

THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRI/VBI/107/4/2024

Criminal Division

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS

AND

RAYMOND FORBES

Before: The Honourable Ms. Renae McKay

Appearances: Mrs. Erica Ingraham and Mr. Calnan Kelly for the Prosecution
Ms. Tai Pinder and Mrs. Lilynique Murphy-Grant for the Defence

Hearing Dates: 8th May 2026 and 15th May, 2026

RULING

Criminal Law – Vehicular Manslaughter – Section 44A (1) Road Traffic Act (Amendment) (No.32) Act, 2020 – Section 22 Evidence Act – Expert opinion – Admissibility of evidence – Sections 38 and 39 Evidence Act – Article 20(1) Constitution – conflicting expert evidence – whether an expert evidence containing hearsay admissible evidence

McKay, J.

FACTUAL BACKGROUND

1. Raymond Forbes, the Defendant herein, stands charged with the offence of vehicular manslaughter, contrary to section 44A (1) of the Road Traffic (Amendment) (No. 32) Act, 2020. His trial commenced on 25th April 2026, and the Prosecution closed its case on 5th May 2026.

2. On 6th May 2026, the Defence opened its case and indicated their intention to call Mr. David Lockhart as a crash reconstruction expert. Mr. Lockhart prepared a report concerning the events of 31st January 2024. The Prosecution objected to the Defence calling him as an expert witness.
3. The Prosecution contended that they were not privy to Mr. Lockhart's report and needed time to review its contents. Thereafter the matter was adjourned to the following day. Upon resumption, the Prosecution submitted that the report was inadmissible on the ground that it offended the rule against hearsay and bias. The Defence had over the course of the night handed over to the side opposite an amended document. Reference to the report throughout herein, is a collective reference to both reports.
4. On 8th May 2026, the Court in a case management/evidentiary hearing heard oral submissions on the inadmissibility and admissibility arguments, respectively of the Lockhart report. At the conclusion the Court invited Counsel to reduce their oral submissions in writing.
5. This ruling concerns the Prosecution's objection to the admissibility of the Lockhart report.

Submissions of the Prosecution

6. Counsel for the Prosecution, Mrs. Ingraham, relies on the recently published Bahamas **Criminal Bench Handbook**, with respect to the nature of expert evidence which is admissible only if it is relevant, needed to provide information outside the judge's or jury's knowledge, the witness is competent, and the evidence satisfies the rules from **Folkes v Chadd (1782) 3 Doug KB** as summarised in **R v Turner [1975] QB 834**.
7. They also relied on **R v Turner [1975] 1 All ER 70** in support of its submission that just because evidence is relevant does not automatically mean it should be admitted. The Prosecution's position maintained that the usual rules still apply, including the rules which generally prevent hearsay and opinion evidence from being admitted.
8. Counsel submits that, as stated in **R v Bowman [2006] EWCA 417**, expert evidence must be independent and objective, and the expert must not act as an advocate for the party calling him. Counsel further submits that the expert should clearly identify the facts and assumptions relied upon and should not leave out matters that undermine the opinion.
9. Referring to **Franklyn Edgecombe v DPP SCCr App. No 22 of 2024**, which adopts the **R v Turner** necessity rule for including relevance, necessity, properly qualified expert, Counsel submits that relevant evidence may be excluded if its prejudicial effect outweighs its probative value or it misleads the jury.
10. The Prosecutor also placed reliance on the authority of **R v Breani [2021] 1 WLR 5851** for the proposition that expert opinion is only admissible if it is relevant, given by a competent witness, and needed to provide information outside the court's knowledge and experience.

11. Mrs. Ingraham submitted that Mr. Lockhart used the same measurements as their expert, Mr. Hepburn and that Mr. Lockhart did not challenge Mr. Hepburn's techniques. She noted further that Mr. Lockhart's conclusion was different from Mr. Hepburn's conclusion. The differing conclusion she submitted is based on unfounded opinions, inadmissible hearsay, misstated facts and speculation.
12. In comparing the witnesses' statements, including the Defendant's caution statement, to that which Mr. Lockhart based his report on, Counsel argues that he must have relied on transcripts herein to form his conclusion. She submits that Mr. Lockhart had reconstructed the witness evidence to form his report. This she said is 'highly' improper.
13. Finally, Counsel submits that in the report Mr. Lockhart's comments on matters which are in the province of the jury, and accordingly it is biased. The Report she said exceeds the proper role of a crash reconstruction expert by expressing views beyond the reconstruction evidence. As such it is more prejudicial than probative, and does not provide assistance herein.

