

25/8/04

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN IN GEORGE TOWN, GRAND CAYMAN

CAYMAN ISLANDS
LEGAL DEPARTMENT
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IND. NO. 19 OF 2004

- Criminal

REGINA

- VS -

SHELDON BROWN



REASONS FOR JUDGMENT delivered by

THE HONOURABLE MR. JUSTICE HENDERSON on the 3rd
day of August 2004, at George Town, Grand Cayman.

APPEARANCES:

For the CROWN:

Mr. P. Patterson

For the DEFENDANT:

Represents self

Amicus curiae:

Mr. D. Schofield

REASONS FOR JUDGMENT

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REASONS FOR JUDGMENT

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5 HENDERSON, J. (Orally):

6

7 The defendant, Sheldon Brown, is charged
8 that "on a day between the 12th and 23rd days
9 of February 2004, with intent to pervert the
10 course of public justice, he did an act which
11 had a tendency to pervert the course of public
12 justice in that he made threats against James
13 Fernando Martin, a potential witness, in order
14 that the said James Fernando Martin would make
15 a false statement to the police investigating
16 the murder of Joseph Williams."

17

18 Cast that way, it may be thought that the
19 charge alleges a continuing course of threats
20 and threatening conduct between the 12th and
21 23rd days of February. In fact, the case put
22 for the Crown was of a single instance of a
23 threat.

23

24 The defendant represented himself
25 throughout the trial. I am, of course, able to
 convict him if, but only if, I am sure of his

25

REASONS FOR JUDGMENT

1 guilt. Put another way, I must be satisfied
2 beyond any reasonable doubt that each essential
3 element of the charge contained in the
4 indictment has been proved by the Crown.

5 The only evidence implicating this
6 defendant was given by the witness James
7 Fernando Martin. There was no independent,
8 supporting or confirming evidence for Martin's
9 testimony.

10 Mr. Martin has a long history of criminal
11 behaviour. It is clear, both from his criminal
12 record and from the tenor of his evidence, that
13 he associates with the criminal element on
14 Grand Cayman Island. One need only mention
15 that he was a witness, by his own testimony, to
16 two murders in the course of three days to see
17 the truth of what I have just said. In
18 addition, Mr. Martin was taking cocaine, ganja
19 and alcohol at the time at which he is alleged
20 to have been threatened and when he gave his
21 first statements to the police.

22 Bearing all that in mind, I must warn
23 myself, as I do now, that it is dangerous to
24 convict on the unsupported or uncorroborated
25 evidence of James Fernando Martin.

REASONS FOR JUDGMENT

1 His evidence is best approached by
2 considering, first, his various statements to
3 the police.

4 On February 18th, 2004, he gave a
5 statement regarding the murder of Chadwick
6 Bush. That murder happened on February 14th,
7 2004, Valentine's Day. His statement was quite
8 detailed and specific.

9 On the same day, he gave a second
10 statement to the police regarding the murder of
11 Joseph Williams, which happened around
12 8:00 p.m. on February 12th, 2004. Again, there
13 is significant circumstantial detail in the
14 statement. That statement implicates a man
15 known as "Skinny" as the person who shot
16 Williams, but also implicates Mateo Dinnal and
17 one Derek Stewart as accomplices. It is
18 significant that Mateo Dinnal is a friend and
19 associate of the defendant Sheldon Brown.

20 On February 20th, 2004 (that is to say,
21 some 48 hours later), Mr. Martin gave two
22 further statements to the police.

23 In the first, he says that he saw a man
24 known as Debo, whose full name is Damean
25 Seymour, participate in the Williams murder.

REASONS FOR JUDGMENT

1 Aside from naming Seymour as a participant,
2 this statement is reasonably consistent with
3 the statement given on February 18th about the
4 Williams murder.

5 In the second February 20th statement,
6 Martin says that he previously gave two
7 statements to the police regarding the murder
8 of Williams. In context, that must mean the
9 statements given on February 18th and
10 February 20th. There is no evidence before me
11 of any additional statement provided by Martin,
12 unless one considers that his conversation with
13 the police around midnight on February 14th
14 could be termed the giving of a statement.

