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IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
IND. 43 OF 2000

REGINA  
V  
JOHN BERNARD



Appearances:

For the Crown:	Mr. A. Roberts
For the Defendant:	In Person
Amicus Curiae:	Mr. McGrath

Hearing: March 25-28; April 2 - 4,9,12,15,16,17&19; May 15, 2002

JUDGMENT

John Bernard is charged with four offences. They are:

1. Assault Occasioning Actual Bodily Harm, contrary to Section 214 of the Penal Code (1995 Revision). The particulars of that alleged offence, are that Mr. Bernard on December 21<sup>st</sup>, 1999 at George Town assaulted Barbara Bernard, thereby causing her actual bodily harm.
2. Threatening Violence, contrary to section 86 of the Penal Code (1995 Revision). The particulars of that alleged offence, are that Mr. Bernard on December 22<sup>nd</sup>, 1999 at Plantation Village, West Bay Road with intent to intimidate and alarm him, threatened to kill Everton McHayle.
3. Attempted Murder, contrary to section 192(1) of the Penal Code (1995 Revision). The particulars of that alleged offence, are that Mr. Bernard on May 2<sup>nd</sup>, 2000, at 7 Templeton Apartments, George Town attempted to murder Barbara Bernard.

4. Grievous Bodily Harm, contrary to section 201 of the Penal Code (1995 Revision). The particulars of that alleged offence, are that Mr. Bernard on May 2<sup>nd</sup>, 2000 at 7 Templeton Apartments, George Town unlawfully did grievous bodily harm to Barbara Bernard.

Before coming to any conclusion on the evidence I have considered and cautioned myself on the following –

1. Mr. Bernard did not testify in the case. I specifically draw no inference, adverse or otherwise from that, even though I am entitled to do so pursuant to Section 18(C) of the Evidence Law, (1995 Revision). Mr. Bernard was unrepresented at trial, although he had different lawyers representing him up to trial and he also had the benefit of Mr. McGrath's assistance at trial, if he chose to rely on it. Nevertheless, he may not have understood the potential negative consequences of failing to testify and in these circumstances, I will not draw any adverse inference from his decision not to testify.
2. No adverse inference was drawn from Mr. Bernard's decision not to give a statement to the police in May 2000. That is his right.

3. In his statement to police in December 1999 he offered certain exculpatory explanations, namely that Mrs. Bernard received her injuries when jumping out of the car. Although that was not given in evidence by Mr. Bernard, I did consider that explanation given to police by Mr. Bernard, when determining whether I was sure that the injuries sustained by Mrs. Bernard on December 22<sup>nd</sup> were the result of an assault by Mr. Bernard.
  
4. I have considered Mr. Bernard to be a man of previous good character and therefore entitled to the benefit of that direction to myself. Further, in cross-examination several police and civilian witnesses testified that they were unaware of any previous acts of violence committed by Mr. Bernard. Accordingly, I remind myself that the fact that he is of good character may mean that he is less likely than otherwise might be the case, to commit the crimes alleged.
  
5. During the course of the trial Mr. Bernard's conduct was such, that much of the Crown's case was led in his absence. He

would not allow the Crown, its witness or the Court the opportunity to speak, he would simply shout them down. Often he would not stop speaking or shouting. Accordingly he had to be removed from the courtroom. He was provided with a copy of either a transcript or a videotape of all Crown witnesses' evidence as quickly as possible. Also during the course of the trial Mr. Bernard made several remarks to the Court which prima facie are contemptuous. His remarks and conduct will form the basis of a contempt hearing which will follow after these proceedings. I refer to them here, simply to remind myself not to consider his conduct in any way in determining if the Crown has proved each and every element of its case so that I am sure of his guilt.

#### Defence

Mr. Bernard did not call any witness in his defence. I did however understand his defence, from his remarks at the beginning of trial and from his suggestions during cross-examination of various Crown witnesses to be as follows-

1. He is being prosecuted as part of a conspiracy to undermine and defeat the immigration processes in the Cayman Islands.

- (a) That the Chief Justice, Mr. Justice Graham, myself, the police, immigration officials and others are part of this conspiracy;
  - (b) That Mr. Justice Graham has intimidated his previous lawyers into withdrawing and that I refused his adjournment request with the desire to convict him;
  - (c) The police and the Crown witnesses have conspired to create a story in order to convict Mr. Bernard;
  - (d) One reason advanced for the motive behind this conspiracy was because he is a black Caymanian and those conspiring against him wanted to allow Mrs. Bernard to keep her Caymanian status by putting a criminal record against Mr. Bernard.
2. That he is innocent of the offences charged. That he did not assault Mrs. Bernard on December 22<sup>nd</sup>, 2000 because she was injured jumping from the moving automobile. That he did not threaten Everton McHayle on December 23<sup>rd</sup>, 2000 and that the injuries inflicted on Mrs. Bernard on May 2<sup>nd</sup>, 2000 were caused by Mr. Bernard when he was trying to defend himself from an attack by Mrs. Bernard.

Count 1  
Assault Occasioning Actual Bodily Harm

John Bernard was married to Barbara Bernard for 11 years but they are now divorced. She was the complainant in Counts 1, 3 & 4.

Mrs. Bernard gave the following evidence at trial.

In December 1999, she was an employee at Plantation Village as the Housekeeping Supervisor. Mr. Everton McHayle was also an employee at Plantation Village at that time.

In November and December 1999 Mr. Bernard became hostile towards Mrs. Bernard because she would speak to Mr. McHayle on occasion. She said that it got so intense that one night in order to create some peace at home, she told Mr. Bernard that she no longer spoke to Mr. McHayle.

On the morning of December 21<sup>st</sup>, 1999 she took the bus to work and when she walked in the gate Mr. McHayle and two other workers were there putting up Christmas lights and she said good morning to each of them by name. As she was saying good morning to Mr. McHayle, Mr. Bernard drove in behind her and heard her say good morning. He stopped and asked Mrs. Bernard why she had previously told him, that she did not speak to Mr. McHayle. She admitted that she did speak to him but only on work related matters. Mr. Bernard then began to get hostile and made a lot of noise and Mrs. Bernard said she didn't want to be embarrassed at work. Mr. Bernard then left, came back and then left again.

When Mrs. Bernard got home that evening, Mr. Bernard started to quarrel, regarding her and Mr. McHayle being together. She testified –

“And he started beating me from like 6 o’clock in the evening. He would argue and then he would lick me, he would argue, and would box me... that was going on from about 6 o’clock until about 11 at night.”

She testified that during this period of time Mr. Bernard struck or kicked her several times. She estimated she received more than 10 blows during this period.

Mr. Bernard then told Mrs. Bernard that he wanted to go for a ride in the car with her because he wasn’t getting any answers at home. She reluctantly agreed. Once in the car Mr. Bernard accused her of having sex with Mr. McHayle in the rooms at Plantation Village. She said that was not true. He then slapped her on the face with the back of his hand. She said she was slapped several times.

Mrs. Bernard then opened the car door while the car was moving. She said it was her intention to get out of the car even though it was moving in order to get away from him. She testified that she did not get out of the car when it was moving because Mr. Bernard had grabbed her shirt around her arm and

was trying to pull her back. She said she was screaming for help. Mr. Bernard stopped the car, Mrs. Bernard jumped out and he then got out and tried to push her back in. However, someone from a nearby apartment came and intervened. Mr. Bernard then got back in the car and drove away.

The police arrived and took care of Mrs. Bernard. She refused to give them Mr. Bernard's name because she testified she did not want him to get in trouble. The police took her to Melsaida Jackson's house where Mrs. Bernard was given some ice to put on her face. She slept at Mrs. Jackson's house that night and returned home at approximately 6:30 a.m. the next morning, December 22<sup>nd</sup>, 1999.

She said there was another row that morning with Mr. Bernard, that went on until about 9:00 a.m. Mr. Bernard left saying he was going to work, but he returned and said he had been to Plantation Village and the row between Mr. and Mrs. Bernard continued. The police then arrived on the scene and Mr. Bernard was arrested and taken into custody.