Submissions of the Defence

14. Counsel for the Defence, Ms. Pinder, contends that the Lockhart's report is admissible on the basis that it relates to a traffic accident of the 31st January 2024 and concerns matters lying beyond the ordinary knowledge and experience of the judge or jury.
15. She submits that the evidence is required to assist the jury in reaching conclusions it could not properly reach without expert assistance, provided that the witness is suitably qualified, the opinion is relevant to the issues in the case, and the expert identifies the facts and assumptions upon which that opinion is founded.
16. Counsel relies on the principles in the **Ikarian Reefer [1993] 2 Lloyds Rep 68** and submits that expert evidence must be independent and objective. The expert should clearly set out the facts and assumptions on which the opinion is based, stay within the limits of his or her expertise, and say when a view is provisional or when there is not enough information to reach a firm conclusion. Also, an expert must promptly disclose any change of opinion and should identify the materials relied on, such as photographs, calculations, and reports.
17. Counsel also refers to **R v Bowman [2006] EWCA Crim 417**, which emphasizes the duties of an expert witness as set out in **R v Harris [2005] EWCA Crim 1980** and identifies what the expert report should include. As such, she argues that Mr. Lockhart's report outlines the materials used to form his opinion, explains the methodology used, identifies assumptions, and confines his opinion within his expertise.
18. Counsel cites **R v Harris** (supra) and finally submits that, considering all the circumstances, for the jury to resolve disputed facts, the **Ikarian Reefer** (supra) principles ought to be applied.

19. In conclusion, Counsel submits that Mr. Lockhart is an independent expert, not an advocate and that disagreement with the Prosecution expert opinion does not amount to bias.

ISSUES

20. The issues for consideration herein are:

- i. Whether Mr. Lockhart is capable of being treated as an expert witness in crash reconstruction.
- ii. Whether Mr. Lockhart's proposed report is admissible in whole or in part.
- iii. Whether Mr. Lockhart's report impermissibly relies on hearsay, advocacy, factual commentary, or other matters outside the expert's field.
- iv. Whether exclusion or limitation of the report is required in the interests of fairness.

LAW AND ANALYSIS

21. The Black's Law Dictionary 8th Edition defines 'expert evidence' as **“evidence about a scientific, technical, professional, or other specialized issue given by a person qualified to testify because of familiarity with the subject or special training in the field.”** It also defines an 'expert witness' as a **“witness qualified by knowledge, skill experience, training, or education to provide a scientific, technical or specialised opinion about the evidence or a fact in issue.”**

22. **Section 22(1) of the Evidence Act, Chapter 65**, provides that when a court faces technical issues requiring specialized knowledge or skill, it may admit expert evidence along with relevant supporting or opposing facts to assist in informed decisions.

23. The witness possesses the specialized skill or knowledge to give expert evidence on facts in issue before the Court.

24. In the Court of Appeal decision of **Franklyn Edgecombe v DPP SCCR.App. No.22 of 2024**, Crane-Scott JA (as she then was) at paragraph 178 explained the effect of section 22(1) of the Act in the following terms:

“On its plain and ordinary reading, section 22 provides that where in any particular case (whether criminal or civil) a person is proffered as an expert witness to give opinion evidence, the court is required to undertake two tasks, namely: (i) to “form an opinion” on whether an expert opinion is ‘necessary’ to assist the court on a subject requiring special skill or knowledge; and (ii) to determine, for the purpose of admitting the opinion into evidence, whether “in the court’s opinion” the witness proffered to give the opinion is in fact an expert in the subject requiring the person’s special skill or knowledge. [Emphasis added]”.

25. Expert evidence is not necessary in every criminal proceedings, provided that the judge or the jury can apply common sense and draw their own conclusions. If an issue is technical, however, expert evidence is necessary. Lawton J in **R v Turner [1975] QB 834** observed that:

“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 or jury. If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary. In such a case if it is given dress up in scientific jargon it may make judgment more difficult. The fact that an expert witness has impressive scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves;” [Emphasis added].