15 In this second February 20th statement,
16 Martin says that Debo was the man who shot
17 Williams. Martin implicates Mateo Dinnal
18 again, and Skinny again, as accessories to the
19 murder. Some of the language used in that
20 statement is important, and I quote from it
21 now. Martin says in his statement:

22

23 I am the above-named person and
24 I would like to give a further
25 statement regarding the murder

REASONS FOR JUDGMENT

1 of Joseph Williams. I had
2 previously given the police two
3 statements before, but those
4 statements were not true. The
5 reason why I gave those
6 statements to the police was
7 because I was fearful for my
8 life and my family's life.
9 After the murder of Killa,
10 Sheldon Brown came to me and
11 told me what to say to the
12 police and told me to lie to
13 them. Sheldon told me if I
14 didn't tell the police the lies,
15 he would kill me. The day after
16 the murder, when Sheldon Brown
17 came to me, he told me to tell
18 the police that Skinny was on
19 the porch with us and that
20 Skinny had the gun, but all that
21 is a lie. Skinny came on the
22 scene after Joe was killed.

23
24 Later in the statement, Mr. Martin says:
25

REASONS FOR JUDGMENT

1 I don't know Skinny very well,
2 or what time he had come in the
3 area, but all I know is that
4 after the explosion he came to
5 where we were by the porch and
6 gave Dan a silver object. I
7 believe it was the said gun, but
8 I am not sure, because when he
9 was handing the object to Dan I
10 never really got a good look at
11 it.

12
13 Thus, in this statement, Martin alleges
14 that, on the day after the murder,
15 February 13th, 2004, Mr. Brown threatened to
16 kill Martin if he did not tell the police lies.
17 Further, Martin says that Brown instructed him
18 to tell a specific lie, that is, that Skinny
19 was on the porch "with us" and that Skinny had
20 the gun. Martin says that the truth is that
21 Skinny came on the scene only after Williams
22 was killed. It is the allegations in that
23 statement which form the gravamen of the
24 Crown's case.

25 There were, however, more statements.

Tuesday, August 3, 2004 (car)

REASONS FOR JUDGMENT

1 At some point early in May 2004, Martin
2 signed a letter addressed "To whom it may
3 concern" which was sent to Crown Counsel's
4 office. Martin says he did not read the letter
5 and signed it because he was high on ganja at
6 the time. The letter is a complete repudiation
7 of his accusation that Sheldon Brown had
8 threatened him.

9 Shortly afterwards, on May 10th, 2004,
10 Martin gave another statement to the police.
11 He began by addressing the topic of the letter.
12 He said, and I quote:

13
14 If I had read the letter before
15 signing it, I would not have
16 signed it because it is not
17 true.

18
19 He then refers to a statement, eight pages
20 in length and dated February 20th, 2004, signed
21 by himself. (We have two statements given by
22 Martin on that date and neither is eight pages
23 in length.) Martin goes on to say:

24
25 I gave that statement of my own

REASONS FOR JUDGMENT

1 free will. I was never
2 threatened by the police,
3 neither was I arrested by them,
4 so there was no talk of me
5 getting bail. Sheldon Brown did
6 threaten to kill me if I did not
7 tell the police lies about
8 Skinny by the Zodiac Club on
9 Saturday, 14th February, during
10 the evening just before Chadwick
11 Bush got shot. Sheldon and I
12 both ran when Chadwick got shot.
13 After being threatened by
14 Sheldon, I felt really scared
15 for my life and fearful of
16 Sheldon. Because of this, I
17 would hide out in my house and
18 would see Sheldon driving past
19 my yard in his white Toyota,
20 two-door pick up truck, which is
21 tinted very dark. It was
22 because of this that I gave the
23 police two statements
24 implicating Skinny.
25

REASONS FOR JUDGMENT

1 He concluded by saying:

2

3

I have not spoken with Sheldon

4

since he threatened me, and no

5

one has threatened me since

6

then. I believe that I signed

7

the letter Henny gave me to sign

8

because I was high from smoking

9

ganja.

10

11

Thus, in this May 10th statement, Mr.

