Bandler case: Questions linger

Richard Bandler's trial for the Nov. 3, 1986 murder of Live Oak resident Corine Christensen, a police officer's daughter turned prostitute, had all the prurient ingredients of a grade-B movie. It played as such nearly every day to a courtroom jammed with friends, family members, reporters and the just plain curious.

Yet the ending — a "not-guilty" verdict after less than six hours of deliberation on Jan. 28 — took nearly everyone by surprise and prompted numerous telephone calls to the District Attorney's Office.

There were only two people in the room with Christensen when she was shot. Either Richard Bandler, a local celebrity of sorts for his work in developing a behavior-control technique dubbed Neuro-Linguistic Programming, or James Marino, an admitted cocaine dealer and the prosecution's key witness, had gotten away with murder.

People called wanting to know what District Attorney Art Danner was going to do about it. The following are Danner's answers to some of the most-asked questions.

Someone got away with murder

By JENNIFER KOSS
STAFF WRITER

The jury's "not guilty" verdict in the Richard Bandler murder trial raises questions about the efficiency of a justice system that lets a killer slip through its grasp.

Nearly two weeks after the verdict was announced, both the prosecutor, Assistant District Attorney Gary Fry, and the defense attorney, M. Gerald Schwartzbach, maintain they represented the truthful version in the trial.

Whatever the truth about the murderer — whether Richard Bandler or James Marino fired the bullet that killed Corine Christensen — one thing is clear: Someone got away with murder. How that happened is not so clear.

A sheriff's detective involved in the initial stakeout of Bandler's house after the crime suggested the verdict might have been different if the jury had been allowed a deeper insight into Bandler's character.

Evidence ruled inadmissible included descriptions from neighbors of Bandler brandishing a gun in broad daylight, screaming at them to shut their children up so he could sleep, according to the detective.

District Attorney Art Danner was somewhat reluctant to discuss specific instances of inadmissible evidence, but conceded that such information might have made a difference in the case against Bandler.

"When you come down to it, in this kind of case, the question for a lot of people is whether or not an individual is capable of committing murder," he said. "Maybe many people in a terribly angry moment could do something

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By JENNIFER KOSS
STAFF WRITER

Q. If there were three people in the room, one of whom is dead, why can't we find one of the two survivors responsible? Why can't we take the verdict that in this instance says Bandler is not guilty and use that against Marino?

A. Certainly there's a lot of common sense to the analysis that says, "Look, somebody was responsible. There were only two people there, so it has to be one or the other."

But it's important to understand that under the law, we've got to have proof beyond a reasonable doubt and to a moral certainty; so whomever we choose, we need to have that quantum of evidence.

It's important to remember,

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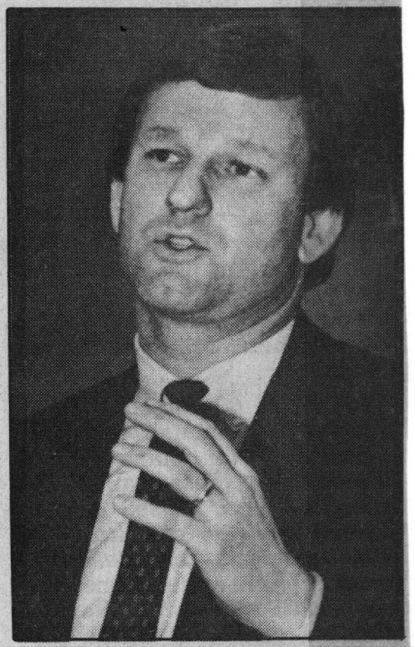

D.A. ART DANNER
Tries to provide answers

BANDLER

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then, that the verdict in this kind of case is not an innocent verdict. That is, that Mr. Bandler wasn't necessarily found innocent. But what was said by the jury was, "We couldn't find evidence beyond a reasonable doubt and to a moral certainty."

Now, you might quarrel with that — you know, looking at the evidence — but I don't think it's productive to speculate on what the jury did. I think the important point here is that people understand we cannot use that verdict from the Bandler case to help in any way to accuse Marino; because of what I said, because of what it stands for.

And further, as a legal proposition it can't be used as a piece of evidence, since it's the opinion of 12 people. So as a legal proposition you couldn't admit it.

