

Guitar  
Man's  
Psalm 23



*The light black skin* on his forearm had been transformed into a canvas for Jasper John-like swirling tattoos. As Willie Banks, aka Guitar Man, moved his nimble fingers up and down the imaginary strings of an acoustic guitar, mimicking Jimi Hendrix, the rippling tattoo figures sprang to life. His stage was Department 47, Superior Court, Martinez, and his audience eight women and four men. They did not buy tickets for the performance and an agent had not booked Guitar Man for this venue.

Several months before, 49-year-old Willie Banks, trying to finish a drug rehabilitation program, unemployed and unwilling to panhandle, tucked packaged bologna and a bakery roll under his shirt in the Empire Market. The market was a surrogate for the big chains that ignored that part of the tough Iron Triangle of Richmond. A checker saw Willie leaving with a package sticking out from under his shirt and alerted her boss. When the assistant manager grabbed Willie outside, he did not resist — his broken spirit had been through this many times in the past. A Richmond cop arrested and booked Willie for a 488, petty theft that the charging D.A. escalated to a 666 petty theft with a prior, making Willie Lamar Banks eligible for state prison. The booking officer found several crushed Pepsi cans and scribbled music notes in the accused's pockets, and a pocket bible earmarked to Psalm 23.

Public Defender Joyce Sawyer was assigned the Banks case — J.D. 1982 from Hastings Law School, LL.M in street law from the Richmond Public Defender's Office, nicknamed "*The Great Suppressor*" in the early 1980's when the appellate courts liberalized the rules of search and seizure on a regular basis.

Back then, Sawyer was always one step ahead of the opposing deputy D.A. in the pretrial department. But the pendulum swung the other way in the 1990's and Sawyer's batting average shrunk from a lofty .650 to less than .100 — she counted her victories by hung juries leading to favorable pleas and not by favorable rulings on 1538.5 motions. She reached a point in her career where success in her mind was measured not by cases won or lost but by the satisfaction of helping clients navigate the system with some dignity. And she began doubting herself.

Willie scarcely paid attention to his lawyer as she piloted him through the shoals of various hearings. His fingers strummed his imaginary guitar, struggling to find the chords to a Hendrix song, and occasionally he perused his crumpled, earmarked pocket Bible, a gift from his drug counselor. Concerned about Willie's mental state, Sawyer asked for a 1368 hearing to determine if Guitar Man understood the proceedings and could assist her in his defense. After short interviews and long reports citing DSM IV-R, the two court-appointed psychologists deemed Willie Lamar Banks competent to stand trial. They noted his preoccupation with depressive, self-imposed ideation of guilt and his delusional playing of the imaginary guitar, but he seemed to understand the nature of the proceedings and the consequences if found guilty.

Judge Raymond Carlton sat in Department 47. He was a veteran trial judge, having presided over high and low profile cases including death penalty trials. Judge Carlton was a student of the classics, especially poetry. His wife gave him an anthology of Emily Dickinson's poetry, with most of the untitled, num-

bered poems. Number 883 exalted poets lighting lamps, an inspiration that reverberated in Carlton's mind. As he waited in his cluttered chambers for court files and the lawyers, he reread #883 one afternoon and then scribbled out his own version:

### Reflection After Reading

#### Dickinson's #883

*Judges write but words,  
Themselves — forgotten under dust.  
The ideals they enkindle,  
If truly just,  
Ever ignite, as do the sun's sparks —  
Yesterday's glow of justice  
Into today's radiant  
Illumination.*

He was preparing to rework his poem when his clerk brought in the Banks case file and Deputy D.A. Gerald Peraldi and the once Great Suppressor. Carlton knew Sawyer from his days of ruling on her pretrial motions and he also presided over several of her notable cases. Carlton admired Sawyer's tenacity, creativity, and commitment to her clients. Her youthful exuberance of the 1980's had matured into a seasoned defense attorney, well versed in the evidence code and human nature. But Carlton worried about signs of burn-out in the once-bright comet. Prosecutor Peraldi had only recently graduated from misdemeanor trials in Walnut Creek to felony trials in Martinez. He was still learning the 30 different exceptions to the hearsay rule and how to exercise peremptory challenges.

Banks was caught trying to steal a bicycle from an open, attached garage 12 years earlier. He was not a Latin scholar but still pled *nolo contendere* to burglary and received probation with a modest county jail sentence. Now the burglary conviction returned to haunt

him like the monster that could not be killed in a horror film. The D.A. charged the burglary as a strike, which raised the ante to a possible six-year prison term. Although Bank's rap sheet echoed with prior drug possession, petty theft charges and the garage burglary, Sawyer told the judge that her client did not want to go to state prison. Somehow Banks thought that if he were caught, he would end up at the Marsh Creek Detention Facility, as in the past, where at least he had a roof over his head, time to play his guitar and read his book of psalms. He did not comprehend state prison, so he clung to his pocket bible and belief in a merciful God.