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Martin repeats that Mr. Brown made a specific

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threat to kill him if he did not tell the

14

police lies about Skinny. He adds that this

15

happened at the Zodiac Club, a location not

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mentioned in his earlier statement of

17

February 20th. He also says that the threat

18

was on Saturday, 14th February, during the

19

evening just before Chadwick Bush got shot.

20

The fact that Martin witnessed the murder

21

of Chadwick Bush on February 14th would be an

22

excellent reason for thinking that the occasion

23

and the date would be cemented in Martin's

24

recollection. The date that he gives, though,

25

in his May 10th statement, is inconsistent with

REASONS FOR JUDGMENT

1 the date he gave in his February 20th
2 statement. Since the February 20th statement
3 was given only six days after Chadwick Bush got
4 shot, one would expect Martin's memory to have
5 been clearer on that occasion.

6 Finally, Mr. Martin gave a statement to
7 the police dated June 11th, 2004. He begins by
8 referring back to his February 20th statement
9 and then says this, and I quote:

10
11 When the murder happened,
12 Sheldon saw me about two or
13 three days later around
14 3:00 p.m. at Jim Woods' bar,
15 called The Globe on Martin Drive
16 off Shedden Road. I was
17 standing up in front of the
18 bar's front door when Sheldon
19 drove up in a white Toyota pick
20 up truck, which is darkly
21 tinted. He was alone, but I do
22 not recall if there were anyone
23 else around at the time.
24 Sheldon pulled down his window,
25 right hand side, and said to me

REASONS FOR JUDGMENT

1 "Fernando, come here, I need to
2 see ya." I walked up to the
3 truck, to his window, and
4 Sheldon said to me, "Fernando,
5 you must tell the policeman them
6 lies about Debo and Mateo
7 knowing anything about Joe
8 Williams' murder. If you don't
9 tell them lies, I will get rid
10 of you." He didn't say anything
11 else and I walked off. I took
12 the threat to mean that he would
13 kill me and I got very scared
14 because his voice was very
15 aggressive and he seemed very
16 serious. I then went and gave
17 the police two statements which
18 did not implicate Debo, Damean
19 Seymour, or Mateo Dinnal. When
20 the police came back to me the
21 third time, I decided to confess
22 to them that I had lied in the
23 other two statements and why I
24 had done so.

25

REASONS FOR JUDGMENT

1 His statement of June 11th goes on to
2 recount a meeting at Denzel Barnes' bar about
3 two weeks after the first threat, on Mary
4 Street around 7:30 a.m. On this occasion, he
5 says the defendant asked him if he told the
6 police what the defendant had told him to say
7 and Martin said "yes". Then, after describing
8 that encounter, Martin said "I have not spoken
9 to Sheldon after this encounter and neither
10 have I been threatened again." He refers to
11 both encounters, making it clear (in this
12 statement at least) that he is saying that
13 there were two conversations of significance
14 with the defendant.

15 It will be noted in this June 11th
16 statement that he repeats that there was a
17 threat to kill him if he did not lie to the
18 police. He says it was two or three days after
19 the murder of Williams, which would put it on
20 the 14th or 15th of February, and he says it
21 happened at Jim Woods' bar called the Globe.
22 There was other evidence in the case that Jim
23 Woods' bar is also known as "the Globe" and
24 "the Zodiac".

25 He says he went and gave the police two

REASONS FOR JUDGMENT

1 statements which did not implicate Damean
2 Seymour or Mateo Dinnal. That is somewhat
3 puzzling because each of the two statements, as
4 I have indicated earlier, given on the 18th and
5 20th of February, implicate Mateo Dinnal as an
6 active participant in the shooting of Williams.
7 In addition, the second of the two implicates
8 Seymour as a participant in the shooting of
9 Williams. Unless Martin has given further
10 statements which are not in evidence, one
11 cannot make much sense of his assertion that he
12 gave the police two statements which did not
13 implicate Seymour or Dinnal.

14 Clearly, all the statements which were
15 disclosed to the defendant have been put to
16 Martin in cross-examination and entered in
17 evidence. I have referred to all of these in
18 this ruling.