Now the other aspect to this is the fact that before any member of this office — including the assistant district attorneys and investigators — takes a case to trial, they must be convinced themselves personally that the evidence shows (the defendant) guilty beyond a reasonable doubt.

If they are not convinced, then they don't try the case. And they shouldn't try the case, and I insist on that in this office.

Now in this instance, the assistant district attorney, Mr. (Gary) Fry, and the investigation team, both from the Sheriff's Office and the District Attorney's Office, were convinced morally beyond a reasonable doubt that Bandler had done it.

Nothing in this trial has changed their minds on this issue. They still believe Bandler did it, even though the jury felt there was not enough evidence to prove guilt beyond a reasonable doubt.

Under the circumstances, it would be improper for them to take and turn around this situation and attempt to go after Marino. They morally believe that Bandler is the responsible party.

All of the evidence — save for and except the assertion by Bandler that Marino is the shooter — points to Bandler as the killer.

Q. Why couldn't Marino be charged as accessory to murder?

A. Based on the facts as we have them and the physical evidence, there is not enough evidence to indicate that, in fact, Marino was an accessory to the crime, based on what the law requires.

If you believe Bandler, and Marino is the killer, you can't be both the killer and an accessory; you have to be one or the other.

But if we don't believe Bandler and we believe that Bandler is the killer, we still don't have enough evidence to charge Marino as an accessory.

Q. What about Bandler being charged as an accessory?

A. The state of the evidence is that we believe that Bandler is the killer. It's important for people to know that if you're the killer you can't be an accessory.

But just let's concentrate on him being the accessory for a minute.

There is enough evidence to support that. There is a legal question as to whether, because of the double-jeopardy clause, we are barred from prosecuting him as even an accessory. Originally we could have charged him with being the killer or the accessory, but we didn't.

Q. Why not?

A. I think the reason why is, if you think about it just for a moment, very plain to arrive at. And that is, because if we'd done that, the defense would have stood up and used that against us in the case.

And he (defense attorney M. Gerald Schwartzbach) would have said, "They don't even believe their witness because they have also an accessory charge here. And if they had confidence in their case and they believed it, they would have charged him only with being the killer."

So it would have become a tactic, or a piece of strategy, in the case utilized significantly against us. And based on that, we determined that we should not charge him.

Q. Couldn't Bandler and Marino have been tried together? In other words, couldn't you have charged them both, taken them into the courtroom and said, "Jury, take your pick?"

A. In the first instance, what we would need to have was evidence that both of them in some way participated in the murder. As I've indicated before, all the evidence that we felt was significant in this case pointed to Bandler; we were convinced that Bandler did it.

There was absolutely no evidence of conspiracy or joint effort that would have produced this killing. If there was, we certainly would have gone that way and would have proceeded on that theory.

Now as to whether or not you could take two people like this in before a jury and say, "Take your pick," the answer is "no."

The difficulty with that, of course, is that in each case you must convince the judge that there is enough evidence, to get to the jury for them to decide the case.

In Bandler's case, obviously there was, because the judge let that case go before the jury for them to decide one way or another.

With regard to Marino, absent the assertion by Bandler, it would be unlikely, in my judgment, that the court would even allow that case to go before the jury for a decision.

And the reason is that, as I said before, you need a quantum of evidence from which a jury could reasonably conclude that there was proof beyond a reasonable doubt. And the state of the evidence we have concerning Marino — I don't believe that, absent Bandler's assertion of Marino's guilt, we had that quantum of evidence.

Q. Could you have used Bandler's statement, then, that Marino did it, and fill in the gap that way?

A. If we tried both together we could not do that, because each is entitled to a Fifth Amendment privilege. We could not count on the defendants taking the stand as Bandler did. It's their right not to take the stand and if, in fact, they chose not to, they cannot be compelled to, according to our Constitution.

Without that kind of evidence, I would have doubted that the case against Marino would go anywhere. In fact, I'm convinced of it, based on the evidence that we have.

Q. Now that Marino has testified and it was apparent to some people, and maybe many, that he lied about certain facts, can't he at least be charged for perjury?