Mrs. Bernard then went to seek medical treatment. She saw Dr. Fiona Robertson who testified at trial that she treated Mrs. Bernard for facial

bruising, including swelling over the left side of the forehead, cheek and around the eye, and for bruising of approximately 4 to 5 inches to the right upper arm. She was sent home with a painkiller and anti-inflammatory. Exhibit 5 were the photographs taken by the police and show both the facial and upper arm bruising.

I accept the evidence of Mrs. Bernard regarding the events of December 21<sup>st</sup> and 22<sup>nd</sup> as forthright and truthful. There was no evidence led to contradict it.

In cross-examination by Mr. Bernard, he suggested , that her evidence was untruthful, that it was inconsistent with her statements to the police, the doctors and other witnesses. Nothing in his cross-examination altered my view of Mrs. Bernard as an honest and credible witness. I fully accepted the explanations that she gave to the Court during cross-examination.

For example, Mr. Bernard cross-examined Mrs. Bernard regarding her evidence that she had cigarette burns to her breast, but that fact was not contained in any statement she made to the police. She testified that she did not tell the police because she did not want to have to take her clothes off

and show the officer. She said she told the doctor but did not know if this was contained in the doctor's report. She denied that a cigarette burn was inflicted upon her by her sweetheart and said she had never had a sweetheart. I accept Mrs. Bernard's evidence on this issue and reject the suggestion advanced by Mr. Bernard.

Mrs. Bernard admitted that she told the police on December 21<sup>st</sup>, 1999 that she had not been assaulted by Mr. Bernard. She said she did so because she wanted to protect her husband. Mr. Bernard suggested she was lying and conspiring to protect her sweetheart. Again I fully accept Mrs. Bernard's evidence on this matter and reject Mr. Bernard's suggestion.

In his witness statement, officer Shawn Bodden said Mrs. Bernard had asked him to take her to her apartment. He also gave that evidence at trial. Mrs. Bernard testified that she asked officer Bodden to take her to a friend's apartment. There is no dispute that Mrs. Bernard was not taken to her apartment on the evening of December 21<sup>st</sup> and that she stayed at her friend's Malsaida Jackson that night. I accept her evidence and conclude that officer Bodden must be mistaken on this minor point. In any event

nothing turns on this fact. It really only went to Mrs. Bernard credibility which I have previously said I accept.

Mr. Bernard cross-examined Mrs. Bernard about her jumping out of the car on December 21<sup>st</sup>. She did not tell the police she did so, yet she acknowledged it was important. She said she did not tell the police about it because she was protecting Mr. Bernard. That omission is consistent with her other actions that day and I accept her explanation.

In cross-examination by Mr. Bernard, Mrs. Bernard admitted that she lied to him when she had previously told him that she had not been speaking to Mr. McHayle at work. She said she did so to bring peace to the home. Again I accept her evidence and I am satisfied that it was necessary for her to tell Mr. Bernard that she did not speak to Mr. McHayle in order to avoid arguments.

Mr. Bernard spent a great deal of time cross-examining Mrs. Bernard about her statement to the police, where she said that she had told Mr. Bernard, "we need counseling". Mr. Bernard suggested that she had said to him, "you

need counseling". In my view nothing turned on this and in any event I accepted Mrs. Bernard's evidence.

Mr. Bernard cross-examined Mrs. Bernard on why she was wearing a bandage on her hand in Court. He suggested that this was a contrivance to gain sympathy of the court. She testified that she does not wear it all the time during the day but only as needed and that she wears it every night. He cross-examined her on whether she wears it when she travels and whether she requires help with her luggage. In short, I accepted Mrs. Bernard's evidence that she wears the bandage for pain, as and when required and not to gain sympathy. Again this cross-examination was not relevant to the issues before me, except to attack her credibility.

Mr. Bernard finally suggested to her that her injuries were sustained when she jumped from the car. She denied this, testifying that she did not fall to the ground or suffer any injury when getting out of the car. I accept her evidence, that her injuries were caused by the blows struck by Mr. Bernard on the evening of December 21<sup>st</sup>.

There were several other areas of attack on Mrs. Bernard's credibility by Mr. Bernard during his cross-examination of her. I will not repeat all of them in these reasons. Not one of them, individually or collectively caused me to doubt her honesty. She was forthright and candid in her evidence in chief and cross-examination. She acknowledged that she had not told the truth to the police or to Mr. Bernard on previous occasions but she explained why and I fully accepted these explanations.

I remind myself that it is dangerous to convict on the uncorroborated evidence of a complainant where that witness has made prior inconsistent statements. Mrs. Bernard's evidence of the assault on December 21, 1999 was not witnessed by any other person. Her injuries however, were corroborated by the evidence of Melsaida Jackson, Dr. Fiona Robertson and the photographs exhibit #5, taken by the police.

Notwithstanding the lack of other corroborative evidence regarding the actual assault I am satisfied on the evidence of Mrs. Bernard, so that I am sure, that the events of December 21<sup>st</sup> occurred as she described them, in her testimony.

In conclusion the Crown has to prove so that I am sure, that –

- (1) Mr. Bernard assaulted Mrs. Bernard on the evening of December 21<sup>st</sup>, 1999;
- (2) That he intended to assault her;
- (3) That her injuries were not caused by Mrs. Bernard jumping from a moving automobile and;
- (4) That she suffered actual bodily harm, as a result of the assault.

I find that the Crown has proved all of those elements and accordingly I find Mr. Bernard guilty of Count 1.

Count 2  
Threatening Violence

Mr. Everton McHayle was the complainant in respect of this count. He testified that when Mrs. Bernard got off the bus on the morning of December 21<sup>st</sup> she said “good morning Mr. Phil, morning Chuckie, morning Everton”. At the same time Mr. Bernard drove up and then went inside with Mrs. Bernard.

The next morning, December 22<sup>nd</sup> Mr. Bernard came to Plantation Village. He said to Mr. McHayle that he wanted to talk to him and they sat down together. Mr. McHayle testified that Mr. Bernard said that his wife had previously told him she didn't speak to Mr. McHayle, but he heard her speak to him the day before. He said his wife had lied to him. Mr. Bernard then said, "if he loses his wife he is going to kill me."

Mr. McHayle got up and said "what you said" and Mr. Bernard replied "you heard what I said" and Mr. McHayle asked "what you mean - are you threatening me" and Mr. Bernard replied "you can take that as a threat".

Mr. McHayle then began to walk away but Mr. Bernard followed him. Mr. Bernard was in a rage, acting like he wanted to fight. Mr. McHayle was unable to speak to him because Mr. Bernard was screaming and other workers and guests came to try to calm him down. The other workers were unable to calm him down but Mr. Bernard did get into his car and drove away. However, he then put his car in reverse, came back and said "he was going to come to my house and kill my family."

Mr. McHayle said "I don't think you want to try that. I bet you never come" to which Mr. Bernard replied that he "would take that smile off his face". Mr. McHayle testified that he was smiling at the time.

In cross-examination Mr. McHayle agreed that there were several other people who were close by and would have heard the threats. None of these people gave evidence. He also agreed that he was smiling when the second threat was made, but did say that he felt upset and very frightened.

In cross-examination Mr. McHayle agreed that he had known Mr. Bernard a long time and had no direct knowledge of Mr. Bernard as a violent person.

Mr. Bernard also cross-examined Mr. McHayle on the statement he gave to the police. In that statement he said Mr. Bernard came to his job and started threatening him in a loud tone. The statement to the police did not say that Mr. Bernard first sat down with Mr. McHayle. I do not find that difference significant or impacting in any way on Mr. McHayle's credibility.

Mr. Bernard further suggested that Mr. McHayle threatened him. Mr. McHayle denies this and I accept his evidence. He also cross-examined Mr.

McHayle on his memory of the date of the conversation, whether he was ever alone with Mrs. Bernard on Sundays at work, whether he saw her on December 23<sup>rd</sup>, and whether he was part of a conspiracy to convict Mr. Bernard. Nothing in that cross-examination caused me to question Mr. McHayle's credibility.

