

1 review these cases. Thank you.

2 (TRANSCRIBER NOTE: Court recessed - court reconvened)

3 THE COURT: Folks, thank you for your -- for your
4 patience, Mr. Banks is present along with both counsel. And,
5 for the record, I've had the benefit of both listening to the
6 testimony and observing the witnesses in weighing the
7 evidence, I've considered each of the factors raised by the
8 attorneys in their arguments in weighing the issue and what's
9 pending exactly at this point is the motion for a new trial;
10 correct?

11 MR. TYRE: That's correct, Judge.

12 THE COURT: Okay. Obviously this is a very difficult
13 decision and based on the evidence and the arguments I find
14 that the Defense has not met their initial burden of proof on
15 the issue and the motion for a new trial is denied.

16 Is the State ready to proceed with sentencing on the
17 cases?

18 MS. NELSON: Yes, Your Honor, we're ready to proceed.

19 THE COURT: And is the Defense?

20 MR. TYRE: Yes, sir.

21 THE COURT: Is there any legal cause why sentence should
22 not be pronounced?

23 MR. TYRE: No, Your Honor.

24 THE COURT: Okay, thank you. Folks, do you have the PSI
25 that was done some time ago?

1 MR. TYRE: I do believe I have a copy of that, Judge.

2 THE COURT: I must be missing a file.

3 MS. NELSON: Your Honor, I've got a copy of the
4 presentence investigation, I may be mistaken.

5 THE COURT: Oh, I have it, thank you, it was in the court
6 file, thank you.

7 MS. NELSON: Obviously there's not a score sheet for that
8 one, but this is a score sheet for the -- for the other case
9 that Mr. Banks just entered a plea to, 03-1144, I gave a copy
10 of it to Mr. Tyre.

11 THE COURT: Okay, do we have a score sheet for -- for the
12 three cases?

13 MS. NELSON: The other case I'm going to nolle pros, this
14 case, the one with the presentence investigation, because it
15 had no filing back from the 1960s, '70s, I don't believe.

16 THE COURT: Yes, I'm sorry, you're right, I forgot the
17 age.

18 (TRANSCRIBER NOTE: Pause)

19 THE COURT: Start with the PSI, any objections or
20 corrections to it by the State?

21 MS. NELSON: No, sir.

22 THE COURT: How about the Defense?

23 MR. TYRE: No, Your Honor.

24 THE COURT: Ma'am, can you locate the jury verdict in
25 here for me, please?

1 Any objection or corrections to the score sheet on 03-
2 1144?

3 MR. TYRE: No, Your Honor.

4 (TRANSCRIBER NOTE: Pause)

5 THE COURT: Ms. Nelson, evidence, argument or
6 recommendation?

7 MS. NELSON: Your Honor, I do have some evidence to
8 present, I actually have three of the victims here if they
9 want to come up.

10 THE COURT: Let's do them one at a time, please.

11 WHEREUPON,

12 The witness, D. G. H. was sworn in by the clerk.

13 MS. NELSON: Ma'am, could you please state your name?

14 MS. H : D G H.

15 MS. NELSON: And, Ms. H , you are one of the victims
16 that testified at trial in the 03-1144-CF case?

17 MS. H : Yes, ma'am.

18 MS. NELSON: And this is the time for the judge to
19 determine what an appropriate sentence is, would you like to
20 tell the Court your feelings?

21 MR. H : I think what he did he should pay for even
22 though he didn't admit he did anything wrong or he can't
23 remember, I -- I just think he should get what he paid for for
24 what he done to us and that it's not right and I know there's
25 sick people in this world and they need to pay for what

1 they've done.

