

SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

JAVANCE MICKEY WILSON,

Defendant and Appellant.

CAPITAL CASE

Case No. S118775

SUPREME COURT
FILED

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Deputy

San Bernardino County Superior Court Case No.

FVA12968

The Honorable James A. Edwards, Judge

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DEATH PENALTY

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INTRODUCTION

In January of 2000, James Richards, a Yellow Cab driver in the City of San Bernardino, was dispatched to pick up a fare at a local grocery store. The fare was appellant Javance Wilson, who had Richards drive him to a remote, rural area of the county. Once there, Wilson took out a handgun, pointed it at Richards, and ordered him out of the cab. Richards complied, after which Wilson instructed him to get down on his knees, close his eyes, and open his mouth. Again, Richards complied. Fortunately, the gun Wilson put into Richards's mouth misfired when Wilson pulled the trigger. Richards was able to escape into a nearby residence. Wilson fled the scene and remained at large.

About 45 days later, Andres Dominguez, also a Yellow Cab driver in the City of San Bernardino, was dispatched to pick up a fare at the exact same grocery store. Again, the fare was Wilson, and again, Wilson had Dominguez take him to the very same remote, rural area of the county where Wilson previously attempted to murder Richards. This time, however, the gun did not misfire. Wilson shot Dominguez in the head with a .44 Magnum handgun, killing him.

A few hours later, Wilson used the cell phone he took from Dominguez to call for a taxi in Pomona. Victor Henderson, a Yellow Cab driver in Pomona, was dispatched to pick up Wilson. Wilson directed Dominguez to a neighborhood in Pomona, after which Wilson used the same .44 Magnum handgun to rob Dominguez. Dominguez attempted to flee, but Wilson shot him in the back when he was running away. As Dominguez lay on the ground screaming in pain and pleading for his life, Wilson walked up and shot Dominguez in the chest from close range, killing him.

STATEMENT OF THE CASE

On February 6, 2002, the Orange County District Attorney filed a first amended information charging appellant Javance Wilson with premeditated attempted murder of James Richards (count 1; Pen. Code,¹ §§ 664, 187, subd. (a)); robbery of James Richards (count 2; § 211); carjacking (count 3; § 215, subd. (a)); premeditated murder of Andres Dominguez (count 4; § 187, subd. (a)); robbery of Andres Dominguez (count 5; § 211); premeditated murder of Victor Henderson (count 6; § 187, subd. (a)); and robbery of Victor Henderson (count 7; § 211). (2 CT 520-526.) As to counts 1 through 3, the information alleged that Wilson personally used a firearm within the meaning of section 12022.53, subdivision (b). (2 CT 520-522.) As to counts 4 through 7, the information alleged that Wilson personally discharged a firearm causing death within the meaning of section 12022.53, subdivision (d). (2 CT 520-526.) As to counts 4 and 6, the information alleged that Wilson committed multiple murders (§ 190.2, subd. (a)(3)) and committed the murders during the course of a robbery (§ 190.2, subd. (a)(17)). (2 CT 520-526.)

On March 11, 2002, jury selection began. (4 CT 1062-1064.) On April 9, 2002, the jury was sworn. (4 CT 1156-1157.) On May 22, 2002, the case was submitted to the jury for guilt-phase deliberations. (5 CT 1383-1384.) On June 6, 2002, as a result of a deadlocked jury, the trial court declared a mistrial. (6 CT 1619-1620.)

On October 28, 2002, jury selection began for the retrial. (6 CT 1710-1712.) On December 2, 2002, the jury was sworn. (6 CT 1775-1776.) On February 5, 2003, the case was submitted to the jury for guilt-phase deliberations. (9 CT 2495-2497.) On February 13, 2003, the jury found Wilson guilty as charged in counts 1 through 6, and guilty of the lesser

¹ All further unspecified statutory references are to the Penal Code.

included offense of attempted robbery in count 7. The jury found true the multiple-murder and robbery-murder special circumstances, and found true all alleged enhancement allegations. (9 CT 2554-2571, 2584-2586.)

On March 4, 2003, the penalty phase began. (10 CT 2865-2866.) On April 8, 2003, the case was submitted to the jury for penalty-phase deliberations. (10 CT 2980-2981.) On April 17, 2003, the jury returned a verdict of death. (11 CT 3047-3050.)

On August 27, 2003, the court imposed its sentence. As to the noncapital counts, the court sentenced Wilson to 40 years plus life in prison with the possibility of parole. As to the capital murders, the court sentenced Wilson to death. (11 CT 3166-3175.)

