

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Honorable Thomas A. Russo, Circuit Court Judge
Appellate Case No. 2011-198488

THE STATE,

Respondent,

vs.

JIMMY WILSON, JR.,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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other words, very different from what you may have watched on television or seen in the movies or read in a book. This courtroom is a place of honor that is dedicated to the protection and the preservation of citizens' rights through what many have called the greatest justice system ever created.

The attorneys that appear before you are advocates for the sides that they represent; but first and foremost, they are officers of the court sworn to uphold the integrity and the fairness of our judicial system and to help you in your search for the truth. You should expect them to be competent and ethical and professional in the performance of their duties.

Now in just a moment you're gonna take an oath to try this case and to reach a fair and a just verdict, and so you are also expected to be professional and reasonable and ethical in the performance of your duties, which I have absolutely no doubt you will do. And I want to take this opportunity again to thank you for your service to your community by being here today and serving on jury duty.

Now before I go any further I'm gonna ask if you would, to give Ms. O'Hara your attention. She

is gonna place you under your oath for your role as jurors in this case.

THE CLERK OF COURT: If you will, please stand and raise your right hand to be sworn.

(WHEREUPON, the jury was sworn at 10:12 a.m.)

THE COURT: Now ladies and gentlemen, what I'm gonna tell you now is intended to serve as an introduction to the trial of the case. These remarks are not a charge on the law. I will instruct you on the law that is applicable to this case at the end of the trial before you retire to consider your verdict. This is merely gonna be an explanation of the procedures that we're gonna follow so that you can better understand what's going on.

Now the defendant in this case, Mr. Jimmy Wilson, Jr., is charged by what is called an indictment and I showed this to you yesterday, which has been filed with the court. And it is — he is charged with the crime of possession of cocaine base, or what is commonly referred to as crack cocaine. The elements of that crime or that charge I will explain to you later when I charge you on the law. What you need to understand is, though, is

what I told you yesterday is this indictment is simply the charge by which the case is brought to court. It is not in any sense evidence of the allegations that it contains. To this indictment Mr. Wilson has pled not guilty and that plea of not guilty places the burden of proof on the State to prove each and every element of the indictment beyond a reasonable doubt.

It is going to be your duty, ladies and gentlemen, to decide whether or not the State has met that burden. Your purpose as jurors is to find and to determine what the facts are in this case. You are the sole judges of the facts; and if at any time during the course of this trial I make any comment regarding those facts, you must disregard my comments. You are to determine the facts from the testimony that you hear from witnesses on the witness stand and any other exhibits that may come in during the course of the trial. It is up to you to determine what inferences you feel may be properly drawn from that evidence. It is especially important that you perform your duty of determining the facts diligently and conscientiously because ordinarily there is no way to correct an erroneous determination of facts by a jury.

Now on the other hand but with equal emphasis, the same law that makes you the jurors of the facts makes me the judge of the law. The law as given by the Court is the only law you may consider. You must accept and you must follow the law that I give you even though you may disagree with it. I'm not allowed to tell you what the facts are in this case, and you on the other hand are not allowed to disagree with me about what the law is or what the law should be. Your job is to take the law as I give it to you, apply it to the facts as you find the facts to be through the testimony of the witnesses and any exhibits that may come in. And based on that you will render your verdict a true and a just verdict under the solemn oath that you have just taken as jurors.

Now you're not allowed to deliberate or to talk about this case until I tell you it's time. In other words, you may find this a little odd that I tell you this because most people think that a jury is supposed to talk about the case; and you are, but not until it's time. So in other words, until you reach that point that you're allowed to deliberate, when we take breaks and you go back into the jury room, or if we break for lunch and you leave the

courthouse, you're not allowed to have any conversation about the case with anyone and not even amongst yourselves. You will have that opportunity once all the evidence is in, the attorneys have had the opportunity to make their closing arguments, and then I've charged you on the law.

It is important, ladies and gentlemen, that you keep an open mind and that you do not decide any issue in this case until all of the evidence has been presented, the parties have had an opportunity to address you with their closing arguments, and that I've charged you on the law. It is your solemn responsibility to determine the guilt or innocence of the defendant, and your verdict must be based solely on the evidence that is presented during the course of this trial and on the law as I instruct you during the course of the trial.

Now in just a moment Ms. Parr on behalf of the State will have the opportunity to make what is called an opening statement in which she'll explain to you what the issues in the case are, or at least what she believes the issues are. Once she concludes her remarks Ms. Wingard will have an opportunity to also address you with an opening statement, although she is not required to do so.

But what I need for you to understand is this, that what the attorneys tell you during their opening statements is not evidence. The only — it is simply their contentions as is what they will the evidence will show you. The evidence in this case that you're going to consider and you're gonna take into your deliberations will be presented to you by testimony from the witness stand by witnesses who are placed under oath and testify from this stand and any exhibits which may come in during the course of the trial.

Now during the course of the trial from time to time you may hear one of the attorneys say something along these lines: Judge, we've got a matter of law we need to take up with the Court; or, Your Honor, may we approach the Bench. I might find it necessary to ask you to step into your jury room during those times. The reason I would ask you to do that if I feel it's necessary, would simply be this: There are times when I'm discussing matters of law with the lawyers that in connection with a ruling that I have to make, it may be necessary for me to make some comment about the facts. And as I told you earlier I'm not to have any influence over you about the facts of the case. So to protect you

from that so that I don't influence you in any way I may ask you to step into your jury room so that I can freely discuss the matter of law with the lawyers and not in any way affect your role as fact finders.

Now in determining what the true facts are in this case is it's going to be necessary for you to decide whether or not the testimony of a witness is believable. It'll be my job as my responsibility to rule as a matter of law whether testimony comes into this case or not at all. But once I rule that evidence is admissible, testimony is admissible, whether or not you believe that is up for you to decide. In deciding whether to believe a witness you have the right to consider the interest of a witness, the bias that a witness may have, the opportunity for the witness to have seen the matters and the things about which that witness testifies, and the way that a witness acts on the witness stand. You have a right to consider anything that is in this record that will help you to evaluate the testimony of the witnesses. So what does that mean? That means that it's really necessary for you to pay close attention to the witnesses, to observe them, listen to the witnesses, pay close attention to the

CERTIFICATE OF COUNSEL

Counsel for Respondent certifies that this Supplemental Record on Appeal contains all remaining material proposed to be included by any of the parties and not any other material and that this Supplemental Record on Appeal complies to the best of my ability with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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