2 MS. NELSON: And, for the record, ma'am, he is your --
3 Billy Banks, Sr. is your uncle?

4 MR. H : Yes.

5 THE COURT: Thank you. Mr. Tyre, any inquiry?

6 MR. TYRE: No, Your Honor.

7 THE COURT: Thank you, ma'am.

8 (TRANSCRIBER NOTE: Pause)

9 THE COURT: Ma'am, do you prefer to be seated?

10 MS. B : No.

11 WHEREUPON,

12 The witness, M. A. B , was sworn in by the Court.

13 MS. NELSON: Ma'am, for the record, would you state your
14 name, please?

15 MS. B : M. E .

16 MS. NELSON: And you are also a victim who had testified
17 in -- at trial in the 03-1144-CF case?

18 MS. B : Yes, ma'am.

19 MS. NELSON: Okay, and the Defendant is related to how?

20 MS. B : My father.

21 MS. NELSON: And what would you like to tell the Court as
22 far as what you think would be an appropriate sentence would
23 be?

24 MS. B : Can I read a statement? "Dad, you were
25 right all along, you was the one that took my mama and my

1 brothers from me; I have Roy and his wife that calls me a
2 trader for telling the truth about you; Jimmy, who is in jail
3 right now and has threatened to blow my head off if he ever
4 gets out of jail; Junior doesn't even talk to me and he knows
5 for a fact that I and G. told the truth and Paul is there
6 for me and he always took up for me and my own mother is so
7 ashamed of what you have caused our family that she can't even
8 look me in" -- "in the eye and tell me the truth, that she
9 even loves me or that she is sorry. Dad, to this day I still
10 love you and I can't figure out why. I wrote you letters
11 asking you why you done the things to me and you don't even
12 have the guts to write me back, why? Dammit, Dad, you are" --
13 "Dammit, Dad, you" -- "I was your daughter, not a stranger
14 walking on the street. You might have won by taking my mom
15 and the boys from me, but I won more cause I'm getting my
16 power back. Mom can stand by your side, if she wants to, and
17 hate me forever, but deep inside she knows that you are a
18 child molester. You have shamed our family so much. Dad, if
19 you loved me, you will stand up right now and tell the truth,
20 you can sit there and deny it, but you know deep inside and
21 you know that" --

22 THE DEFENDANT: I didn't do it and you -- you know you --

23 THE COURT: Folks, folks, folks, --

24 THE DEFENDANT: -- you --

25 THE COURT: -- folks, we're crossing the line here, folks.

1 MS. B. : "Dad, I have always wanted to be your
2 little girl, but you took that away from me, I will never be a
3 daddy's little girl, I just want you and the family to know
4 that I am your daughter, the one that you have caused so much
5 pain to and I hope that you are happy."

6 MS. NELSON: Is there anything else that you'd like to
7 say to the Court?

8 MS. B. : And, Your Honor, if you give him life in
9 jail, it will not matter cause it will not make up for the
10 prison that he's put me through all these years and no matter
11 how much I try to put it behind me, I can't because he is my
12 dad and I hope that he at least has got to serve something to
13 prove what he done to all of us. That's it.

14 THE COURT: Mr. Tyre?

15 MR. TYRE: I think -- no questions, Judge.

16 THE COURT: Thank you, ma'am.

17 MS. NELSON: Your Honor, the other victim does not want
18 to address the Court, but if -- Miss H would like to come
19 back, she did want to say something else.

20 THE COURT: Ma'am, you recognize you're still under oath?

21 MR. H : Yes. I have something else I want to say
22 to you, I wrote this today before I came to court, "There's a
23 lot I'd like to say to you, but I'm just going to say this:
24 I'm glad you're where you belong, that way you won't hurt any
25 little girls anymore. Like you heard us, there's a lot of

