

20.7.93



IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

IND. 41/92

REGINA V. JOSEPH DUKE EBANKS

Mr. Roberts for the Crown
Mrs. Messer for the accused Ebanks

10/8 *OP*

JUDGMENT

SCHOFIELD J.

In April, 1992, Miguel Diaz committed burglary at the condominium of Belinda and Raymond Byrd at the Island Pines condominium complex on Seven Mile Beach. Evidently the Byrds confronted Diaz in their apartment and identified him on the beach shortly afterwards. When they confronted Diaz he was in the company of the accused in this case Joseph Duke Ebanks.

At about 9 p.m. on 23rd May, 1992, Belinda Byrd was going for a walk and as she headed for the beach she saw the accused looking up at some of the condominiums in the complex. Her testimony is that she asked the accused if he was looking for anyone in particular and he responded to the effect that it was none of her business and he could be anywhere he wanted to be. Mrs. Byrd said she lived there and asked the accused if he did too. The accused came up close to her and said she and her husband were causing trouble for him and his friends. Mrs. Byrd said she became nervous and started walking back towards her apartment. The accused walked back that way too and threatened to hit her. When she was almost in front of the apartment the accused said that they were not going to be around to testify against his friend.

By this time Mrs. Byrd's husband, who was inside the



apartment, heard loud voices and went outside. Mr. Byrd's testimony was that the accused was using profane language. Mr. Byrd tried to persuade the accused to leave as he was uttering threats including a threat that they were not going to be around to testify.

Mrs. Byrd went indoors and came outside with a camera and the key to the outside telephone booth. She took a photograph of the accused over her husband's left shoulder. The accused, said the Byrds, then lunged at Mrs. Byrd, got hold of her arm and twisted it. Mr. Byrd intervened and tussled with the accused ending up on the ground. During this struggle Mr. Byrd suffered scratches to his knee, foot and toes. Mr. Byrd thought the accused was subdued but when he let the accused get up he again threatened them, saying someone would break into the house and smash their heads in and stab them.

The Byrds then decided to telephone the police and walked to the payphone. The accused, they said, followed them and got into the phone booth as Mrs. Byrd was making the call. Mr. Byrd grabbed the accused in a strangle hold, and it seems subdued the accused because he walked off.

The police arrived at the complex after an interval - evidently they were at the scene of another report - and Police Constable Scotland found the accused at the Police Station just before midnight on the same night. The accused appeared intoxicated so he was bailed to appear at the Police Station on 3rd June, 1992 when he was interviewed under caution. During that interview, a record of which was admitted without objection as exhibit 2, the accused gave a version of events basically the same as that which he related to the Court.

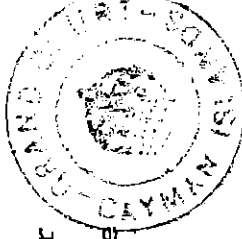
The photograph Mrs. Byrd took of the accused, together with photographs of injuries to Mr. Byrd's knee and foot and a photograph taken of Mrs. Byrd's right arm, showing bruises

were produced in evidence. The photographs of the injuries to the Byrds were taken the next day or the day following that. Mrs. Byrd testified that she thought the accused had sprained her left arm and the next day she had bruises all up the arm that he twisted.

Alvan Lloyd Jones is an American who was staying at neighboring condominium to the Byrds on the 23rd May, 1992. He was in his apartment and heard a loud "boom" and then voices. He went to his front door to see what was happening. He saw Mr. Byrd and the accused pushing each other. Mr. Byrd asked why the accused hit his wife and the accused denied that he did. Mrs. Byrd then stepped out of her apartment and said "yes, you did hit me." The accused then lunged at Mrs. Byrd and they started a pushing match. The accused went for Mrs. Byrd and Mr. Byrd tried to stop him. It appeared that Mr. Byrd was trying to diffuse the situation and was trying to keep the accused from his wife.

Mr. Jones did not see any punches thrown and did not see either man on the ground. He said that he heard someone say "call the police" and the accused left. He then went back inside his apartment.

The accused testified that he was looking for a lady friend of his at apartment 404 in the Island Pines complex when Mrs. Byrd approached him and asked him what he was doing there. He told her he was looking for a friend. Mrs. Byrd was mumbling as if she wanted to start trouble saying things like "I don't like your kind around here." He said, "You are just trying to start trouble for me and my friends." The accused said he started to walk back towards the street, towards apartment 404, and Mrs. Byrd kept mumbling at him. Suddenly Mr. Byrd came out of the apartment and Mrs. Byrd went inside. She came out and took a photograph of him. The accused took exception to this and he tried to grab the camera, but it was strapped to Mrs. Byrd's arm. Mr. Byrd hit him on the shoulder and he turned and pushed Mr.