Hearsay Evidence

26. **Section 38 of the Evidence Act** restricts the admissibility of hearsay evidence in proceedings, subject to the statutory exceptions preserved by **section 39**. It is, however, well established that an expert witness is not subjected to the hearsay rule in the same manner as a witness of fact.
27. An expert may, in the course of forming an opinion, rely upon information obtained from others, including material that would not itself be admissible as proof of the facts stated. The expert’s opinion does not make the underlying material evidence proof of truth, and in the absence of the material relied upon to draw a conclusion, the opinion may carry little weight.
28. I draw judicial guidance from **R v Abadom [1983] 1 WLR 126**. Therein, both the prosecution and the defence adduced expert evidence on the question of whether the appellant had committed a robbery, the relevant issue arising from the appellant’s pair of shoes on which fragments of glass were embedded. One of the prosecution’s experts relied in part on hearsay material, and the defence submitted that such reliance rendered the evidence inadmissible. At page 4, Kerr LJ stated that:

“...In the context of evidence given by experts it is no more than a statement of the obvious that, in reaching their conclusion, they must be entitled to draw upon material produced by others in the field in which their expertise lies. Indeed, it is a part of their duty to consider any material which may be available in their field, and not to draw conclusions merely on the basis of their own experience, which is inevitably likely to be more limited than the general body of information which may be available to them. Further when an expert has to consider the likelihood or unlikelihood of some occurrence or factual association in reaching a conclusion, as must often be necessary, the statistical results of the work of others in the same field must inevitably form an opinion ingredient in the cogency or probative value of his own conclusion in the

particular case...However, it is also inherent in the nature of any statistical information that it will result from the work of others in the same field, whether or not the expert from the work of others in the same field, whether or not the expert in question will himself have contributed to the bank of information. Indeed, to exclude reliance on such information on the ground that it is inadmissible under the hearsay rule, might inevitably lead to the distortion of unreliability of the opinion which the expert presents for evaluation by a judge or jury... [Emphasis added]

29. In **Brecani v R [2021] EWCA Crim 417**, Lord Burnett of Maldon CJ reaffirmed that expert evidence is admissible where specialised knowledge is required, the witness is competent, and the court needs assistance beyond ordinary experience. Citing **R v Turner** (supra), he emphasised two points made by Lawton J: such evidence is admissible only on matters outside ordinary knowledge, and its weight depends on the court knowing the factual basis of the opinion. His lordship also observed at paragraph 45 that:

First, that the facts on which an expert founds an opinion must be proved by admissible evidence (840B). In many cases some of those facts are likely to be admitted by the prosecution or defence as the case may be, or allowed in via hearsay provisions. But when an expert report contains a controversial account from the defendant that may not be so. Secondly, at 840E to F:

“Before a court can assess the value of an opinion it must know the facts upon 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 upon which his opinion is based. It is wrong to leave the other side to elicit the facts by cross-examination.”
[Emphasis added]

Conflicting Expert Evidence

30. In criminal proceedings, more than one expert evidence may be presented with hearsay material. It is the judge or jury’s responsibility to impartially evaluate these experts and determine which evidence to accept or reject in reaching a verdict. Also, the judge is duty bound to give the jury directions on how to approach conflicting expert evidence in summing up.
31. The Court’s approach to conflicting expert evidence was adumbrated in **R v Harris, Rock, Cherry and Faulder [2005] EWCA Crim 1980**. Gage LJ observed at paragraph 70 that the resolution of conflicting expert evidence does not ordinarily fall within the purview of the judge. Such an assessment is a matter for the tribunal of fact, which must determine what weight, if any, is to be attached to the conflicting expert evidence and which, if either, is to be accepted or rejected.