1 secrets in this family, but I'm just glad this one can't be
2 rebuilt, you took a lot away from me, my innocence and my
3 childhood and you scarred me for life. There's not a day that
4 goes by that I don't think about what you did to us, you hurt
5 me. I know that part of my family hates me, hates you. I was
6 adopted into this family when I was five, but for some reason
7 I always felt like I never belonged here, I guess that reason
8 was you, if you only knew how bad I feel standing here today
9 talking to you telling you how I feel. I" -- "I forgive you,
10 but I'll never forget, I get my satisfaction knowing that you
11 will have to stand in front of God and if he asks you why you
12 did this, you would hang your head in shame, what are you
13 going to say to him? I'm glad I'm doing this because now I
14 can tell" -- "tell you how" -- "tell you what I've been
15 through my whole life since I was five years old, now that I
16 have, I feel like a weight has been lifted off my shoulders.
17 I hope what I said to you stays you with you for the rest of
18 your life so you'll know what pain you put me through. Now,
19 as I walk out of this courtroom, I will hold my head up high
20 and I am proud of what I did today, I won, I have peace with
21 God and I pray every day to Him and thank Him for everything
22 that He has given especially my life and my daughter." Thank
23 you, that's it.

24 THE COURT: Thank you.

25 MR. TYRE: No questions.

1 THE COURT: Thank you.

2 MS. NELSON: Your Honor, the State has no other
3 witnesses, only argument.

4 THE COURT: Okay.

5 MS. NELSON: On the Case Number 03-1144-CF, the State is
6 asking the Court to sentence the Defendant to life in prison.
7 The Court heard the facts of the case and know what the
8 Defendant and know how this has affected these women's lives,
9 what he has done to them has devastated them. For the
10 protection of the -- of the public, the State is asking you to
11 sentence him to life in prison.

12 As far as the other case, the case that he pled to, the
13 State is asking the Court to sentence him to three-and-a-half
14 years Department of Corrections to run concurrent with all
15 these sentences.

16 And then the State would be announcing a nolle pros into
17 the other -- the other --

18 THE COURT: Why don't you hold off until the conclusion
19 of sentencing?

20 MS. NELSON: And that's all, Your Honor.

21 THE COURT: Thank you. Mr. Tyre?

22 MR. TYRE: Judge, Mr. Banks would like to address the
23 Court.

24 THE COURT: Yes, sir, if you'd raise your right hand,
25 please, and be sworn?

1 WHEREUPON,

2 The Defendant, Billy Earl Banks, Sr., was sworn in by the
3 clerk.

4 THE COURT: Yes, sir?

5 MR. TYRE: Mr. Banks, what do you want to tell the judge?

6 THE DEFENDANT: Well, I want to tell him what got this
7 started is my daughter-in-law, I had some money of theirs,
8 \$23,500, my boy wanted it, my wife was fixing to take it to
9 him and she would call, she wanted me to take it, but I wasn't
10 able, she called and said she wanted it and I said, "Well, he
11 done called me and my wife's fixing to take it to him."

12 She said, "If you don't, I'll have you locked up," so,
13 that's what she did.

14 And them -- as far as them girls, they didn't -- couldn't
15 even get together on nothing during the -- the trial. We've
16 never had a closed-in bathroom till we built the house in --
17 or she couldn't even -- my daughter couldn't even tell me what
18 kind of tub we lived in if it had to be there in the house and
19 we've never lived in a -- a -- two trailers with a hall
20 between them, when we moved back, we moved back into an old
21 trailer that was sitting over there.

22 As far as G , she might have been at our house three
23 times when we got our house built and she never was over in
24 the -- spent the night or was in and out before we got that
25 house built cause we didn't have no room for her to stay.

1 And, furthermore, my daughter, we had to give her money
2 to -- she didn't have no way to -- have no money, we give her
3 money and to have money, me and my wife and her and her
4 husband busted up, all of a sudden she started buying stuff,
5 spending money, my wife asked her where'd she get the money,
6 she said, "My husband give it to me," he was on workman's
7 comp, that's all he ever worked, just long enough to get on
8 workman's comp and then he drawed it and you don't get that
9 kind of money for that. And her -- her own daughter, Tammy,
10 would -- wrote her out in checks, but I didn't mess with them
11 girls. And my daughter says we -- I went and got her every
12 weekend, picked her up and went and got her, I worked at the
13 fire department every third weekend, every Thursday till
14 Friday, G: was never at our house only two or three times,
15 but I don't know, Tammy's the one who started this, but I'm
16 sorry whatever they do because it's up to you cause nobody
17 wants to know the truth about nothing. Thank you.