I accepted his evidence on all material points. I also observe that he was a candid, fair and forthright witness.

I fully accept that Mr. Bernard made the threats as described by Mr. McHayle. The question is whether these threats support the charge as laid.

Section 86 of the Penal Code provides:

- “86. Whoever –
- (a) with intent to intimidate or annoy any person, threatens to break or injure a dwelling house; or
  - (b) with intent to alarm any person, discharges loaded firearms or commits any other breach of the peace,

is guilty of an offence and liable to imprisonment for three years or, if the offence is committed in the night, to imprisonment for five years”.

In *Archbold, Criminal Pleading Evidence and Practice, 2002 Edition*, at Chapter 29, paragraph 55, it states that the common law offence of Breach of

Peace is defined in *R v. Howell* [1982] Q.B. 416; as committed whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance. (emphasis added)

Therefore, the Crown must prove that Mr. McHayle was in fear of being harmed through an assault.

An assault is defined in Archbold (supra) at Chapter 19, paragraph 166 as:

“An assault is any act and not a mere omission to act by which a person intentionally or recklessly causes another to apprehend immediate unlawful violence...”

The act must be accompanied by a hostile intent calculated to cause apprehension in the mind of the victim.”

I am satisfied, beyond reasonable doubt and so that I am sure, that Mr. Bernard made the threats on December 22<sup>nd</sup> in the manner described by Mr. McHayle. I am satisfied so that I am sure that Mr. Bernard made these threats with the hostile intention calculated to cause apprehension in the mind of Mr. McHayle.

Mr. McHayle testified that he was upset and very frightened. Mr. Bernard made the first threat, then followed Mr. McHayle while screaming and acting like he wanted to fight. He got into his car and left, only to back up and renew his threats. Mr. McHayle's smile or laughing at that time did not, in my mind, mean that he did not feel frightened or did not take Mr. Bernard's threats seriously.

Mr. McHayle said he was frightened when the first threat was made and Mr. Bernard was following him, screaming and acting like he wanted to fight. I fully accept Mr. McHayle's evidence on this point so that I am satisfied beyond a reasonable doubt that Mr. McHayle was in fear of being harmed through an immediate assault.

Accordingly I find that the Crown has proved all of the elements of this offence, so that I am sure and I find Mr. Bernard guilty on Count 2 of the indictment.

Count 3  
Attempted Murder

Mrs. Bernard testified that she moved out of the matrimonial home on December 23<sup>rd</sup>, 1999. In March 2000 she asked the police not to prosecute

Mr. Bernard because he seemed to have changed. During this period she had seen Mr. Bernard several times and had also spoken to him by telephone. She had talked to him about going to counseling. At around this time Mrs. Bernard resumed intimate relations with Mr. Bernard but she did not move back home.

On May 2<sup>nd</sup> Mr. Bernard called Mrs. Bernard and asked her for lunch at Treasure Island. He picked her up in the Treasure Island parking lot and drove her back to the matrimonial home. He asked her if she would iron a couple of shirts for him and she agreed. During the drive he began to argue with her about her decision to not move home and he said that she was listening to her friends and family. Mrs. Bernard said she wasn't coming back to live unless he got counseling.

She testified that they went into the apartment, she went upstairs and asked him to get the ironing board which he did. She started to iron the shirts. Mr. Bernard then started to argue with her about coming back. She said she didn't want to talk about coming home at that point. She gave the following evidence regarding the subsequent attack.

"The Court: So, ma'am, when you said to Mr. Bernard that you weren't going to talk about it that day because you had agreed to not talk about it, what was his response?

The Witness: He took his hand and pushed me real hard in my face.

By Mr. Roberts:

Q: Whereabouts in your face did he push you?

A: Right under my left eye.

Q: Did you say anything when he did this?

A: Yes. I tell him I hope when he goes to work that day he would tell Ronny, a girl in his office, that he start his craziness again.

Q: How did he react when you told him that?

A: He grabbed me by my skirt and then he throw me on the bed and then he jump on top of me and he started to take – pluck out my eyes out of my head.

Q: Okay, just hold it there, please. What happened after that?

A: Then he pulled me up by my hair and he started to Punch me and kick me all over the room.

Q: Was he saying anything while this was going on?

A: Yeah. He was arguing about me not coming back home, and I was listening to people and friends and family. He was just, you know, rambling on about the same thing over and over.

Q: What happened after that?

A: Then he went, he just went by the bedroom door and he came back with two knife and a machete.

The Court: Sorry. He went by the bedroom door?

The Witness: He just went to the bedroom door because the bedroom door is – the door was closed. So he just leave from where he was standing by the air conditioning unit, which was like over here, then goes to the bedroom door right there.

The Court: He stayed inside the bedroom?

The Witness: Pardon me?

The Court: Did he stay inside the bedroom?

The Witness: The top of his body was like just outside. He just like reached down and picked up the knife and thing off the floor.

The Court: From outside the bedroom door.

The Witness: Yes, Sir.

By Mr. Roberts:

Q: What were the knives like?

A: He had a paring knife, a butcher knife and a machete.

Q: Had you seen them before?

A: Yes.

Q: Where?

A: They were in the kitchen.

Q: After they came back in with these three weapons, did he do anything?

A: He said, "you naw running off your mouth today. And then he take the knife and he push-

Q: Which knife are we talking about?

A: The butcher knife. He put the other two on the bed, and then he take the butcher knife and he say, "you naw running off your mouth today" and then he juked me in my chest.

Q: When he said that to you, did you respond to him?

A: No, I didn't say anything at that point.

Q: Okay. Did you say anything at any point during this?

A: Yeah. I start to tell him that we don't have to go through this. We could, you know, like try to make it up again. And he said it was too late because he asking me for four months to change, and I wouldn't change.

Q: Okay. So you say he – what did he do with the knife?

A: He juk me over my left breast. It is a cut right over Here that he juked me with the knife.

The Court: Just a moment. Yes, go ahead. He cut you just Above the left breast with the butcher knife?

The Witness: Yes, sir.

By Mr. Roberts:

Q: When he did that to you, how did you respond?

A: I jump on the bed to try an see if I could push the window out to jump outside.

Q: Were you able to do that?

A: No, because he come back at me and like tried pull me back. And then he take the knife and hold up my hand and cut me in my left hand.

Q: Whereabouts on your left hand?

A: Just right close to my wrist.

Q: The witness indicated more of the wrist area, is that right?

A: Yes. It is right down here.

The Court: Mrs. Bernard, show me please and describe to me please how the chest wound above your left breast was inflicted. Was it a thrusting move like that or was it a slicing move like that?

The Witness: A move like that.

The Court: It was a stabbing wound toward your chest?

The Witness: Yes, sir.

The Court: Where was the point of the knife directed?

The Witness: Right here.

The Court: Are you sure?

The Witness: Yes, sir.

The Court: You sure it wasn't a slash like that?

The Witness: No, sir. He had the knife in his hand holding like  
Like this, and he said you not running off your  
mouth today, and he went like that with it.

The Court: Thank you Mr. Roberts. And if you could also  
Describe the wound to the hand, how he did that?  
Or the wrist area.

The Witness: Because when I hold up my hand like that, the  
Knife come down like this to cut this one. And the  
same thing with this, with my right hand.

The Court: So was it with the point of the knife or the blade  
of the knife?

The Witness: The blade of the knife cut me in both of my  
hands.

The Court: You held your hands up. Were you holding your  
hands up or did he hold your hands up?

The Witness: I hold my hands up.

The Court: Why were you holding them up?

The Witness: He was coming at my face, so I was trying to  
Protect my face.

The Court: Sorry, Mr. Roberts.

By Mr. Roberts:

Q: You just said to His Lordship that he cut both  
of your hands?

A: Yes, sir.

Q: Was that at that time when you were trying to get  
out the window?

A: No. Like when he pulled me back from the window, and I was coming back down, he come down at my face. I hold up the hand and he cut me.