A. Perjury is all too common in the system and, in a case like this, it's obvious to everybody someone's not telling the truth; and perjury, of course, is the crime for someone testifying under oath to something that is not true that's material or otherwise significant in the case.

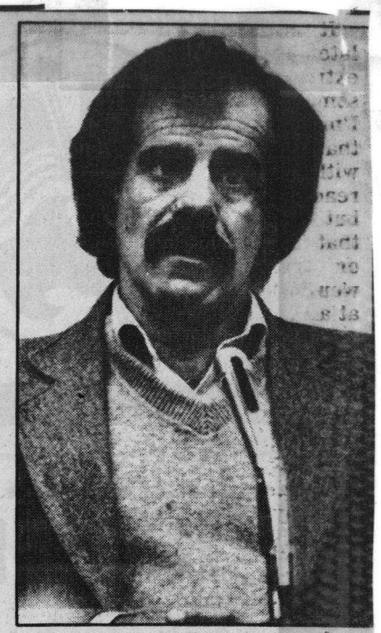
Whoever in this instance lied and, of course, we think it's Bandler, committed perjury on the ultimate issue of who killed Corine Christensen.

But to, of course, prove perjury is to prove the same thing as murder; and so, on that particular issue, it would be of no avail to attempt to charge either one of them with perjury because of the previous analysis that we've gone through.

Now could we charge Marino with perjury for other things that he said that no one believes? There are some things that Marino said on the stand sometimes, in most instances for the first time, that we certainly don't believe.

Didn't he say he could change traffic lights by blinking his eyes? Well, I don't think most people believe that. Now the question is, "Is that significant or material to the case?" I don't think so ...

If there was anything material or significant in the case that we can find, other than his assertion, obviously, on who killed Corine Christensen, that we can find that he lied about, and we have a witness, as the law requires, then of course we could charge him with perjury.



JAMES MARINO
Prosecution's key witness

Q. You've said you don't believe Bandler and Marino conspired in Christensen's murder, but do you think there was a conspiracy later? Did they use Neuro-Linguistic Programming tactics during the trial?

A. There is no evidence of that anywhere in the case, as far as I'm concerned. And I'm ready to go with the Academy of National Sciences, that says there is no scientific basis to this NLP.

All it is is a way in which people who take a placebo, if you will, and they take the course, convince themselves that they got something out of it.

It may be that they've stimulated themselves or done some extra work in giving themselves some additional confidence, but I'm not in any way convinced that NLP had anything to do with this. It makes for nice reading and nice conjecture, but there's absolutely nothing that I see, nor any of our team or trial attorneys see, that would lend any credence to that at all.

Q. What about a conspiracy, though? Doesn't it seem like it worked out pretty good for them; Bandler's accused and then Marino, as the only witness, gets up there and tells strange, bizarre things that destroy his credibility?

A. And so the question's raised and I've heard it, "Well, did they do just enough to take advantage of the system? And understand that the jury would not be able to find Bandler guilty, and understand that there then would not be enough evidence to go after Marino?"

That's really a fair question. A number of people haven't asked that, but it's one that certainly can cross your mind.

I think that when you examine that entire scenario, you have to really think about the incredible risk taken by Bandler if that were the plan. Because frankly, my understanding is, most of the press corps and corps personnel believed that the jury was going to find him guilty. And that on cross-examination he, meaning Bandler, didn't do very well and really boggled the ball, so to speak.

Any time you have this kind of case in the hands of 12 people who are randomly selected from the community, I don't think you can count on it going one way or the other. That's why the jury system is alternately praised and condemned at times, depending on which side of the result, I guess, you're on.

But I can't possibly see that any reasonable person, when analyzing this situation, would finally conclude that they (Marino and Bandler) were able to put together this kind of plan in such a manner that they could count on the jurors finding Bandler not guilty.

And in fact, perhaps one of the most stunned and surprised persons in the courtroom was Bandler when they announced that verdict.

Q. Why was the jury instructed to consider only a first-degree murder verdict?

A. We did want the jury instructed on second-degree murder. It was only because of the objection of the defendant that the judge did not instruct the jury on second-degree murder.

This is the way that argument went: Second-degree murder means that an individual has unlawfully killed another human being with what — in the law is required now — is a malice of forethought, and with an absence of premeditation and deliberation.