18 THE COURT: Thank you, any further inquiry?

19 MR. TYRE: No inquiry, Judge.

20 THE COURT: Ms. Nelson?

21 MS. NELSON: No questions, Your Honor.

22 THE COURT: Thank you. Is there anybody else that wishes
23 to speak?

24 MR. TYRE: No, sir, I don't believe so.

25 Judge, it's a -- it's a -- it's a tragic case all the way

1 around, there's no upside to it at all, having said that, I
2 can -- I mean, you can see the -- the Court can see the
3 condition that Mr. Banks is in, he's not a danger to society,
4 these allegations took place many, many decades ago, what Mr.
5 Banks has been reduced to here is just an old man who's seen
6 his family fall apart and he's waiting to die. And, Judge, we
7 would request a -- a lesser amount of time than life,
8 obviously and, again, any significant even a period of years
9 is tantamount to a death sentence for Mr. Banks as -- as well,
10 he'll die in prison and we're hoping that he doesn't have to
11 do that, we're hoping that the Court takes the totality of the
12 circumstances including his current physical condition and his
13 medical condition. If the Court does lock him up for life,
14 it's not going to change anything in the -- in the lives of
15 the victims, Judge, I'm sorry that we have to be here, I'm
16 sorry that we're even talking about it, but we don't believe
17 that there's anything to be gained by sentencing Mr. Banks to
18 life in prison.

19 THE COURT: Thank you. Ms. Nelson, anything further?

20 MS. NELSON: Your Honor, I'd just like to point out that
21 despite the fact that Mr. Tyre said that this happened decades
22 ago, I mean, the most recent case involving his granddaughter,
23 who was the victim in Case Number 03-1148, this was back in
24 1990, 1991 and we do think that he is a danger to society and
25 he does need to spend the rest of his life in prison.

1 THE COURT: If I may, which is the -- which is the case
2 number that Mr. Banks entered a plea to?

3 MS. NELSON: That would be 1148, 03-1148-CF.

4 THE COURT: 1148. 1146 is the one you're going to be
5 dropping; correct?

6 MS. NELSON: Correct.

7 THE COURT: And who's the individual in 1146?

8 MS. NELSON: Your Honor, the individual in 1146 is also
9 his granddaughter who made allegations at the very beginning
10 and since has had a lot of contact with the Defendant's wife,
11 Miss Banks, going back and forth recanting several times and
12 then said no, said yes, it did happen and she's -- she's the
13 youngest of that family, she's actually T.M.B.'s sister.

14 THE COURT: Thank you. Mr. Tyre, according to the --
15 thank you for this, Mr. Gallo, according to the -- according
16 to the jail, apparently your client's been in custody for 766
17 days, is that correct?

18 MR. TYRE: That's -- yes, sir, that sounds correct.

19 THE COURT: Thank you. Let's start with 03-1148, the
20 case that Mr. Banks entered a plea on the other day, on the
21 single count of lewd, lascivious or indecent act on a child
22 under the age of 16 years, a second degree felony, I'll find
23 you guilty of that offense and I'll adjudicate you guilty of
24 that offense, I'll sentence you to three-and-a-half years in
25 Department of Corrections with credit for the 766 days.

1 Now, let's turn to 03-1144, obviously I've had the
2 opportunity to sit through that trial as well as the
3 proceedings today and the only way to describe that case is
4 complete devastation, there is no sentence that could do
5 justice in this case because I can't put this family back
6 together again, I cannot give these women the normal childhood
7 or give them back their innocence or give them peace or
8 tranquility as an adult, there's nothing that this court
9 system can do to solve all of those problems, all of that
10 is -- all of that is already done and there's nothing that I
11 can do unfortunately to undo all of that. The jury found you
12 guilty in Counts One, Two, Three, Four, let's see, I think
13 that's -- they found him guilty in all the counts; correct?