Q: That is your left hand you are holding up now?

A: Yes, sir.

Q: Right.

A: And then he was coming again, and I had to put up my right hand, that is where I had this one on my right hand.

Q: And you have indicated there that is more to the Forearm area?

A: Yes. This one is to the forearm.

Q: Was either of you saying anything during this?

A: I was screaming and asking him to stop. And he was still getting on like, "you let the devil take over for four months, well I am letting him take me over today".

The Court: Just a minute, just a minute. Sorry, Mrs. Bernard. I let the devil take you over for four months, is that right?

The Witness: Yes, sir.

The Court: And now I am letting him take me over today?

The Witness: Yes, sir.

The Court: Thank you.

By Mr. Roberts:

Q: Anything else said by you or by him?

A: I can't remember at this point. I eventually get a cut over my eye. Because all this was still going on, and couple of small one in other parts of my arm, one in my head. The one in my head he chopped me with the knife, like a chop.

Q: Now you started by saying you got a cut over your right eye, you indicated your right eye

anyway. Where did that cut go from?  
A: It is from some place up here. And it ended right on my eyelid, because I had a stitch right in this one here.  
Q: Alright. You said a couple more injuries to your arm. Whereabouts were they?  
A: There is a small one right here and one here and one here and there is a little one right here too.  
Q: And that is actually on your left, left hand, near your -  
A: Yeah, There is a little one here near to my small finger on my left hand and there is two on my left arm up here.  
Q: The inside of your forearm, you are pointing to?  
A: Yes, sir.  
Q: Any other injuries inflicted by your husband on you?  
A: On that same day?  
Q: Yes.  
A: Yes, there is one in my head. I don't know Exactly where now, but there is one in my head.  
Q: And how was that inflicted on you?  
A: He chopped me like that with the knife.  
Q: Downward chopping motion?  
A: Down like that.  
Q: Anything else?  
A: And there is one right about the right side of my face. This was the last cut when he asked me, "so what do you say about Mr. McHayle?" And I said I already tell you that me and him is not anything. And he said if you said that again I will cut off your mouth and then he just drew the knife right here.  
Q: You are pointing to the corner of your mouth?  
A: Yes.  
Q: Did it run away from your mouth or towards your Mouth?  
A: Towards my mouth.  
Q: And you say that was the last injury he inflicted on you?

- A: Yes, sir.  
Q: What happened after he had finished injuring you?  
A: He put down the knife and then he started to blame me, like I was the cause to what happened. And he really didn't mean to do it but I was the one who... and then I in turn –  
Q: Sorry, you dropped your voice. You didn't mean to do it, but you were the?  
A: But I was the one who caused him to do this to me.

For the reasons I will detail later, I accept the evidence of Mrs. Bernard.

Her evidence was also supported by the physical evidence subsequently seized by the police. Her clothing was produced and marked as an exhibit. It showed a hole in her T-shirt just above her left breast. The shirt was covered in blood. The photographs of the bedroom showed blood stains and signs of a struggle. The photographs of her injuries and the material evidence of Dr. Jog and Dr. Osterloh detail the very serious nature of her injuries. Dr. Jog testified that the stab wound to her chest had penetrated causing the lung to collapse. It was just a few centimeters away from her heart. He said it would take moderate force to inflict such a wound on Mrs. Bernard. If full force had been applied by an adult male the wound would likely have been deeper. He said that was the only wound which was life threatening.

Dr. Osterloh described the chest wound as follows:

“The Court: How deep?

The Witness: Down to the bone, but no fracture visible

By Mr. Roberts:

Q: What other injuries did you see?

A: She had on her left side of her chest, it was actually a very open wound. It was eight centimeters in sort of diameter and width, but the actual entry wound into the chest itself, into the chest cavity, was five centimeters. And it is what we describe as a sucking wound in that it was flowing freely from the outside into the chest cavity and it makes a sucking sound. And, clinically, that is what we know as pneumothorax without even having to do an x-ray.

Q: Now perhaps you have to explain pneumothorax to us?

A: Basically, a pneumothorax is when you have, for whatever reason, there is actually an opening from the outside to the actual chest inside, and free air goes into the chest wall and into the lining around the lung and collapses the lung and just leaves air in the actual lung cavity.

Q: I see. How was her breathing as a result of that?

A: Her breathing was very laboured. And it was compromised, so we had to put her on oxygen and treat the actual wound pretty much straight away.

The Court: Was the lung collapsed?

The Witness: Yes, it was.

The Court: One or both?

The Witness: Just the left at that stage.

By Mr. Roberts:

Q: Are you able to say what would have happened to Her had you not given her oxygen at that stage?

A: Again, if oxygen hadn't been given to her and treatment for that wound hadn't have begun, she would have died from that wound."

The evidence of the blood stain analyst Jeffrey Johnson, was that the photographs of the bedroom showed several transfer patterns of blood, meaning that a bloody object or person came in contact with something (such as the wall or blanket) and left a blood stain on it. He also identified on photograph 9 impact patterns in the bedroom, that he testified would likely be caused by an impact of medium force from an object on a person, causing blood to fly from the person to some other stationary object in the room. He did form the opinion that the blood source was not stationary. That is, that the blood source (Mrs. Bernard) was moving around. That evidence is consistent with Mrs. Bernard's evidence that she was moving around the bedroom. Mr. Johnson was not able to say whether the impact patterns were consistent with a knife wound. Finally he testified that the attack, likely did not occur outside of the bedroom because he could see no signs of blood downstairs. Again this is consistent with Mrs. Bernard's evidence.

After the attack, Mrs. Bernard said that Mr. Bernard just sat on the bed for 10 minutes or so. He did not say anything. She was crying and asking him to take her to the doctor. He initially refused because he said, she would tell them it was him, and he would go to jail.

This went on for several hours. Mr. Bernard finally calmed down and she convinced him that she would not let him be arrested. She told him that if he would take her to the doctor she would move back in with him. She told him that she would tell the doctors that some girl had stabbed her because she had heard that Mrs. Bernard had a relationship with her boyfriend. He then agreed. She told him to change his clothes. He first changed Mrs. Bernard's clothes, then his. The blood-stained clothing and butcher knife were later found at the scene by police.

Mr. Bernard then drove her to the hospital. On the way he stopped to get cigarettes. He said it was because he was going to jail and wanted something to smoke but Mrs. Bernard continued to convince him that he would not.

He took her into the emergency room and whenever they were alone he would ask her if she was going to stick to her story and Mrs. Bernard did just that. She told the nurse and the doctor that a girl had “stabbed her up”. Mr. Bernard was present when she said this. Prior to arrival at the hospital Mr. Bernard had told her that if he got arrested he would get bail and buy a gun and kill her and every family member living here. He also threatened to kill her boss and every friend she had in the Cayman Islands.

After her husband left the room, she told the police that it was her husband who injured her. Those injuries and conditions were –

1. The chest wound that I have described earlier.
2. Clinical shock.
3. Severe blood loss.
4. Large 8 cm laceration to the right side of her face.
5. A 5 cm laceration to the right of her right eye and her skin was hanging off.
6. A 5 cm deep laceration on the back of her head (down to the bone).
7. A 7 cm wound on the dorsal aspect of her right hand – it was very deep and severed the tendons.

8. Numerous small lacerations to the palm of her fingers which were superficial.
9. A deep laceration through the left hypothenar eminence of the left hand extending into the wrist.

In his cross-examination of Mrs. Bernard, Mr. Bernard suggested that she had attacked him and he was defending himself.

The following questions were asked and answered at trial.

Q: So you realised that you must find some other way to deal with the matter and yourself and others put together this evil plot on how to get a divorce, maintain the Cayman status, and either put me away in prison or I would be dead. And under that condition and for those reasons only, you have attacked me on the second of May and because you were not successful in getting me killed or dying yourself, then you find yourself in an awkward position and that position you turned the story around when you get to the hospital because you were so fearful. You were so fearful of what had happened. I putting it to you that the time between the incident in the room and the time that you were taken to the hospital you sat – you stood there and you made some admissions that until this day I can't believe that is you. That you are the person that was living with married to all them years. I still can't believe, but it is obvious?