Judge Carlton was a master at plea bargaining, but this time nothing would come together. Like trying to broker a deal between Hamas and Israel, a frustrated Judge Carlton was unable to find a middle ground that would satisfy the warring sides. A jury would determine the outcome of this conflict in a simple two-day trial.

Dressed in a dark three-piece suit with a conservative power tie, Peraldi confidently addressed the jury as he described master thief Bank's crime at the market in his opening statement. Guitar Man quietly strummed a blues melody that lamented a good man gone bad. The attentive jurors listened while the checker, market manager, and arresting officer recounted what happened. They also watched the one-man concert at the defense table. The People rested. The jurors appeared to rest too. The judge recessed for the day.

Sawyer asked the judge to allow her to talk to her client for a few moments in the empty courtroom before he was escorted back to the Detention Facility. Judge Carlton could hear Sawyer arguing with her client about testifying. Banks

alternately was crying, praying, and playing his consoling guitar. Carlton concentrated on his Dickinson revision so as not to hear what was said.

The next morning, before the jury was brought back, Sawyer addressed the judge as Peraldi listened. Guitar Man wanted to tell the jury in his own words what happened. Sawyer advised him not to testify. Judge Carlton explained the privilege against self-incrimination and how the jury could not use his right not to testify against him. He also told the defendant that he had the right to testify if he insisted on doing so. Banks told the judge, "My God is a righteous, forgiving God. He is my shepherd and wants me to testify." Carlton rarely found a divine presence in Department 47. But he wanted Sawyer to be protected from appellate second-guessing and accusations of ineffective assistance of counsel. He asked Banks a few more questions and then found on the record that the defendant was freely and knowingly waiving his Fifth Amendment right and wanted to testify.

Guitar Man carried his guitar to the witness stand and promised to tell the whole truth, "so help me God." He pulled some small scraps of paper from his pockets, unfinished tunes, cacophonous chords, remnants of melodies that danced in his mind. He told the jurors that he was a street musician, that he played blues and rock 'n roll for his fans at the Richmond BART station and in front of a liquor store. His mind could not remember the songs he wrote. Strange people were always stealing his guitar. He held up his instrument and proudly showed the cherry-red surface and six silver steel strings that none of the jurors could see. In a soft-spoken voice, he told them about his days of lying, drinking, and whoring around until

Reverend Johnson at Dismas House helped him through the Twelve-Step program and convinced him to accept a saving God. The Lord was his shepherd and would lead him to restful waters.

He testified that he had been tired and hungry when he went into the market and had not eaten in several days. In his pockets were some crushed Pepsi cans that he wanted to redeem for change. He took the bologna and roll and was going outside to the recycler in back of the parking lot when someone grabbed him and said he had not paid for the items. He did not explain anything to the police — they never believed him in the past. He put his fate in the hands of God. He started to weep as he went beyond direct answers to Sawyer's soft questions, explained he was sorry, and asked for forgiveness. His jail friends told him to lie, or plead, or say nothing, but he was finished with lying, would not plead, and was inspired to speak the truth.

On cross-examination, Willie Banks repeated that he took the bologna and roll. Peraldi asked no more questions. The defense rested. The judge instructed the jury on the law. Penal Code section 488: *"Every person who steals, takes, or carries away the personal property of another with the specific intent to permanently deprive the owner of his or her property is guilty of the crime of petty theft."*

Peraldi's confident argument lasted 15 minutes. Joyce Sawyer stood up, took off her glasses, quietly looked into the eyes of each juror as she reclaimed her 1980's idealism and gave not a closing argument, but a summation — a summation of Guitar Man's life; a summation about the intent required by the law of theft; and a summation about the virtue of justice found in the defendant's psalms and in the lyrics of his imaginary music.

A Jimi Hendrix high-chord crescendoed in Department 47.

The jury deliberated two-and-a-half days, and they were hopelessly deadlocked ten to two for acquittal — ten forgiving jurors believed Guitar Man did not intend to steal; he was just forgetful and hungry.

After the hung jury was discharged, Judge Carlton was able to persuade the Assistant D.A. not to pursue the case and simply credit the defendant six months for time spent in custody waiting for trial. Judge Carlton looked at his reworked poem and read how the ideals of justice become a radiant illumination. Somewhere, some ray must be shining on Willie Lamar Banks, strumming his guitar and reading Psalm 23 to himself — surely goodness and mercy followed him. 