

Criminal

FILE

15.4.2002

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
IND. 34 OF 2001

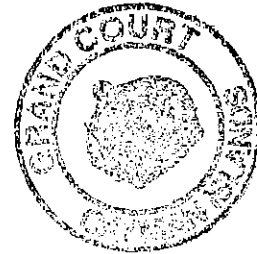


**R V. HERMAN BYRD & OTHERS.**

Appearances:

Adam Roberts and Marlene Smith-Andalcio for the Crown  
L.S. Samson for the accused, Herman Byrd

**JUDGMENT**



1.

The accused in the above named matter was, *inter alia*, charged with two offences of arson contrary to Section 250 of the Penal Code. The offences alleged arose out of the prison riots on the 30<sup>th</sup> September 2000.

2.

The first of the two offences of arson alleged that the accused had mounted a series of steps and entered a classroom. Shortly afterward, smoke was seen to emerge from that room and a complete conflagration ensued. The accused was the only person seen entering that classroom although it was

conceded that other means of entry to the classroom existed. One of the two witnesses as to Byrd's behaviour saw him emerge from the classroom after which the fire broke out. In the second matter, he was alleged to have set fire to a prison truck. Two witnesses described him setting fire to the truck, the more cogent of whom was a civilian fire officer. He had spoken to Byrd, whom he knew, and had warned him off. He observed him setting fire to the prison truck and then cutting the hose pipe from the fire tender, when the officer attempted to extinguish the fire. In his police interview, Byrd had denied setting fire to the truck while admitting that he had cut the hose pipe of the fire tender. When Byrd's turn came to give evidence he decided neither to give evidence himself nor to call any witness on his behalf.

3.

I ruled that the jury should be directed in his case in accordance with Section 18 (c) of the Evidence Law (1995 Revision). It was suggested to me that this Section had never been implemented by the Courts and it had, in effect, lain fallow. I am not in a position to judge whether that is true or not, but, if it is the case, I thought it appropriate that the direction I gave to the jury should be published in a formal judgment.

4.

Section 18 reads:-

*“Every person charged with an offence and the spouse of a person so charged is a competent witness for defence at every stage of a proceedings, whether the person so charged is charged solely or jointly with any person;*

Subsection (c ) provides:

*“The failure of any person charged with an offence, or the spouse of such a person, to give evidence shall not be made to subject of any comment by the prosecution but the Court of jury may draw any reasonable inference from such failure;*

I directed the jury as follows:-

*“Herman Byrd did not give evidence. He is entitled to take that course. The burden of proof being always upon the Crown. He is entitled to say to the Crown “prove your case against me if you can”. The fact that*

*Byrd has exercised his right not to give evidence proves nothing in itself. In itself it is entirely neutral. In respect of the interview record he has made, which I have just read out to you, admissions are made or what you decide were admissions. There are also denials. (the admissions that were made were in respect of the cutting of the hose pipe). Ladies and gentlemen, you must take the interview as whole but you may think that where admissions are made, for example egging on the prisoners or the cutting of the pipe, they are more likely to be true because, he has made an admission against his interest. Where he makes denials, they ought to be considered by you, but they have less weight because, of course, they are not supported by his giving evidence on oath in the witness box before you. In other words, there are matters which he has not chosen to support by giving evidence about them. Ladies and gentlemen you will have to look at the statement as a whole, as I have said, and judge it. There is a further matter for you to consider which I have just dealt with by my reading out*

*the statement of our Law. If you were to decide that the evidence on any particular matter, for example the alleged arson on the classroom, or the evidence as to his alleged setting fire to the truck, creates a case for him to answer, or on either of those matters, you may think that the defendant would have gone to the witness box to give an explanation, or an answer to it or them, but, if in your judgment the only sensible reason for his decision not to give evidence is that he had no explanation to give or none that would stand up to cross-examination, then it would be open to you to hold his failure to give evidence against him. That is to say, to take it into account as an additional support for the prosecution's case. It is for you to decide whether in all the circumstances you draw that inference or you do not.*

*Ladies and gentlemen, you must make a separate decision in respect of each of the alleged arsons. The Crown has got to prove its case against Herman Byrd so that you are sure of it. You are entitled, having put yourself through the mental exercise that I have*

*suggested to you, to decide whether you take his failure to go into the witness box and give an explanation about these matters against him, but before you do you will have to be satisfied individually on the alleged arson of the classroom and/or the alleged arson of the truck that there exists a strong prima facie against him so that you would expect him to give an answer to it. I repeat, the fact that he has not gone into the witness box does not in itself strengthen the prosecution's case one iota."*

4.

In the event the jury acquitted the accused on the alleged arson of the classroom but convicted him of the arson of the prison truck.



15<sup>th</sup> April, 2002

H.G.D. Graham  
Judge of the Grand Court