32. The approach to conflicting expert evidence was also reiterated in **R v Henderson et al [2010] EWCA Crim 1269**, with judicial guidance being given to a judge on how the jury should be directed in approaching such a conflict. At paragraph 218, Moses LJ pronounced:

“...Second, the jury need directions as to how they should approach conflicting expert evidence. Kai-Whitewind teaches that the mere fact that expert differs from expert is no ground for withdrawing the case from the jury. But how is the jury to approach such a conflict? To suggest, in cases where the expert evidence is fundamental to the case, that the jury should approach that expert opinion in the same way as they do in every other criminal case, is inadequate. It is difficult enough for Family Division judges to express their reasons for accepting or rejecting conflicting expert evidence, despite their experience. **Juries, we suggest, should not be left in cases requiring a higher standard of proof to flounder in the formation of a general impression. A conclusion cannot be left merely to impression. In the appeal of Henderson, Dr. Leestma gave, if we may say so, a most beguiling impression, courteous and understated as it was. But there were, as we have concluded, sound reasons relating to his experience in comparison with Dr. Al-Sarraj for rejecting what he told us. **Lacking the experience of Family Division judges, a jury needs to be directed as to the pointers to reliable evidence and the basis for distinguishing that which may be relied upon and that which should be rejected**” [Emphasis added].**

Expert’s Duty to the Court

33. An expert’s primary duty is to the Court, not to the party instructing them, and therefore, the expert evidence they provide must be independent, reliable, and impartial. As Gage LJ stated in **R v Bowman [2006] EWCA Crim 417** at paragraph 176, those duties override any obligation to the person paying or instructing the expert.
34. His Lordship also underscored that an expert reports on materials used to form his conclusion must include: (i) his qualifications in the field; (ii) instructions and materials relied upon, tests, measurements or examinations done and by whom; (iii) methodology used; (iv) statement confirming the expert’s independent, unbiased duty to the court and undertaking to notify the parties, and where appropriate the court, of any material change in opinion; and (v) any supplemental report, outlining the requirements mentioned above.

Fairness of the Proceedings

35. In **Randall v R [2002] UKPC 19**, Lord Bingham at page 2241 emphasised that the criminal trial process is designed to ensure a fair opportunity for the prosecution to prove its case and for the defence to answer it:

“...The adversarial format of the criminal trial is indeed directed to ensuring a fair opportunity for the prosecution to establish guilt and a fair opportunity for the defendant to advance his defence. To safeguard the fairness of the trial

a number of rules have been developed to ensure that the proceedings, however, closely contested and however highly charged, are conducted in a manner which is orderly and fair...” [Emphasis added]

Counsel for the Prosecution’s Submissions on Hearsay Material and Bias

36. Counsel for the Prosecution relied upon **R v Turner [1975] 1 All ER 70** and **Franklyn Edgecombe v DPP** (supra) in support of the submission that the expert report was inadmissible as hearsay. I will deal with these cases separately as each of them turned on its own facts and circumstances.
37. In **R v Turner**, the defendant killed his girlfriend in a car by striking her repeatedly with a hammer after claiming she told him she had slept with other men and that the child she was carrying was not his. The defendant at trial raised provocation, and counsel sought to rely on a psychiatric report to support his account and claimed that he was provoked. The court refused to admit the psychiatric report, although relevant, because it came from sources other than the psychiatrist’s own observations, thereby offending the hearsay rule. The court further held that provocation and credibility were matters of ordinary human experience within the jury’s competence, and therefore did not call for expert evidence.
38. In **Franklyn Edgecombe**, the defendant was convicted of murder after an eyewitness identified him as the person who committed the killing. The defence argued mistaken identification and alibi and sought to rely on two proposed expert witnesses in the fields of firearms and crime scene reconstruction. The learned judge refused to admit the expert evidence on the grounds that one witness, in his sworn testimony, did not present himself as an expert in crime scene reconstruction, while the other’s opinion was found to be unreliable, lacking a proper scientific foundation, and to be dependent and partial. Crane-Scott JA agreed with the learned judge’s reasoning and upheld those grounds to exclude the experts’ report.
39. Accordingly, Prosecution’s Counsel’s reliance on **R v Turner** in support of the submission that Mr. Lockhart’s report is inadmissible as offending the hearsay rule and bias is, in my view, distinguishable from the present facts before me and irrelevant. Also, the case of **Franklyn Edgecombe** is inapplicable to the present facts, as Counsel did not object to the admissibility of Lockhart’s report on the basis that Mr. Lockhart was not an expert, but that the conclusions reached by the Prosecution’s and the Defence experts were different.
40. The authorities cited by the parties have been carefully considered. However, I find that the present matter is distinguishable on its facts and circumstances from the cases relied upon. In my view, the legal and factual matrix before this Court differs materially from those authorities such that they do not govern the determination of the issues presently under consideration. Accordingly, while the Court has had due regard to both authorities, the Court will therefore proceed to determine this case on its own merits.