19 In summary, then (and before I even touch
20 upon the oral evidence of Martin), one can
21 infer this from his statements: First, he says
22 he gave a statement after the alleged threat.
23 The statement was given on February 18th. It
24 implicated Mateo Dinnal, a friend of Sheldon
25 Brown's, although Martin says that Brown's

REASONS FOR JUDGMENT

1 threat was to the effect that he should do
2 nothing to implicate Dinnal. On February 20th,
3 two days later, he gave another statement to
4 the police, which implicated Dinnal, but also
5 implicated Seymour. He resiled from his
6 allegation that Brown had threatened him, in
7 the letter he wrote to Crown Counsel. He
8 referred at one point to an eight-page
9 statement, which we do not have in evidence,
10 and there are some inconsistencies between the
11 various statements.

12 On the basis of the disclosure of these
13 statements, the defendant, who represented
14 himself, gave notice of alibi evidence and
15 presented a rather elaborate alibi defense.

16 I turn now to the oral evidence of Martin.

17 I instruct myself that what Martin said in
18 his prior statements is not evidence unless and
19 until he expressly adopts the statement in
20 question or some passage in it.

21 In his oral evidence, Martin began by
22 saying that the police spoke to him about
23 midnight at the police station on the day of
24 the Williams' murder. He was then asked, and I
25 quote:

REASONS FOR JUDGMENT

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"Now, after this incident did

3

you see the defendant Sheldon

4

Brown at some point?

5

Answer: I didn't saw him that

6

night.

7

Question: When next, when did

8

you see him after the incident?

9

I seen him like two days after.

10

Question: And where were you

11

when you saw him?

12

Answer: By the Globe, what they

13

call Club Zodiac."

14

15

So that bit of evidence places the

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evidence to come at the Globe, also known as

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Club Zodiac, on February 14th. Martin said:

18

19

"I was standing up in the door,

20

the front door.

21

Question: Tell us what

22

happened when you saw him.

23

Answer: When I saw him, he call

24

me.

25

Question: And what did you do

REASONS FOR JUDGMENT

1 when he called you?

2 Answer: I went to him."

3

4 We then dealt with the identification of
5 the defendant. Then, Crown Counsel asked:

6

7 "And what happened when you went
8 to him?

9 Answer: When I went to him, he
10 started to ask me if I give the
11 police a statement.

12 Question: And did you respond?
13 What did you say to him if
14 anything?

15 Answer: The tone of voice, how
16 he was talking to me, had me
17 scared and I told him "no".

18 Question: Was anything else
19 said?

20 Answer: Well, all I did was
21 walk away from him because I was
22 scared, and I am still scared.

23 Question: And did he speak you
24 again?

25 Answer: And he speak to me at

REASONS FOR JUDGMENT

1 Denzel bar about two weeks
2 after."

3
4 So, on the first occasion when he is asked
5 about it, in response to non leading questions
6 from Crown Counsel, Martin gives no evidence
7 whatsoever of any threat to kill him and no
8 evidence of any specific direction from the
9 defendant that Martin was to tell a specific
10 lie to the police (that is, that neither Dinnal
11 nor Seymour was involved in the Williams
12 murder).

13 Crown Counsel went on in this vein:

14
15 "Question: After the question
16 to you as to whether you had
17 given the police a statement and
18 you said no, did he speak
19 further to you on that evening?

20 Answer: He didn't speak to me
21 further on that evening.

22 Question: You say you saw him
23 at Denzel's bar. Did you speak
24 to him on that occasion?

25 Answer: He came and asked me if

REASONS FOR JUDGMENT

1 I did what he said and I said

2 yes.

3 Question: And what was it that
4 he had said?

5 Answer: To tell the policeman
6 lies which I did in the first
7 two statements because I was
8 scared of my life and my family.

9 Question: And what were the
10 lies that you had been asked to
11 tell the police?

12 Answer: To say that Damean and
13 Mateo didn't know nothing about
14 Joe murder.

15 Question: Anything else?

16 Answer: Nothing. He didn't say
17 nothing else."

18

19 Here, Martin, for the first time in his
20 evidence, testified that the defendant gave him
21 a specific direction to lie to the police about
22 Damean and Mateo. He places the occasion at
23 Denzel's bar some two weeks after the first
24 conversation and outside the dates alleged in
25 the indictment.