Our argument was that even though both sides were going to argue that this crime was a first-degree murder, and that Bandler from our point of view had committed the first-degree murder, that the jury was entitled to hear a theory of the law which the evidence supported that was even different from first-degree murder; and was entitled, therefore, to reject both lawyers' contentions if they so wished, and convict him of second-degree murder in theory.

The defense position was that this was unfair to the defendant, because the jury might otherwise compromise when they couldn't find first-degree murder, and just find second-degree murder as a result of a group dynamic or a want to compromise; and hold him responsible when, if faced with the issue of whether he committed first-degree murder, they would otherwise acquit.

Now under those circumstances, the judge needed to make a decision. The judge made the decision that, because the defendant objected to the giving of that instruction, that only first-degree murder instructions would be given. And thereafter, that's the way the case was argued.

Q. Can Bandler be tried again?

A. The answer is "no," Bandler cannot be tried again for the specific crime of murder, because of the double-jeopardy clause which we've previously discussed; and it is found in our Constitution, so it's the fundamental law of the land in criminal prosecutions.

The law then defines double-jeopardy to cover any necessarily included crimes, such as second-degree murder or manslaughter. And of course, we've already discussed the question as to whether or not even an accessory may be within the bar, or double-jeopardy, purposes.

And that means that even if Bandler went out and said, "I did it," and proclaimed to all who could hear that he was guilty, you could not charge him again with that particular crime.

However, if in fact that occurred, or additional significant evidence turns up in the case that makes it abundantly clear that Bandler is the killer — as we now believe — we would do everything possible to find some theory under which he could be charged.

There is a precedent that has been utilized once before, as far as I know — but we're doing further research on this — that indicates that in a situation where someone had been acquitted of murder, such as we have here, new evidence was developed and the case then was tried by the federal courts, on the theory of a violation of the person's civil rights.

That appeared to have satisfied the double-jeopardy clause, and the conviction stood. However, that prosecution was not for murder again, because the double-jeopardy clause would bar that.

So there is some precedent. The question is, could you apply that precedent in a situation like this?

Well, we won't know, of course, until — and when and if — that would happen; if there's additional evidence that ever would surface, or if Bandler would admit that he did in fact kill Corine Christensen.

Q. Are you going to look for any additional evidence in the case against either Bandler or Marino?

A. We've covered the fact that we believe there's sufficient evidence right now, and at the time we submitted it to the jury, that would convict Bandler.

We believe we chased about every lead possible and there were many, many in this case. And so we do not believe at this time that it would be productive, given the rest of our resources and the rest of our caseload, to pursue these leads any further.

The same applies in the instance of Marino. Marino is someone of despicable character who has been engaged in all kinds of crime...

But there is nothing at this point that makes us disbelieve his testimony central to the killing.

Further, there's nothing now that makes us believe that there's anything further to follow up that would develop a different state of the evidence, and allow us to prosecute him for the murder of Corine Christensen.

If, in fact, something came to light, some evidence was given to us or we uncovered it in some way, certainly we would follow up on that. And I say that because this verdict was as frustrating and as confusing to us as it must have been to so many people in the community.

When this kind of thing happens, the system hasn't worked well ... The criminal-justice system that we have today is one that is premised on the fact that it is supposed to meet the needs of the people that it is to protect. If it does not meet those needs, then people need to examine it and determine ways in which they want to change.

I'm not talking here about a knee-jerk emotional reaction, because I don't think that would be appropriate. But I do think there are ways in which the system can be changed which will help minimize this kind of result ...

There are many places in the process where jurors can become confused. And I think it's important and incumbent on those people who want the system to work well to attempt to streamline that; and the best way possible, so that (jurors) are not confused, so that they properly understand the law and that they are able to utilize that the best way possible when they have such an important decision to make.

RICHARD BANDLER
Acquittal surprised many

I mean, because it's awful to think, "Well, they got confused here and they made a decision based on a misunderstanding of a law or a misunderstanding of what their role was."

I mean, that's awful to think of when you think of the parents of this victim and the family and the worth of human life.

So I think we constantly have to work on that and make sure we do all we can to make the system as clear as possible. That includes understanding the law and utilizing the process in the best way to get the most just result.