

**Audley Milton**

*Appellant*

v.

**The Queen**

*Respondent*

FROM

**THE COURT OF APPEAL OF JAMAICA**

-----  
REASONS FOR REPORT OF THE LORDS OF THE  
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL OF  
THE 24th June 1996, Delivered the  
9th July 1996  
-----

*Present at the hearing:-*

Lord Goff of Chieveley  
Lord Jauncey of Tullichettle  
Lord Lloyd of Berwick  
Lord Hoffmann  
Lord Cooke of Thorndon

*[Delivered by Lord Lloyd of Berwick]*

-----  
On 24th June 1996 their Lordships indicated that they would humbly advise Her Majesty to allow the appeal and quash the appellant's conviction. They now give their reasons.

On 27th October 1989 the appellant, Audley Milton, was convicted in the Manchester Circuit Court at Mandeville, Jamaica of the murder of Desmond Thompson. The case for the prosecution depended on the evidence of two witnesses, Edward Anderson and Clive Gayle.

Anderson gave evidence that he saw Thompson being attacked by three men each armed with a weapon. He recognised one of the men as the appellant. He was about 18 feet away at the time. He went on to say that it was the appellant who stabbed Thompson with a ratchet knife. He demonstrated in the witness box the way in which the wound had been inflicted. Thompson staggered into Anderson's shop, bleeding profusely. According to

Anderson he said "look how Rat [the name by which the appellant was known] them chopped mi up".

Gayle gave evidence that he saw the incident, while standing outside his shop on the other side of the square. A group of about six men, including the appellant, approached Thompson. He saw the fight, but he did not see anyone with a knife. He was asked in cross-examination whether he saw Thompson with a machete. He replied that he did not.

The question was relevant, because the defence case was that Thompson had attacked the appellant with a machete, and that the appellant received a severe injury to his right hand while defending himself. The injury which was described by the doctor as "life threatening" caused the appellant to faint. He would not have been able to use his right hand thereafter.

The evidence given by Anderson and Gayle at the trial was substantially in accordance with the evidence which they had given at a preliminary hearing in August 1989.

There was an appeal to the Court of Appeal in Jamaica. The principal ground of appeal was that the judge had not dealt fairly with the defence case. The Court of Appeal dismissed the appeal in July 1990.

In the course of preparing the appellant's petition for special leave to appeal, Messrs. Clifford Chance became aware that there might have been a previous written statement by Gayle which had not been disclosed to the defence. Accordingly they wrote to Messrs. Charles Russell on 4th August 1994 asking for copies of any statements which had not been disclosed. Messrs. Charles Russell replied promptly that they would make enquiries. After a long delay it emerged that the police had indeed taken two previous statements, one from Anderson and one from Gayle. At first it was maintained on instructions from the Director of Public Prosecutions that there were no discrepancies between these statements and the evidence given at the trial, and that therefore there was no duty "then or now" to disclose the statements: see Messrs. Charles Russell's letter of 27th March 1995. But as soon as legible copies of the statements had been obtained, it became obvious that there were serious discrepancies in respect of both statements.

Thus in Anderson's case there was no mention of his having seen the appellant stab Thompson. Nor was there any mention of Thompson having said "look how Rat them chopped mi up".

As for Gayle, his statement reads in part:-

"Desmond who had a machete started swinging the machete at the men who were blocking it with sticks one of the men cried 'Him chop me ' this was the first time anybody spoke. All of the men rushed in and the machete fell from Desmond's hand, one of the men took up the machete and they all attacked Desmond more viciously and rained blows and chops on him."

This is the exact opposite of what Gayle said at the trial, when asked whether he had seen Thompson with a machete. It is also consistent with the appellant's defence that, after receiving an injury to his hand, he fainted, and took no further part in the incident.

It is unnecessary for their Lordships to review the law and practice relating to prosecution disclosure in Jamaica, since this has been done very recently by the Board in *Berry v. The Queen* [1992] 2 A.C. 364. In the light of the cases there cited, there can be no doubt that both statements should have been disclosed to the defence at or before the preliminary hearing; and Mr. Guthrie does not seek to argue otherwise. Nor has there been any explanation from the Director of Public Prosecutions why there was so much delay in making the statements available, after they had been requested by Messrs. Clifford Chance. It goes without saying that no blame attaches to Messrs. Charles Russell.

Although the disclosure issue has now been conceded in a supplementary case filed on behalf of the Crown, Mr. Guthrie submitted, with diffidence, that even if the statements had been disclosed, it would have made no difference. For on the way the case was run the defence did not seek to challenge the evidence given by Anderson and Gayle. There had therefore been no miscarriage of justice.

But if the statements had been made available, the case might well have been run differently; indeed almost certainly would have been run differently. Anderson's unchallenged evidence that he actually saw the wound being inflicted must have had a powerful effect on the jury. The point was mentioned more than once by the judge in his summing up. But that evidence would have been undermined, or at least weakened, if it could have been shown that Anderson never mentioned having seen the stabbing in his initial statement to the police. Similarly, the defence case would have been greatly strengthened by Gayle's statement that he saw the deceased with a machete in his hand, which he subsequently dropped when attacked. Their Lordships do not accept the submission that the disclosure of the statements would have made no difference. On the contrary, the verdict of the jury might well have been affected.

Mr. Guthrie also argued that it would be open to the Board to substitute a verdict of manslaughter on the ground that the appellant was taking part in an unlawful assault in the course of which Thompson met his death, even though the appellant had by then been incapacitated. But the case was never argued on that basis by the prosecution at the trial, and there is insufficient material on which to substitute a verdict of manslaughter at this stage. Alternatively it was suggested that the case might be remitted with an order for retrial. But having regard to the course which the case has taken, and the time that has elapsed since the appellant's conviction, their Lordships do not regard an order for retrial as appropriate.

For these reasons their Lordships will humbly advise Her Majesty, as already indicated, that the appeal should be allowed and the conviction quashed.