A: Likewise.

The Court: What do you say to Mr. Bernard's rather long and complex suggestion of a conspiracy and changing of story?

The Witness: Nothing like that, sir. Whatever I told the Court and the police is true.

Mr. Roberts: I think those admissions have to be put to Mrs. Bernard as well. My Lord.

By Mr. Bernard:

Q: What you told the Court and the police is true you said?

A: That you stab me up. You stab me, John. It is no one else in that room that day.

Q: I never stated that there was anyone else in the room. So I never ever tried to umm – but what you told the police?

A: I tried to kill you, where is the cut on you skin? Where is the mark that you have?

Q: Me. The angel of the Lord protected me. That is the only reason that I am alive here today?

A: But you said the devil was in the room that day.

Q: An angel of the Lord protected me. You are Satan. You are Satan –

The Court: Well I think that is probably an appropriate place to end the cross-examination. Thank you very much.

Mrs. Bernard admitted in her evidence in response to questions from the Court that she was lying to the police and medical staff when she told them the story about being stabbed by another girl. She gave the following evidence –

- Q: Alright. Now, you told me that at first you told the nurse and doctor when you first went to the hospital that, "a girl had stabbed me up".
- A: Yes sir.
- Q: Did you tell the doctor and nurse anything else? Did you say you went into your husband's car, for instance?
- A: No sir.
- Q: Did you say a girl stabbed you up?
- A: Yes, I did.
- Q: Alright. Is there a reason why you did not tell the doctor, or nurse right then that it was your husband who stabbed you?
- A: He was there and he tell me on numerous occasions that if anything should happen, even if the police was there, he would hold me by the throat and he would not let me go until I was dead and the police could never get him off. So at that point I was still scared and there is like injection needles and things.
- Q: He said he would hold you by the throat?
- A: Yes. Like he would hold right here (indicate) and even if the police was there, he could not take me off. He would hold it until I die.
- Q: When did he tell you that?
- A: On numerous occasions before this incident.
- Q: On the night, or before this day?
- A: Before this day, and even at the house this day.
- Q: Sorry, I don't understand you. He told you before this day that -
- A: He told me on numerous occasions that if something should happen and even if the police was there he would hold me by the throat and he would squeeze and the police could not get him off until he kill me, so I was afraid. I just tell the nurse it's a girl.

During his cross-examination of Mrs. Bernard, Mr. Bernard challenged her credibility in many areas, primarily based on the statements she had given to the police, prior to trial.

He suggested she was unfit to give a statement to the police dated May 5<sup>th</sup> because of her injuries and the medication she was taking.

She testified that when she gave her statement to the police in May that there was one policeman present and no one else. This is inconsistent with the evidence of officer Mohammed who testified that he was also present for at least part of her statement on the 1<sup>st</sup> day.

Mr. Bernard suggested that Mrs. Bernard's statement dated May 5<sup>th</sup> was contrived and put together with others. She denied this.

Mr. Bernard spent some time cross-examining her on what her name was and why she was called Jean when her name was Barbara. She explained it was pet name given to her by her mother.

I will not recite all of the areas explored by Mr. Bernard during his cross-examination of Mrs. Bernard. They were intended to persuade me to conclude that Mrs. Bernard was not an honest witness. I have reached the opposite conclusion.

Even though there were some inconsistencies in her evidence and she admitted telling lies to the police and others, I am satisfied so that I am sure that she was telling the truth on every material issue before me. Mr. Bernard's cross-examination was forceful and aggressive, but it did not, in my judgment impair her credibility in any way. The inconsistencies in her evidence and contradictions with other evidence were either explained to my satisfaction, were on insignificant matters or explained by the simple frailties of one's memory. But as I have said on all material matters, I am satisfied, so that I am sure, that her memory of the events she described was accurate and her evidence truthful.

Although it is not necessary to make such a finding I do find that the evidence of the hospital staff and police corroborates in part, Mrs. Bernard's evidence. Even without that evidence, the Crown would have proved its case to the requisite standard of proof, namely so that I am sure of it.

Sergeant Evans testified that he arrived at the hospital at 6:30 or 7:00 p.m. on May 2<sup>nd</sup> 2000 where he saw Mrs. Bernard in the trauma room and Mr. Bernard in the corridor. He asked Mr. Bernard what happened and Mr.

Bernard said that she was injured by a lady on the street and the reason was because Mrs. Bernard had been fooling around with her man. Mr. Bernard said he was at home and when his wife knocked at the door she was already injured.

Sergeant Evans then went to Mr. Bernard's apartment and did not observe any blood on the pavement, door or door knobs. This would indicate that she was not injured outside and then went into the apartment already bloody.

Sergeant Evans returned to the hospital and again spoke to Mr. Bernard. He then returned to Mr. Bernard's apartment with Mr. Bernard, Detective Best and Officer Mohammed. At the house Detective Best arrested Mr. Bernard for suspicion of attempted murder. Mr. Bernard was cautioned and as was his right he said "I have nothing to say." Sergeant Evans then left to get a search warrant and upon his return, Mr. Bernard and the three police officers entered the apartment. Sergeant Evans observed blood stained clothing on the stairway, blood stained rug and floor mat outside of the upstairs bathroom, blood on the bathroom basin, blood stained clothing and bed sheets in the master bedroom. These items were taken into custody. He also recovered a butcher knife, which was marked as Exhibit 9 and was identified

by Mrs. Bernard in her evidence, as the knife used by Mr. Bernard to inflict the injuries on her.

On May 3<sup>rd</sup> Sergeant Evans, Mr. Bernard, Officers Codner and Tubbs again went to Mr. Bernard's apartment. Sergeant Evans tried to speak to Mr. Bernard about the incident but again, as was his right, Mr. Bernard declined to discuss it. I do not draw any inference from Mr. Bernard's decision not to discuss the events with Sergeant Evans or any other police officer. He is not obliged to do so and no inference may be drawn from his decision to answer or not answer any questions.

In cross-examination of Sergeant Evans, Mr. Bernard suggested that Sergeant Evans was a conspirator in a plan to wrongfully convict him. He suggested that Sergeant Evans was involved in this conspiracy because he had arrested Mr. Bernard several years earlier for knocking down a child with his motor vehicle. Sergeant Evans could not recall such an incident.

I accept the evidence of Sergeant Evans and reject the suggestion put forward by Mr. Bernard.

Detective Constable Mohammed testified that he attended the hospital on the evening of May 2<sup>nd</sup> with Sergeant Evans where they spoke to Mr. Bernard. He testified that Mr. Bernard explained that an unknown woman attacked his wife, stating that she was with her man. This evidence is consistent with Mrs. Bernard's testimony that this was the "story" they would tell the police.

Detective Mohammed also saw Mr. Bernard in the trauma room in the presence of Mrs. Bernard. However, when Mr. Bernard was asked to leave the room she looked around to make sure he was not there and then motioned to Detective Mohammed. She then told Detective Mohammed that her husband had done this to her. That evidence was not led for the purpose of proving the truth of the contents of the statement. It was led as to show the state of mind of Mrs. Bernard. It helps to explain why she did not tell the police immediately that Mr. Bernard had injured her and is consistent with her evidence of the "story" that she and Mr. Bernard said they would tell the police and her evidence of her fear of Mr. Bernard because of the threats he had previously made.

While detective Mohammed was at the apartment on the evening of May 2<sup>nd</sup>

Mr. Bernard said to him that he was just telling him what his wife told him to say. Detective Mohammed also testified that Mr. Bernard said "what did I get myself into" or "what have I got myself into".

Detective Mohammed's observations of the apartment were similar to Sergeant Evans. In his cross-examination of Detective Mohammed, Mr. Bernard suggested that he had told Detective Mohammed at the apartment on the evening of May 2<sup>nd</sup>, 2000 that he did not wound anyone. Detective Mohammed denied this. I accept Detective Mohammed's evidence.