DECISION

41. I am grateful to Counsel for the Prosecution and Counsel for the Defence for their oral and written submissions, all of which I have carefully considered in determining the issues arising in relation to Mr. Lockhart's report.
42. Having reviewed the report, I am satisfied that the proposed evidence is directed to matters falling within the scope of expert crash reconstruction evidence. The report refers to witnesses with whom Mr. Lockhart spoke, namely Mr. Cedric Allen, Mr. Glenn Taylor, and the Defendant, all of whom are also identified as witnesses in the Voluntary Bill of Indictment ("VBI").
43. Mr. Lockhart further relied upon the reports of Reserve Inspector Forbes, Sergeant Curry, Sergeant Hepburn, Sergeant Forbes, Constable Smith, and the Police Road Accident Report. The matters addressed include speed, distance, timing, roadway layout, visibility, physical marks, and reconstruction calculations.
44. I am further satisfied that an expert in crash reconstruction may properly rely upon visits to the accident scene, measurements, roadway observations, and calculations undertaken within the field of reconstruction, and may explain the bearing of such technical material upon speed, line of travel, stopping distance, visibility conditions, and collision dynamics, provided always that those matters fall within the scope of his expertise.
45. In my judgment, the materials Mr. Lockhart relied on do not infringe the hearsay rule or show bias; they simply form the factual basis for his opinion. Without such materials, he would be unable to form an objective conclusion in relation to the accident.
46. The report is plainly relevant, as it addresses the central issue arising from the charge against the Defendant, namely how the accident occurred. That issue is one of a technical nature upon which expert evidence may properly assist the tribunal of fact. The Prosecution has itself relied on the witness statements identified in the VBI, together with the report and testimony of its own crash reconstruction expert, Mr. Hepburn. In those circumstances, fairness and impartiality require that the Defence also be permitted to advance its case through expert reconstruction evidence.
47. The fact that Mr. Lockhart was engaged by the Defendant does not diminish his overriding duty to assist the Court by giving objective, independent, and impartial expert evidence within his area of expertise. I also note that Mr. Lockhart was subpoenaed to give evidence as a crash reconstruction expert, and that Counsel for the Prosecution was duly notified before the commencement of the trial that he would be called as a witness for the Defence. Although the Defendant has exercised his constitutional right to remain silent, he has elected to call an expert witness on his behalf, and he is entitled to do so.
48. Pursuant to Article 20(1) of the Constitution, the Defendant is entitled to a fair hearing. In my judgment, that entitlement is best maintained by admitting Mr. Lockhart's report into

evidence, subject to scrutiny in cross-examination by Counsel for the Prosecution. To exclude the materials upon which he relied would substantially diminish the weight and utility of his opinion and risk rendering any conclusion dependent, partial and unreliable.

49. Moreover, the admission of the expert evidence serves an additional and important function in assisting the jury, as tribunal of fact, to properly understand and evaluate matters which fall outside ordinary knowledge or experience. Further, the admission of the expert evidence may provide additional context and clarity, thereby placing the jury in a better position to assess the issues before them and to arrive at an informed determination based on the complete evidential record.
50. I do, however, consider that those portions of the report dealing with statutory provisions, regulations, orders and unnecessary commentary must be excluded, as such matters fall outside Mr. Lockhart's expertise as a crash reconstruction expert.
51. The weight to be attached to the report of the Prosecution's expert and that of Mr. Lockhart is a matter for the tribunal of fact. It is not for me to determine the merits of the competing evidence, nor to resolve disputed issues arising from them.
52. Accordingly, I shall permit the Defence to call Mr. Lockhart as an expert witness in these proceedings, subject to the report being revised so as to:
 - i. Exclude any reference to statutory provisions, regulations, orders and unnecessary commentary therein.
53. I also order that the Defence serve the revised report on the Prosecution on or before the close of business on Monday, 18th May, 2026.

Dated the 15th day of May, 2026

**Renaë McKay
The Honourable Madam Justice**