REASONS FOR JUDGMENT

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"Question: Did he say anything
to you about any other person
apart from Damean and Mateo?

3

4

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Answer: No.

6

7

Question: When had he told you
to tell those lies? When did
that take place?

8

9

Answer: That take place at
Denzel bar.

10

11

Question: Was there an occasion
before you saw him at Denzel's
bar where he had asked you tell
the police lies or told you to
tell the police lies?

12

13

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16

Answer: Repeat that, sir.

17

18

Question: Yes. Was there a
time before you saw him at

19

Denzel's bar where you had seen
him and he had told you to tell
the police lies?

20

21

22

Answer: If there was a time?

23

24

Question: Yes. Before you saw
him at Denzel's bar, did you
speak to him before that?

25

REASONS FOR JUDGMENT

1 Answer: No.

2 Question: Was anything else
3 said to you by Sheldon Brown at
4 Denzel's bar?

5 Answer: All he said to me was
6 'pussy'."

7

8 At this juncture, despite repeated
9 questioning from Crown Counsel, there is still
10 no evidence from Martin of threats by the
11 defendant to kill Martin.

12 A little later, Crown Counsel persisted in
13 this manner:

14

15 "Question: And when you went to
16 the station, were you
17 interviewed by the police?

18 Answer: Yeah, they say they
19 need another interview from me
20 because I telling lies.

21 Question: So when you spoke to
22 the police, what was it that you
23 told them?

24 I told them the reason why I
25 told the lie because my life was

REASONS FOR JUDGMENT

1 threatened, and it's still being
2 threatened while I on the
3 street.

4 Question: What was the lie that
5 you told the police?

6 Answer: That Damean and Mateo
7 didn't know nothing about the
8 murder."

9
10 He said (in answer to questions) that he
11 was scared of Sheldon Brown. Then, he was
12 asked by Crown Counsel:

13
14 "Question: Do you know of a bar
15 called Jim Woods' bar?

16 Answer: That the same bar you
17 call the Globe.

18 Question: And that bar is on
19 Shedden Road?

20 Answer: Yes.

21 Question: And the other bar
22 that you've referred us to, is
23 that Denzel Barnes' bar?

24 Answer: Yes, that's on Mary
25 Street."

REASONS FOR JUDGMENT

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There was more examination which covered some of the same ground again. Then, the Crown concluded its direction examination by asking these questions:

"Question: Now, you mentioned to us that you were scared when you were being spoken to by Sheldon Brown. Could you describe how he was behaving when he was speaking to you? What can you tell the Court about his behaviour?

Answer: He was talking, like, in an angry way to me in a loud tone of voice.

Question: Was anything specific said to you that made you feel scared?

Answer: By the way how he talk to me, that get me scared, because I know how close him and Damean is and the relationship between the two of them."

REASONS FOR JUDGMENT

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Again, the witness fails to give any evidence of a specific threat to kill.

3

4

Mr. Patterson, who did his admirable best for the Crown, returned to the task again with another question:

5

6

7

8

"Well, was there anything

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specific that he said to you

10

that made you feel afraid?

11

Answer: Well, the thing that he

12

said, right, is I mustn't tell

13

the police the truth about

14

Damean or what had happened.

15

Question: And what would

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happen?

17

Answer: I mean he -- the way

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how he was talking like he want

19

to do me something.

20

Question: Did he tell you what

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would happen?

22

Answer: Not really come out and

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say what's going to happen, but

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I know by the way he talk, I

25

know how he speak."

REASONS FOR JUDGMENT

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So, despite all of that probing, the witness not only failed to repeat the evidence in his statements, which was the theory of the Crown presented in this case that there was a specific threat to kill, but he contradicted that by saying that the defendant did not really come out and say what was going to happen; rather, Martin inferred it from the way the defendant was talking.

Finally, Crown Counsel said:

"Question: And he told you to tell the police certain lies.