Byrd in self defence. Mr. Byrd asked him why he, the accused, hit his wife but the accused said he did not hit or threaten Mrs. Byrd. He told them he did not want any trouble with them. He did not confront the Byrds, they confronted him.

At the time of this incident he did not know Diaz was being charged but he had agreed to testify if he was needed. He did not have any intention of talking to the Byrds and did not know where they lived before that time.

The accused called as his witness Lorraine Nixon who worked as the manager of the Island Pines complex at the time of the incident. She knows the accused well. He had friends who are owners at the complex and would bring fish to sell to them and the staff at the complex. When cross-examined Mrs. Nixon said she would think the accused knows his way around the complex and should know where apartment 404 is.

The accused is charged on two counts of obstructing the course of justice in endeavouring to dissuade, hinder or prevent each of the two Byrds to testify in Court. He faces a third count of assaulting Mrs. Byrd occasioning her actual bodily harm.

To prove the counts of obstructing the course of justice the Crown has to satisfy me that the accused intended by his threats to dissuade the Byrds from testifying against his friend Diaz. The evidence does not show that he was seeking the Byrds out at their apartment on the night in question. Although Mr. Roberts for the Crown manfully tried to minimise this aspect of the evidence, stressing that it is the intention of the accused at the time he utters the words which is relevant, it would present a stronger case against the accused if it could be shown that he went to the complex in search of the Byrds. That is not proved and the accused did not venture to their apartment until Mrs. Byrd had confronted him and, there is no suggestion he made the initial approach to Mrs. Byrd. I am convinced that the accused





threatened both Mr. and Mrs. Byrd in the manner they testified to. I am also convinced that he lunged at Mrs. Byrd and twisted her arm in an endeavour to get her camera. I make this finding on the basis of my assessment of the Byrds and the accused as witnesses and on the basis that the Byrd's evidence in all the circumstances is more probable and the accused's evidence is inherently improbable. Mr. and Mrs. Byrd impressed me as credible witnesses whose evidence corresponded without appearing rehearsed. The accused was evasive in parts of his cross-examination. If it was true that he was looking for apartment 404 when Mrs. Byrd approached him surely he would have told her so as to seek her assistance in locating it. Why would Mr. Byrd come out of the apartment if by that stage loud words were not being exchanged between the accused and Mrs. Byrd? The explanation for the accusation, that the Byrds wanted the accused out of the way as a witness against Diaz, is fanciful in the extreme. And then there is the evidence of Mr. Jones. He did not see everything that happened and his recollection of the incident was not as clear as that of the participants. There is no reason why it should be as he was a disinterested observer. But Mr. Jones clearly puts the accused as the aggressor towards Mrs. Byrd, and Mr. Byrd as attempting to diffuse the situation. That accords with the evidence of the Byrds.

However I am not satisfied that in telling the Byrds that they would not be around to testify and threatening them with harm that the accused's intention was to dissuade them from testifying. He was approached by Mrs. Byrd and was asked what he was up to. It was not unnatural given the circumstances for Mrs. Byrd to do so, no matter that the accused may have been up to no harm. The accused clearly became upset by this approach and lost his temper with Mrs. Byrd. In losing his temper he became immoderate in language and behaviour and in the course of his immoderate behaviour uttered stupid threats which included a reference to the Byrd's intention to testify against his friend. I do not find myself satisfied that the threats were made in

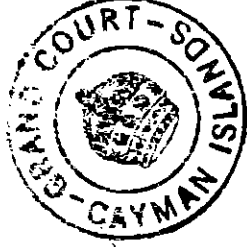
order to dissuade the Byrds from testifying. It was part of, and incidental to, what Mr. Byrd described as a "litany of threats". Counts one and two are not adequately proved.

I am satisfied that the accused threatened Mrs. Byrd so as to put her in fear, and he went further and lunged at her, held her arm to wrest her camera off her and in so doing twisted her arm. Mrs. Byrd's evidence was that her arm was sore thereafter and I accept that evidence. The accused had no legal right to do that. He was not defending himself and I am satisfied that he would have perceived no violence being intended to his own person from either Mr. or Mrs. Byrd. He put himself in a position where Mrs. Byrd was justified in photographically recording his presence. Even if she were not so justified the accused had no right to attack her. The third count is proved beyond all reasonable doubt.

Accordingly, I acquit the accused of counts one and two and discharge him on those counts. I convict him of the third count of assault occasioning actual bodily harm, contrary to Section 202 of the Penal Code.



JUDGE



Dated this 20th day of July, 1993