14 MS. NELSON: Correct.

15 THE COURT: One through 10 of unlawful carnal knowledge
16 as charged in the charging document, they found you guilty,
17 I'll adjudicate you guilty of the offenses, on each count I
18 will sentence you to life in prison with credit for 766 days,
19 all counts concurrent, both cases concurrent.

20 I am not sure what the -- the statutory scheme or costs,
21 now, is the cost issue one that relates to the date of filing
22 or the date of offense; if it's the date of offense, I have no
23 idea what the costs would be for the -- for the case that
24 dates back that far; if the costs are assessed based on date
25 of filing, then obviously I can assess costs.

1 MS. NELSON: Judge, I honestly don't know the case law,
2 it makes sense to me that it would be as of the date of
3 filing, but I honestly don't know what it would be.

4 MR. TYRE: That's the way I would see it as well, Judge,
5 but, again, I -- as Ms. Nelson, I -- I don't know what the
6 case law says, Judge.

7 THE COURT: Okay, thank you. Costs on 03-1144?

8 THE CLERK: \$1405.

9 THE COURT: \$1405.

10 THE CLERK: Plus \$101 for crimes against a minor plus 151
11 for rape crisis plus 201 for the --

12 THE COURT: And how much -- were those in effect in '03,
13 was additional costs in place on the statute in '03?

14 MS. NELSON: I think the costs for the rape crisis is
15 just a new within the last -- it's within the last year or
16 two.

17 THE COURT: Okay, and as far as the crimes against
18 children is 101?

19 THE CLERK: Yes, sir.

20 THE COURT: I'll impose that along with the total court
21 costs you just advised, in 03-1148, court costs?

22 THE CLERK: 370 plus 101 for crimes against children.

23 THE COURT: And impose both of those as well.

24 Is there anything further from the State?

25 MS. NELSON: No, sir, not from the State.

1 THE COURT: Anything further from the Defense?

2 MR. TYRE: I don't believe so, Judge.

3 THE COURT: Sir, you have 30 days to appeal the judgment
4 and the sentence of the Court, if you wish to appeal but can't
5 afford the services of private counsel, I will appoint the
6 Public Defender to represent you on that appeal; if you can't
7 afford the costs, it will be without cost to you and needs to
8 be filed with the clerk. Good luck.

9 MS. NELSON: Your Honor, at this time the State would
10 orally announce the nolle pros as to 03-1146-CF.

11 THE COURT: Thank you. Folks, I need to observe the
12 printing, but it doesn't require you to remain, but I need to
13 observe it. Thank you.

14 MR. TYRE: Thank you, Judge.

15 THE COURT: Thank you. Those counts in -- in both cases
16 are (indiscernible).

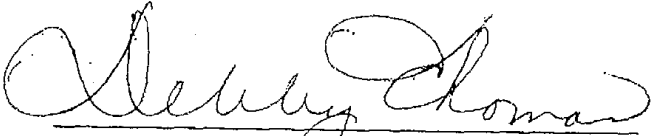
17 (TRANSCRIBER NOTE: Pause while Defendant is being
18 fingerprinted)

19 THE COURT: Okay, thank you, I'll go ahead and recess
20 then.

21 * * *

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23
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25

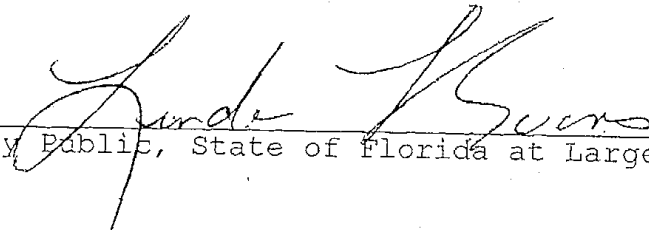
1 I, Debby Thomas, hereby certify that the preceding pages
2 numbered 2 through 414, inclusive, constitute to the best of
3 my ability a true record of the electronically-recorded
4 proceedings in Case Number 432003-CF-001144A, State versus
5 Billy Earl Banks, Sr. as contained in the Designation to
6 Reporter.

