JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 104/96

COR: THE HON MR JUSTICE RATTRAY, P.
THE HON MR JUSTICE FORTE, J A
THE HON MR JUSTICE DOWNER, J A

R. V. FREDERICK TAYLOR

Terrence Williams for Applicant

Kent Pantry, Q.C. and Marlene Malahoo for the Crown

13th October & 10th November, 1997

RATTRAY, P

The established facts in this application for leave to appeal can be dealt with briefly.

The deceased Gladstone Martin, a bus owner of Mickleton Meadows, in St. Catherine was last seen alive by his employee Eric Bandoo, shortly after 7.00 p.m. on the 22nd January, 1993. Mr. Bandoo had washed the bus on the premises and on leaving Mr. Martin that night at the home locked up the verandah grill and the garage of the house.

Next morning at about 3.30 a.m. Martin Prendergast, who was about to take his mother to the Airport, went to Mr. Martin's home because of the inability of his mother to contact Mr. Martin on the phone. There he found the front door of the house open as well as the grill. He made a report to the police.

Detective Inspector Bertram Lee responded by going to the house. He found that an iron grill to a kitchen window on the Western side of the house had been prised from the concrete wall of the house. Two aluminum louvre blades had been forced apart leaving a space sufficiently large to admit an adult person in the house. On the

roof of the house the zinc had been cut in two places but entry could not have been made by this route as the salking remained intact and the ceiling was still in place undisturbed. The house was ransacked. Detective Inspector Lee saw the dead body of Mr. Martin lying face down in the living room dressed only in a white mesh merino and a brown brief. A pair of green pants were tied around his neck. He noticed a wound on the left side of Mr. Martin's chest.

Dr. Royston Clifford, a medical practitioner and forensic pathologist found on examination of the body two stab wounds inflicted by a sharp instrument, the first on the left cheek and the second, which caused death, to the left anterior chest piercing the heart.

Evidence from Det. Corporal Norris Nelson, Det. Cons. Brian Donaldson, Det. Inspector Donald Williams and Det. Inspector Bertram Lee established that a fingerprint of the applicant was found on the louvre blade of the window of the residence of Gladstone Martin through which the intruder had entered. There were however, other fingerprint impressions found in the ransacked house which could not be identified because they were only smudges and not sufficiently defined for identification purposes.

The applicant was arrested on the 21st September, 1993 on a warrant issued for his arrest on the 29th of January 1993.

In cross-examination evidence also came from Det. Inspector Lee that a man named Joseph Gordon had been shot and killed by the police and that articles were recovered from him which allegedly came from the deceased's home. The totality of the evidence of the Crown is disclosed in the cross-examination of Det. Inspector Lee as follows:

> "Q. So, Detective Inspector Lee, am I to understand, Sir, that the only evidence that you have, linking Mr. Taylor with this murder is one fingerprint impression? That's the only evidence?
>
> **A.** Yes, Sir."

The applicant gave sworn evidence denying his involvement in the murder and stating that he was living in Barrett Town, Montego Bay, at the time and had gone nowhere near Mr. Martin's home.

Mr. Terrence Williams counsel for the applicant, has submitted that the learned trial judge in summing up erred in that he gave no direction to the jury that they would have had to make a finding that the applicant caused the death or used violence on the deceased, and had equated the presence of the applicant on the scene with guilty of capital murder.

The learned trial judge directed the jury as follows:

> "... the entire Crown's case, the prosecution's case, hinges on the identification of the prints or fingerprint evidence for the purposes of identification. You see, even if you are satisfied that the house was broken into and that Mr. Martin was killed inside by whoever broke into it, you must be satisfied that it was this man who did that breaking in before you can say he is guilty."

He further directed:

> "Now, if you have accepted, Mr. Foreman and members, that both fingerprints are identical then this is sufficient evidence to identify the accused. The inescapable conclusion or the inescapable inference that you would come to, is that the accused must have been on the scene for his fingerprints to be left there."

Further on in the summing-up he directed:

> "You look at all the circumstances and see if they point in that one direction that the accused, by his fingerprints being there, firstly, by his fingerprints being there, consider him to be identified, then if its the accused that was there, that he went through this window and inside the house, he ransacked the house which would suggest that he was trying to find something to steal or stealing something but that is an act of house breaking, and that he stabbed Mr. Martin in the process of killing him." [My emphasis]

and further:

> "... you will recall I told you that the crux of the prosecution's case hinges on the fingerprint, you can only convict him if you find that both the fingerprints are identical and that you feel that those fingerprints

> belong to him the accused and that from surrounding circumstance he was the man who went in and killed the deceased." [My emphasis]

In explaining the prosecution's case he told the jury:

> "The prosecution is asking you if you are to say from those circumstances, having found the house ransacked, the inference to be drawn is that that person went in to steal, broke the house to steal. The prosecution is further asking you to say that whoever entered that house, killed Mr. Martin, because there is evidence that there was no other persons there at the time. So from all these surrounding circumstances, you are to draw the reasonable inference, to come to your conclusion." [My emphasis]

The learned trial judge left to the jury a verdict of guilty or not guilty of capital murder. He gave absolutely no directions on the question of non-capital murder. That was an alternative not left by the learned trial judge to the jury. Could any proper inference be drawn from the surrounding circumstances that there were no other persons present at the time of the murder of Mr. Martin?