Winsome Hill-Fraser was a nursing assistant at the George Town Hospital on May 2<sup>nd</sup> when Mr. Bernard brought Mrs. Bernard to the emergency. She observed Mr. Bernard with Mrs. Bernard. He was rubbing her leg and ankle, comforting her. He told Mrs. Hill-Fraser that his wife had been attacked and beaten by some woman. Mrs. Hill-Fraser asked if she could help by calling the police so they could catch this woman. Mr. Bernard said he didn't know. I find it surprising that if Mrs. Bernard was injured by someone else, that Mr. Bernard would not want the police called immediately. Mrs. Hill-Fraser continued to question him and she became suspicious. She testified that when Mrs. Bernard was being asked questions

by the doctors, she would look at Mr. Bernard when she answered. Mrs. Hill-Fraser then called the police who came to the hospital.

Having considered all of the evidence and in particular the evidence of Mrs. Bernard and my acceptance of it, I am sure that Mr. Bernard inflicted the injuries to Mrs. Bernard in the manner she described in her evidence.

Having found as a fact that the injuries sustained by Mrs. Bernard on May 2<sup>nd</sup>, 2000 were caused by the attack from Mr. Bernard, and in the manner described by Mrs. Bernard, I turn to the question of intention.

In order for the Crown to prove that Mr. Bernard is guilty of attempted murder it must also prove so that I am sure, that at the time he committed the act, he actually intended to kill her. Proof of recklessness or an intention to cause serious injury would not be sufficient. It must prove an actual intention to kill. This is a narrow and higher *mens rea* than for the offence of murder.

Mr. McGrath referred me to the decision of the English Court of Appeal in *R v. Walker and Hayles* [1990] *Crim. L.R.* 44 at page 45, regarding proof of

*mens rea* for attempted murder; where the summary of that case states at page 4 and 5.

“In most murder cases, the defendants’ desire went hand in hand with his intention. If he desired serious harm, and death resulted from his acts, he was guilty of murder. A simple direction sufficed in such a case. But where the charge was attempted murder, he might well have desired serious harm without desiring death, so the desire of serious harm was not the answer. It did not go hand in hand with the relevant intention because in attempted murder the relevant intention must be an intention to kill... In most cases they would only need a reminder of the simple direction, namely that nothing less than an intention to kill would suffice.”

How is that intention to be determined on the evidence of this case? The Judicial Studies Board guidelines recommend the following charge to the jury –

“You should decide intent by considering what the defendant did or did not do [and the effect of his actions] and by what he said or did not say. You should look at his actions before, at the time of, and after the alleged offence.”

In *R v. Nedrick* [1986] 3 All.E.R, Lord Lane C.J. said at page 3-

What then do a jury have to decide so far as the mental element in murder is concerned? They simply have to decide whether the defendant intended to kill or do serious bodily harm. In order to reach that decision the

jury must pay regard to all the relevant circumstances, including what the defendant himself said and did.

In the great majority of cases a direction to that effect will be enough, particularly where the defendant's actions amounted to a direct attack on his victim, because in such cases the evidence relating to the defendant's desire or motive will be clear and his intent will have been the same as his desire or motive. But in some cases, of which this is one, the defendant does an act which is manifestly dangerous and as a result someone dies. The primary desire or motive of the defendant may not have been to harm that person, or indeed anyone. In that situation what further directions should a jury be given as to the mental state which they must find to exist in the defendant if murder is to be proved?

We have endeavoured to crystallize the effect of their Lordships' speeches in *R v. Maloney* and *R v. Hancock* in a way which we hope may be helpful to judges who have to handle this type of case....

When determining whether the defendant had the necessary intent, it may therefore be helpful for a jury to ask themselves two questions. (1) How probable was the consequence which resulted from the defendant's voluntary act? (2) Did he foresee that consequence?

If he did not appreciate that death or serious harm was likely to result from this act, he cannot have intended to bring it about. If he did, but thought that the risk to which he was exposing the person killed was only slight, then it may be easy for the jury to conclude that he did not intend to bring about that result. On the other hand, if the jury are satisfied that at the material time the defendant recognized that death or serious harm would be virtually certain (barring some unforeseen intervention) to result from his voluntary act, then that is a fact from which they may find it easy to infer that he intended to kill or do serious bodily harm, even though

he may not have had any desire to achieve that result...  
(emphasis added)

Where the charge is murder and in the rare cases where the simple direction is not enough, the jury should be directed that they are not entitled to infer the necessary intention unless they feel sure that death or serious bodily harm was a virtual certainty (barring some unforeseen intervention) as a result of the defendant's actions and that the defendant appreciated that such was the case."(emphasis added)

In *Nedrick* (supra) the Crown alleged that the defendant had gone to the house of Viola Foreshaw and poured paraffin through the letter box and on to the front door and set it alight. The house was burnt down and one of Viola Foreshaw's children died as a result. The defendant ultimately confessed to the police but said "I did not want anyone to die, I am not a murderer." At trial he denied the allegations and the admission to police. He was charged with and convicted of murder. As I have already indicated, in a charge of murder the Crown may prove that the defendant appreciated that death or really serious harm was the likely result of his actions, whereas in a charge of attempted murder the Crown must prove an intention to kill.

The Court of Appeal in *Nedrick* allowed the appeal on the basis that it was a rare case where the simple direction (which I have referred to above) was not enough. It did so because the defendant had made a statement to the

police that he did not intend to kill anyone. There was no evidence of any direct attack on the child. The acts of the defendant although manifestly dangerous, may not have been primarily motivated by the defendant's intention to harm the child or indeed anyone.

In the case at bar there is evidence of a direct attack with a butcher knife by Mr. Bernard on Mrs. Bernard. The defendant did not tell police that he did not intend to kill her. He told the police someone else had done it.

In *R v. Woollin* [1999] 1 Cr. App. Rep. 8 the House of Lords considered *Nedrick* and many other cases which deal with intent to commit murder. Their Lordships approved the decision in *Nedrick*, but referred to Lord Lane's emphasis that "the decision is one for the jury to be reached upon a consideration of all of the evidence".

Lord Steyn then stated-

"Nedrick does not prevent a jury from considering all of the evidence: it merely stated what state of mind (in the absence of a purpose to kill or cause to cause serious harm) is sufficient for murder."

And later in his judgment he stated-

“It may be appropriate to give a direction in accordance with Nedrick, in any case in which the defendant may not have desired the result of his act. But I accept the trial judge is best placed to decide what direction is required by the circumstances of the case.”

*In R v. Lynch [1996] E.C.S.C.J. No. 47 Crim. App. Nos. 4 and 5 of 1996 the Eastern Caribbean Supreme Court (Court of Appeal), the defendants were convicted of attempted murder by means of firing a gun at a mother and her daughter. The learned trial judge directed the jury as follows-*

“Before you can convict Charlesworth Piper and Alarick Lynch or either of them of the offence of attempting to murder Anna Ryan or attempting to murder Koya Ryan, your must be sure of two things:

1. That the two of them intended to murder, that is, intended to kill Anna Ryan and Koya Ryan or either of the two of those. That is the first thing you must feel sure about...
2. They had the intention when they discharged those guns at the house of Anna Ryan on the morning of 16/10/95.

If from the evidence which you have heard all you can assume or come to conclude is that the person or persons only intended to scare or to harm or send a message or any such thing then that would not be attempted murder... The intent you must feel sure about out of the evidence is an intent to kill and an intent to kill only. That is, you must feel sure that there was an intent to kill Anna Ryan and an intent to kill Koya Ryan.”

On appeal the Appellants relied upon the decision in *Nedrick* (supra). The Eastern Caribbean Supreme Court (Court of Appeal) held –

“In the instant appeal, there is cogent evidence to suggest and in fact from which the jury could properly come to the conclusion that the bullets were fired directly at Anna Ryan and Koya Ryan. In the circumstances it could not be said that the risk to which the Appellants were exposing Anna Ryan and Koya Ryan to death was slight. It was only fortuitous that in the circumstances they were not killed.