7
8 
9 Debby Thomas

10
11 STATE OF FLORIDA

12
13 COUNTY OF ST. LUCIE

14 Sworn to and subscribed before me this 12 day of
15 December, 2005 by Debby Thomas, who is personally known to me
16 and who did take an oath.


17 
18 Linda L. Evans
19 Notary Public, State of Florida at Large.



20 Linda L. Evans
21 Commission #DD198770
22 Expires: Mar 31, 2007
23 Bonded Thru
24 Atlantic Bonding Co., Inc
25

PROBATION VIOLATOR
 COMMUNITY CONTROL VIOLATOR
 RETRIAL
 RESENTENCE
 AMENDED

INSTR # 1891072
 OR BK Q2085 PG 1480
 RECORDED 11/23/2005 10:26:30 AM
 MARSHA EWING
 CLERK OF MARTIN COUNTY FLORIDA
 RECORDED BY T COPUS (asst mgr)

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 CLERK OF CIRCUIT COURT
 BY  D.C.

STATE OF FLORIDA

-VS-

Billy EARL BANKS SR.
 DEFENDANT

IN THE CIRCUIT COURT,
 NINETEENTH JUDICIAL CIRCUIT
 IN AND FOR MARTIN COUNTY, FLORIDA
 DIVISION FELONY

CASE NUMBER 03-1144-CFA

The Defendant, Billy EARL BANKS SR ^{JUDGMENT}, being personally before
 this Court represented by MITCHELL L. TYRE, the attorney of record, and the
 state represented by MATHRYN M. NELSON and having:

- Been tried and found guilty by jury by court of the following crime(s)
- Entered a plea of guilty to the following crime(s)
- Entered a plea of nolo contendere to the following crime(s)

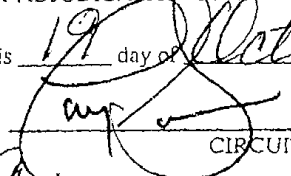
COUNT	CRIME	OFFENSE STATUTE NUMBER'S	DEGREE OF CRIME
<u>1,2,3,</u>	<u>UNLAWFUL CARNAL</u>		
<u>4,5,</u>	<u>KNOWLEDGE</u>	<u>794.01</u>	<u>F-CAPITAL</u>
<u>6,7,8,</u>			
<u>9,10</u>			

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

and having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, to attempts or offenses relating to sexual battery (ch. 794), lewd and lascivious conduct (ch. 800), or murder (s.782.04) aggravated battery (s. 784.045), carjacking (s. 812.133), or home invasion robbery (s. 812.135), or any other offense specified in section 943.325, the defendant shall be required to submit blood specimens.

and good cause being shown: IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

DONE AND ORDERED in open court in Martin County, Florida this 19 day of October, 2005



 CIRCUIT JUDGE

DEFENDANT Billy G. Barks Jr.

CASE NUMBER 03-1144-CFA

OBTS NUMBER 4301034136-COUNT 1.

4301031087 COUNTS 2-10 SENTENCE

(As to Count 1,2,3,4,5,6,7,8,9,10.)

The defendant being personally before this court, accompanied by the defendant's attorney of record, M. J. J. J. and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown.

(CHECK ONE IF APPLICABLE)

- and the Court having on _____ deferred imposition of sentence until this date
- and the Court having previously entered a judgment in this case on _____ now resentsences the defendant.
- and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's Probation/Community Control.

It Is The Sentence of The Court that:

- The defendant pay a find of \$ _____, pursuant to section 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 960.25, Florida Statutes.
- The defendant is hereby committed to the custody of the Department of Corrections.
- The defendant is hereby committed to the custody of the Sheriff of _____ County, Florida.
- The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE.):

- For a term of natural life.
- For a term of Life
- Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "Split" Sentence, complete the appropriate paragraph:

- Followed by a period of _____ on Probation/Community Control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.
- However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.