Mr. Pantry, QC for the Crown has relied upon ***Michael Gayle vs. The Queen*** Privy Council Appeal No. 4/95 to support his submission that the presence of one fingerprint on the louvre blade was sufficient evidence in like circumstances as the present case to support and uphold the conviction for murder. The case is similar in several respects to the present case. Like the present case no explanation was offered as to the presence of the fingerprint on the louvre blade. Their Lordships noted with approval a passage from the judgment of the Court of Appeal as follows:

> "There is no evidence in the case to indicate that the applicant had legitimate cause to visit the home of 78 year old Mrs. Smith. There is nothing to suggest that he visited her home at any period in the past and the evidence that the blades were dusted and polished some two weeks before must give rise to the inference that the fingerprint found thereon was placed there after they were cleaned. The condition of the home on the morning of the 4th April 1988 indicated that an unwarranted invasion of the premises had occurred in the interval between the departure of Audrey Smith on the 3rd and her return on the 4th. This evidence coupled with the isolation and identification of the

> fingerprint as that of the applicant was presumptive evidence of the applicant's involvement in the crime. His denial is challenged by this evidence. The fingerprint is evidence on which the jury could act in coming to a verdict adverse to the applicant."

As in the present case there was a no case submission, and the judgment of the Privy Council stated -

> "Their Lordships find no error in this reasoning of the Court of Appeal, and are satisfied that the judge was right to allow the case to go to the jury."

It is important to note however, that ***Michael Gayle vs. The Queen*** was a case tried by the Supreme Court before the amendment of the Offences against the Person Act which created two categories of murder capital and non-capital. The instant case would be categorised under section 2(1)(d) of the Offences against the Person Act as murder committed in the course or furtherance of burglary or house-breaking and therefore capital murder. However, it would be necessary for the Crown to prove that the only person involved in the murder was the applicant in order to establish that he inflicted or attempted to inflict grievous bodily harm or used violence on the deceased. This is so, because of the provision in section 2(2) of the Act which reads as follows:

> "If, in the case of any murder referred to in sub-section (1) (not being a murder referred to in paragraph (e) of that subsection), two or more persons are guilty of that murder, it shall be capital murder in the case of any of them who by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on, the person murdered, or who himself used violence on that person in the course or furtherance of an attack on that person; but the murder shall not be capital murder in the case of any other of the persons guilty of it."

Mr. Pantry QC has submitted that there is no evidence that any other person was involved in the murder of Mr. Martin. However, the evidence of the fingerprint expert is that there were many smudges of fingerprints not identifiable because they were not sufficiently defined to make a determination of whose prints they were.

Furthermore, the reply of Det. Inspector Lee as to the man held with goods "allegedly coming from the deceased's home" would also raise a question to be determined by the jury of whether more than one person was present in the house at the time of the murder. Furthermore, on a charge of capital murder in these circumstances the onus is on the Crown to establish the involvement only of one person or if more than one person is involved the prerequisites laid down by section 2(2) of the Act.

The questions which would arise for the learned trial judge on a determination of the no-case submission would be as follows:

> 1. Was the applicant Frederick Taylor, on the evidence the only person involved in the murder of Mr. Martin?
>
> 2. If he was not the only person, has the evidence established that he by his own act caused the death of the deceased, or inflicted or attempted to inflict grievous bodily harm on the deceased, or himself used violence on the deceased?

Thus considered the no-case submission in respect of capital murder was bound to succeed.

What the evidence established in the language of the Court of Appeal as approved by their Lordships of the Privy Council in ***Michael Bailey vs. The Queen*** was that the evidence "... was presumptive proof of the applicant's involvement in the crime". [My emphasis] It does not establish participation of the nature required by the Act to be categorised as capital murder.

It was however open to the jury to return a verdict of non-capital murder and it was therefore necessary for the learned trial judge to leave non-capital murder to the jury, a verdict strongly supported by the state of the evidence.

We treated the application for leave to appeal as the hearing of the appeal.

In the circumstances therefore, we quashed the conviction for capital murder and set aside the sentence. We substituted therefor a verdict of guilty of non-capital murder and imposed the mandatory sentence of imprisonment for life. We further specified that the applicant should serve a period of 20 years imprisonment commencing 14th August, 1996 before becoming eligible for parole.