passage towards the end of the summing up. In that passage the trial judge moved from considering the case against Linsel without considering Bruce's evidence to the case against Blandford, indicating an inference which could be drawn without making it clear that that inference might require reliance on Bruce's evidence.

We turn now to consider whether the convictions were in any way unsafe.

As Mr. Cooke helpfully pointed out, there were a number of areas common to the evidence of Bruce and of Linsel which the jury must have accepted, whatever may have been their view of Bruce's credibility.

Linsel had visited Bruce on Sunday, 19 January, 1986, perhaps not by prearrangement. They had both gone to Blandford's home and had met Blandford there. Linsel had then been driving a white Honda Civic. From there they had gone in that car to Inferno. While there they had seen Christopher who had come in Blandford's Volkswagen. After the

visit to Inferno there had been a stop at Blandford Dixon's house. Linsel had parked the Honda Civic in the area of Blandford's house and he and Bruce had transferred to a gray Mazda, which had been parked to the rear of Blandford's house. They had driven to Spotter's Bay in that gray Mazda. Bruce had gone to fetch Charles Rankine using that car. Charles Rankine had been killed at Spotter's Bay. Both Bruce and Linsel had left after the killing in the gray Mazda; they had driven to Blandford Dixon's house and the Madza had been returned.

On this evidence of apparent close association between Bruce and Linsel for some seven hours immediately preceding the crime, their presence at the scene of their crime, their joint departure and the failure of either of them to report what had occurred to anyone, the inference could reasonably be drawn in the absence of an explanation raising some doubt, that both were parties to the commission of the offence. We do not understand Mr. Cooke to disagree with these formulations.

The jury had been directed to acquit Linsel if they believed his evidence or if that evidence raised any reasonable doubt in their minds. The conviction indicated that they rejected his explanation.

We are satisfied that it was reasonable for the jury have rejected Linsel's explanation of his association with Bruce that evening, his presence on the scene, their joint departure and then subsequent silence and continued association.

The rejection of Linsel's explanation leads to the rejection of there ever having been a drug enterprise to account for the presence of Bruce and Linsel at Spotter's Bay that night. If there was indeed a package to be collected at Spotter's Bay that night, it is difficult to understand why Bruce had not made arrangements for this rendezvous. On Linsel's evidence he depended not only on a chance social visit that Sunday afternoon which made transport available, but on the likelihood that such transport would remain available throughout, when no prior arrangements had been made. Once the killing had taken place, the drug collection enterprise disappeared completely from the picture. It should also be noted that without prearrangement on the drug enterprise,

a gray Mazda less associated with Linsel was available to be used at the crucial stage.

We have no doubt that without taking into account the evidence given by Bruce there was sufficient evidence on which Linsel could be convicted as charged. We were satisfied that there was no misdirections and his appeal was accordingly dismissed.

In the case of Blandford it is difficult to believe that he arranged for the rental of the Mazda solely to facilitate shopping and laundry duties by Anna Joy Ebanks. It seems beyond the likelihood of mere coincidence that that car was available, parked behind the house on the Sunday evening to be picked up for the mission of moving Charles to the scene of his death. There was evidence that Bruce had, without consent, ridden Blandford's motorcycle and the contention was that Bruce was a person previously convicted of driving away a vehicle without the owner's consent. Giving due weight to these factors the inference that the car was rented to be used for the purpose for which it was in fact used is compelling.

Even disregarding the evidence of Whittaker that Blandford collected from him the black handled revolver of Spanish make on Saturday, 18 January, 1986, there remains Blandford's own evidence that he had taken the gun on the Tuesday or Wednesday before that Saturday. Blandford could not produce that gun. He explained that there had been a burglary and that that was one of the items stolen. He stated that he had made a report of the burglary. The records of the police contained no such report. Christopher who lived in the same house had been unaware of the house having been burglarised about that time. It would be reasonable to conclude that Blandford very shortly before the date of the killing had recovered from Whittaker a gun of a make from which could have been fired the bullets which killed Charles. He had not produced that gun and had given an explanation for his failure so to do, which was false.

Once the explanation given by Linsel of the collection of a drug package was rejected, the conclusion seems inescapable that the purpose underlying the movements of Bruce and Linsel on the night of

Sunday, 19 January, 1986, was the murder of Charles. There was evidence other than from Bruce which the jury could have accepted that Blandford desired Charles' death and there was also evidence that he had dropped Bruce home on Monday at 7:15 a.m.

While we agree that the reference to the case against Blandford near the close of the summing up after the discussion of the case against Linsel without Bruce's evidence was unfortunate in that it lacked elaboration, we do not think it was erroneous. There was evidence apart from that of Bruce which, if accepted, was adequate to support a conviction in the case of Blandford.

Accordingly, his appeal also was dismissed.