In relation to the first statement, when was it did you speak to Sheldon?

Answer: That was before I made the statement then.

Question: Before you made any of the statements?

Answer: Yeah, before I made any of the statements."

The defendant, representing himself,

REASONS FOR JUDGMENT

1 conducted a lengthy cross-examination of
2 Martin. Some of that was probably unwise. In
3 certain respects Martin, during
4 cross-examination, adopted passages in his
5 statements and gave evidence of a more specific
6 nature than anything he said in direct
7 examination. For example, Mr. Brown said:

8
9 "Question: I am putting it to
10 you that you did tell the police
11 I threatened you at the Globe.
12 Answer: You did threaten me at
13 the Globe."
14

15 In another point in the cross-examination,
16 Mr. Brown read this passage from one of the
17 statements:

18
19 "Sheldon Brown did threaten to
20 kill me if I did not tell the
21 police lies about Skinny by the
22 Zodiac Club on the 14th of
23 February, during the evening,
24 just before Chadwick Bush was
25 shot."

REASONS FOR JUDGMENT

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The witness agreed that that was something he had said in his earlier statement. Then, Brown asked this question:

"Why is it that you did not tell the Courts that earlier?

Answer: Because I didn't recall."

He also gave a second explanation - it was because he was not asked about it.

I do not need to dwell further on the cross-examination of Martin because I am satisfied that those pieces of evidence adduced from Martin in cross-examination which serve to enhance the Crown's case are lacking in credibility, given that they were not adduced in direct examination despite the admirable efforts of Mr. Patterson.

In summary, in his direct testimony, Martin said the police spoke to him about midnight on the day of Williams' murder. Two days later, on February 14th, at the Globe, also known as the Zodiac, he had a conversation

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1 with the defendant. The defendant's tone of
2 voice scared him. There was no specific threat
3 made. Two weeks later, at Denzel Barnes' bar,
4 he had a second conversation with the
5 defendant. The defendant asked Martin if he
6 had done as he was instructed. No threat was
7 made on this occasion either. It was only when
8 it was specifically suggested to Martin in
9 cross-examination that the defendant had
10 threatened him that Martin adopted the
11 suggestion and agreed with it.

12 I can only convict this defendant if I am
13 sure of his guilt. I am not permitted to
14 convict him on the basis of a guess or
15 speculation. I am not permitted to convict him
16 because I consider he leads a criminal
17 lifestyle, or because I suspect he may have
18 been involved in other crimes of violence or
19 threatening. I can convict him only if I am
20 convinced beyond a reasonable doubt that he did
21 utter a specific threat or threats against
22 Martin with a view to inducing Martin to make a
23 false statement to the police regarding the
24 murder of Williams.

25 The unsatisfactory nature of Martin's

REASONS FOR JUDGMENT

1 evidence, the lack of independent support or
2 confirmation for it, the danger of convicting
3 on Martin's evidence alone, the inconsistencies
4 between his statements and the sworn testimony,
5 and my observation of Mr. Martin's demeanour in
6 the witness stand, all (collectively) cause me
7 to have a reasonable doubt as to the
8 defendant's guilt. I must, therefore, give him
9 the benefit of that doubt and find him not
10 guilty of this charge.

11 *Henderson, J.*

REPORTER'S CERTIFICATE

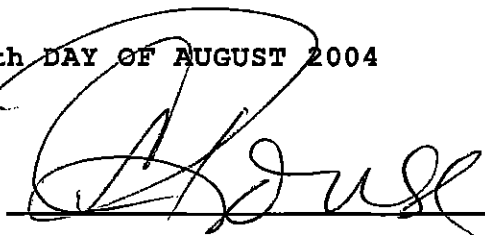
12
13
14 I, CAROL A. ROUSE, Official Court Reporter, hereby
15 certify that the foregoing pages are, to the
16 best of my skill and ability, a true and
17 accurate transcript of the proceedings had in
18 the said Court and reported in machine
19 shorthand by me on the date and place
20 aforementioned.

21
22 DATED THE 25th DAY OF AUGUST 2004

23

24

25



CAROL A. ROUSE