In the circumstances the *Nedrick* case differs from the instant appeal and there was no need for the Judge to give the directions given in *Nedrick*.”

The Court held that the trial judge’s charge was both sound and adequate.

Indeed it could not be sensible to give the *Nedrick* direction in a variety of different cases. For example if a hired assassin was charged with attempted murder by shooting a rifle at someone from a great distance, and there was a real likelihood he might miss, would he be able to say that the jury should be instructed that “they are not entitled to find the necessary intention, unless they felt sure that death... was a virtual certainty (barring some unforeseen intention) as a result of the defendant’s actions and that the defendant

appreciated that such was the case.” The answer to that suggestion must be no.

For these reasons, the case at bar, does not in my view, require that I would give a jury or myself the direction outlined in *Nedrick*; namely that I must be satisfied that at the material time the defendant recognized that death would be virtually certain (barring some unforeseen intervention) to result from his voluntary act and from that I may find it easier to infer that he intended to kill, even though he may not have had any desire to achieve that result”.

I have concluded that in the case at bar, the simple direction to myself is appropriate.

The evidence in the case reveals that Mr. Bernard telephoned Mrs. Bernard and asked her for lunch at Treasure Island. He picked her up there, and drove her, in his car, back to his apartment. He asked her to iron some shirts for him. Once she was in the bedroom Mr. Bernard left the room briefly. When he returned the argument ensued and he leaned out the bedroom door to retrieve a peering knife, a machete and butcher knife. He clearly left the

bedroom earlier to get these weapons and then placed them just outside the bedroom door.

He chose the butcher knife, placing the other weapons on the bed. His first attack with the knife was to plunge the pointed end of the knife into Mrs. Bernard's chest. It barely missed her heart. That was followed by attacks to her face and head, some of which she managed to ward off with her hand and arms.

The first stab wound to the chest would likely have been caused by the application of moderate force. Mrs. Bernard struggled and tried to get away. After the several wounds were inflicted Mr. Bernard stopped and was silent for several minutes. That was followed by several hours of pleading and discussion until Mr. Bernard finally took her to the hospital. She had lost a lot of blood and likely would have died from either blood loss or the chest wound if she had not received medical treatment.

I must determine Mr. Bernard's intention from his words and actions. In my view, the most significant fact to consider, is that Mr. Bernard stabbed Mrs. Bernard in her chest, with the knife barely missing her heart. It was not a

slash but a penetrating wound directed towards a vital organ. The clear and obvious inference is that at that moment he intended to kill her. The force of the stab was described as moderate. If it had been greater, the wound would have been deeper. I cannot imagine that he intentionally applied only a moderate force planning on missing her heart by a few centimeters. The blow was struck in the context of a struggle. The blow may have been with full force but deflected or Mrs. Bernard may have been backing away when it was struck. There was, however, no evidence of this. All that can be said is that the force of the blow was sufficient force to pierce the skin and muscle and penetrate the chest cavity causing the lung to collapse.

Mr. Bernard also placed the weapons outside the room. This indicates a deliberate plan to use them as opposed to grabbing something close by, having lost his temper in the heat of an argument. I consider this to be more likely evidence of an intention to kill rather than an intention to injure because it would not make sense that he would plan to just injure her, let her live and then go to jail for stabbing her. Finally Mr. Bernard had threatened to kill her before and after the attack. Were these the only facts to consider I would have no hesitation in concluding that he intended to kill her at the time of the attack.

I must however consider all of the facts. After the first stab, the subsequent injuries appear to be of a slashing and chopping nature. Those wounds were not life-threatening and were perhaps more consistent with an intention to injure rather than kill. They were however directed towards her head and face but she warded some of them off with her hands and arms.

Mr. Bernard may have had Mrs. Bernard at his mercy, after the first few wounds were inflicted. At that time he perhaps could have killed her if he wanted to but there is no real evidence to support this. Such a conclusion would be mere speculation. I recognize that I must try to determine his intention at the time he stabbed her but in determining that intention I should look at what he did before and after. Before the attack he wanted her to move home. He apparently did not want her dead if she would agree to come home. He stopped the attack while she was still conscious and perhaps less able to defend herself. Although he waited several hours he did take her to the hospital which ultimately saved her life. However, one must ask why he waited several hours to take her to emergency. If he was really interested in saving her life he could have taken her immediately. It was obvious from the blood stained garments and furniture that her wounds were

serious and that she had lost a lot of blood. I think it is right to infer in these circumstances that he was not, for some considerable period of time after the attack interested in saving her life, but rather just waiting to see if she would die. At some later point in time, he had a change of mind – (when she persuaded him that he would not go to jail) – and he then took her to the hospital to save her.

Does all of this evidence lead to the sure conclusion that he was attempting to kill her? In my view it does.

He lured her to his apartment under the pretext of ironing his shirts. He knew he wanted to have it out with her about her moving home. He placed 3 knives outside the bedroom door. He confronted her and when she would not agree he picked up the butcher knife and stabbed her near the heart. He followed that attack with a series of other blows with the butcher knife, to her face and head. She fended off several of them with her arms and hands. The injury to her chest was life threatening and the blood loss was obvious, yet he waited several hours before he took her for treatment. He had threatened to kill her both before and after the incident. This evidence of his intention to kill her is overwhelming.

The fact that the subsequent wounds were not life threatening does not cause me any doubt of his intention to kill her. They were aimed at her head and face and she was defending herself and struggling. There is no evidential basis or logical reason for me to conclude that he intended to kill her when he plunged the butcher knife into her chest but he then, within seconds, changed his mind and intended only to injure her with the subsequent blows. I do not have any reasonable doubt, on the evidence that at the time he struck the first-blow to her chest and the subsequent blows to her face and head that he intended to kill her. Accordingly I find him guilty on Count 3.

Count 4  
Grievous Bodily Harm

In order to prove this offence the Crown must prove, so that I am sure, that;

1. Mr. Bernard assaulted Mrs. Bernard on May 2<sup>nd</sup>;
2. That he intended to assault her; and
3. That her injuries were serious.

In the Cayman Islands it is not necessary to prove an intention to cause grievous bodily harm. It is only necessary to prove an intention to assault her and that the injury sustained is really serious in order to prove the

offence of grievous bodily harm (*see R v Clayburn Ebanks 72/2002 Grand Court of the Cayman Islands, May 16, 2001*).

In the present case I have found as a fact that, when Mr. Bernard attacked Mrs. Bernard he intended to kill her. He intended to kill her by stabbing her. If he had not intended to kill her but merely assault her, he would have been guilty of causing grievous bodily harm because it is clear she suffered serious injuries.

The question is whether it would be legally correct to convict on both counts, attempted murder and grievous bodily harm when both offences arise from the same act. I have not found any authority, binding on this Court that deals with this issue. I understand the common law in England is that a defendant may be convicted of multiple offences for the same act. There, the practice would normally be, that the sentence for the lesser conviction would run concurrently with the sentence for the more serious offence.

This however has been the subject of extensive jurisprudence in Canada but I will only refer to one decision – that of the Supreme Court of Canada in *R*

*v Prince (1986) 30 C.C.C. (3d) 35*, where the question of multiple convictions is dealt with in detail. I adopt the reasoning and conclusions made by the Court in that case and will attempt to briefly summarize them as follows:

Multiple convictions will not be allowed where:

1. There is a sufficient factual nexus between the charges. That requirement of a factual nexus will usually be satisfied if the same act of the accused, grounds each of the charges. (emphasis added) (see page 44).

In the present case the same act, namely the attack with the knife, grounds both charges.

2. There is a legal nexus between the charges. However, even if there is a single act but there are distinct delicts, causes or matters which would sustain separate convictions, then multiple convictions can be sustained. (see page 46).

For example, at page 46 of the decision, Dickson C.J.C referred to numerous authorities where separate and distinct offences could be committed by one act.

(a) driving whilst suspended and impaired driving  
*R v Logeman* (1978). 5 C.R. (3d) 219 B.C.C.A.

(b) contributing to juvenile delinquency and trafficking in a narcotic: *R v Earle* (1980), 24 Nfld. & P.E.I.R. 65

(c) breach of recognizance and possession of a narcotic *R v Earle* (1980) 24 Nfld and P.E.I.R 65

(d) breach of probation and common assault *R v Pinkerton* (1979), 46 C.C.C. (2d) 284

Dickson C.J. C. summarized it in this way at page

"There must be proximity first as between two or more persons to evoke

In the present case the matters that would justify m.

is the stabbing Mrs. Bernard, and there is in my view a legal nexus between the two charges.

3. There must be no additional or distinguishing element in the offences charged. Dickson C.J.C. stated the rule at page 49 as follows;

“No element which Parliament has seen fit to incorporate into an offence and which has been proven beyond a reasonable doubt ought to be omitted from the offender’s accounting to society, unless the element is substantially the same as, or adequately corresponds to, an element in the other offence for which he or she has been convicted.”

In the present case the charge of attempted murder is proved by establishing the attempt – (the attack with the knife) and the intention to kill. The charge of grievous bodily harm is proved by the assault – (the attack with the knife) and the intention to assault.

I conclude in the circumstances of this case that the intention to kill with the knife and the intention to assault with the knife, adequately correspond to each other, such that the Legislature did not intend that multiple convictions

would follow. As stated in *Krug v The Queen* (1985) 2 S.C.R. 255 (and approved by Dickson C.J.C. at p 50)

“Under the circumstances, it was difficult to believe that Parliament intended “automatically to make the same objectionable behaviour the subject of two separate offences”

If I am incorrect in my application of the principles stated in *R v Prince* (supra) then I think it would have to be on the basis that there is no legal nexus between the counts or that there are distinguishing features between the offences. If the correct position is that since attempted murder requires a specific intention to kill, whereas grievous bodily harm requires merely an intention to assault and therefore, there is an insufficient legal nexus between the counts or distinguishing features between the offences, then it would in my view still be wrong to convict on both counts. This would be so because having found the defendant in fact had the intention to kill her and therefore, convict on Count 3, how could I then find that he merely had the intention to assault her and convict on Count 4? I think this approach for arriving at the same result would, however, be incorrect. I think the correct approach is to view this offence as one where he intended to kill her by an

assault with the butcher knife. That in my view meets the requirements set out in *Prince*.

I think it is preferable to impose a single conviction where the tests which are set out in *Prince* have been satisfied, rather than multiple convictions imposed under English Common Law. The basic reason is that the intention of the Legislature is to prohibit and punish a wrongful act. When that single act meets the criteria set out in *Prince*, I think it right to conclude that the Legislature (or Parliament) intended it would be the subject of a single conviction. As previously stated where the criteria set out in *Prince* are not met, then multiple convictions will be permitted – but on the basis that this was the legislative intention. In simple terms, the rationale in *Prince* is that in some circumstances (namely where the criteria are met) the legislative intention is not to have multiple convictions, but where the criteria have not been met then it was the Legislature's intention to allow for multiple convictions. *Prince* does not prevent multiple convictions. It is a guide to determine when it is appropriate or inappropriate to impose them. When it is inappropriate to do so, a second or third conviction does not in my view accomplish anything. It merely convicts twice for the same prohibited

conduct with imposition of concurrent sentences. For these reasons I prefer the approach adopted in *Prince*.

Accordingly, I conclude that it would be legally undesirable to convict on Count 4 and therefore direct that a stay of proceedings be entered in respect of Count 4. I direct a stay on the basis that, should it subsequently be determined that my analysis regarding the applicability of *Prince* (supra), was incorrect or the conviction on Count 3 is set aside, then the Appellate Court could set aside the stay and enter a conviction in respect of Count 4. I take this approach, on the basis that the *actus reus* of the alternative offence of causing grievous bodily harm is clearly established and on the basis that if I am wrong as to the finding of the *mens rea* of attempted murder, I certainly would conclude that the *mens rea* of the alternative offence is proven.

### The Conspiracy Defence

Regarding Mr. Bernard's suggestion that there was a conspiracy to convict him and that the Crown witnesses were part of the conspiracy, there was no evidence to support such an allegation and it is rejected.

### The Defendant Fitness to Stand Trial

In view of Mr. Bernard's conduct during the trial and the nature of the conspiracy defence I think it appropriate to comment on his fitness to stand trial. As a result of his conduct during previous Court appearances Mr. Justice Graham ordered that a Psychiatric Report be prepared, to provide an opinion on his fitness to stand trial. Those reports concluded that although he had a paranoid personality, he was fit. They were given to Mr. Bernard. He did not challenge them in any way and they were entered as exhibits A and B at trial. I also observe that he was quite able to understand the proceedings, that he has intelligence and is able to conduct his defence. Accordingly, I conclude that he was fit to stand trial.

### The Issue of Contempt of Court by Mr. Bernard

During the course of the proceedings Mr. Bernard conducted himself, in such a way, that the Court considered it *prima facie* contemptuous. Mr. Bernard was advised of this fact and told that at the end of the case, he

would be required to show cause why he should not be held in contempt. The following are the general areas of contemptuous behaviour and I have cited transcripts that contain some of the evidence dealing with the potentially contemptuous conduct. They are as follows:

1. Mr. Bernard alleged that he is being railroaded by the Court;

Pages 16, 96-97, 111, 744, 833, 860-861; May 15<sup>th</sup> – page 40

2. Mr. Bernard interrupted the Court and other counsel, he was shouting and would not stop. He refused on many occasions to stop talking when asked;

Pages 11, 12, 84-87, 96-99, 111-114, 118-120, 137-139, 163-167, 222-224, 227-229, 240, 310-315, 320-322, 436-444, 552-557, 560-562; May 15<sup>th</sup> – pages 16-17 and 33

3. Mr. Bernard alleged that Judge Graham had intimidated other lawyers, preventing them from acting for Mr. Bernard and that he conspired with others, including Crown Counsel Mr. Roberts, to have him convicted;

Pages 42, 44, 59-60, 88, 120, 221-222, 313, 437, 558-559, 610-611, 744; May 15<sup>th</sup> – pages 12, 41-42

4. Mr. Bernard accused the Court of intimidation, recklessness, unreasonableness, bias, unfair practices, being malicious, being vicious, being evil, being unfit to try the case, being unjust and corrupt;

Pages 65-66, 111, 226, 227, 314, 320-321, 596-597, 607, 612-615, 741-742, 746-747, 766-767; May 15<sup>th</sup> – pages 29-30, 31-32, 39

5. Mr. Bernard alleged that the Court had prejudged his case and he would not be given a fair trial, that it was a kangaroo trial and was set up to put him in prison;

Pages 68, 89-90, 99, 137, 140, 163, 310, 312, 317, 322, 442, 555, 596-598, 614-15, 621, 632; May 15<sup>th</sup> – pages 11, 29, 36-37, 40 and 44

6. Mr. Bernard alleged that what the Court has said was hogwash, garbage and foolishness;

Pages 198, 228-229, 246, 311, 437, 551-552, 559 and 598

7. Mr. Bernard referred to me as an idiot and a clown;

Pages 441-442 and 560

8. Mr. Bernard said the Chief Justice, and the Registrar of the Court of Appeal Mr. Foldats had taken steps to prevent Mr. Bernard from launching an appeal in order to cover up evidence and thereby conspired against him;

Page 439-440; May 15<sup>th</sup> – pages 13 and 35

9. Mr. Bernard said that I was lying and murderous;

Pages 553-554, 600, 635, 745; May 17<sup>th</sup> pages 17-18

10. I direct that Mr. Bernard appear before me, on the date that this matter is set for sentencing in respect of the above convictions, to show cause why he should not be held in contempt of Court. If Mr. Bernard wishes to have another judge hear the contempt application, I will hear him on this matter.



D. Sanderson  
Judge of the Grand Court

22<sup>nd</sup> July 2002