STATEMENT OF FACTS

I. GUILT PHASE EVIDENCE

A. Wilson Robs and Attempts to Murder James Richards

James Richards worked as a Yellow Cab driver in the City of San Bernardino. (15 RT 3842.) On January 7, 2000, at about 8:00 p.m., Richards was dispatched to the Stater Brothers Grocery Store in downtown San Bernardino to pick up a fare. (15 RT 3843.) The fare was Wilson, who was waiting for Richards by the front door of the grocery store. (15 RT 3843.) When Richards pulled up, Wilson flagged him down and got into the backseat of the cab. (15 RT 3843-3844.) It was still daylight, just before dusk. (15 RT 3844.)

Wilson explained that he wanted to go to Bloomington and that he would give Richards directions once they got on the freeway. (15 RT 3844.) Wilson was “real friendly, polite, calm, relaxed, nice guy.” (15 RT 3845.) As Richards was driving toward Bloomington, Wilson suggested that Richards stop for gas, which he did. (15 RT 3844.) After filling up,

Richards followed Wilson's directions toward Bloomington. (15 RT 3844-3848.)

During the drive, which took 20 to 25 minutes, Richards and Wilson "talked all the way there." (15 RT 3845.) The two men talked about "all kinds of stuff." (15 RT 3845.) But it struck Richards as strange when Wilson asked him if he carried a gun in his cab. (15 RT 3845-3846.) Although Richards was alarmed by the question, he was put at ease because Wilson was "real friendly and nice" and because of the way in which Wilson worked the question into their conversation. (15 RT 3846.) It also struck Richards as strange when Wilson asked him whether he had "a lot of calls" that day. (15 RT 3846.) Richards did not want to admit that he had a lot of money from several calls and was not carrying a weapon, so he lied to Wilson and said he was carrying a gun and that Wilson was his first fare of the night. (15 RT 3846-3847.)

Wilson directed Richards to drive the cab to a rural area on Laurel Avenue in Bloomington. (14 RT 3567; 15 RT 3848.) Laurel Avenue is a partially dirt road where the houses have large lots and are spread apart. (14 RT 3567.) Wilson asked Richards to drive to the end of the road and turn the cab around. (15 RT 3848-3849.) Richards complied, after which he pulled the cab to the side of the road and turned around to tell Wilson the fare was 20 dollars. (15 RT 3849.) It was at that moment Richards first noticed Wilson had a gun pointed directly at his head. (15 RT 3849.)

Wilson ordered Richards to put his hands on his head, after which Wilson robbed Richards of 300 dollars in cash, his wallet, his cigarettes, and the keys to the cab. (15 RT 3849-3850.) Wilson then got out of the back passenger seat of the cab and, while keeping the gun pointed directly at Richards, walked around the front of the cab to the driver's door. (15 RT 3851.) Wilson opened the driver's door and ordered Richards out of the cab. (15 RT 3851.) Wilson told Richards he was going to let him go. (15

RT 3851.) Richards thought Wilson was about to take the cab and leave. (15 RT 3851.)

Once Richards got out of the cab, however, Wilson ordered Richards to follow him behind the cab near a field at the end of the dirt road. (15 RT 3851-3852.) This made Richards nervous because now he thought Wilson may try to kill him. (15 RT 3852.) But Richards complied with Wilson's demands because Wilson continually threatened to shoot Richards. (15 RT 3852.)

Once behind the cab, Wilson ordered Richards to get down on his knees, close his eyes, and open his mouth. (15 RT 3852-3853.) Wilson was pointing the gun directly at Richards's face as he said, "If you don't do it, I am going to shoot you." (15 RT 3852.) Richards reluctantly did as he was told, hoping that "maybe he is just going to hit me in the head and take off." (15 RT 3852.) But suddenly Wilson shoved the gun into Richards's mouth and pulled the trigger. (15 RT 3852-3853.) Richards could feel the gun go into his mouth and could hear a loud clicking noise when the gun misfired. (15 RT 3852-3853.) Wilson hurriedly tried clearing the gun in an effort to make it operational. (See 15 RT 3853.) Richards got up and ran to a nearby house where he started banging on the front door. (15 RT 3853.)

Thomas Day was with his family inside his home on Laurel Avenue when he heard and saw someone acting "very erratic" and "crazy" on his front porch. (14 RT 3568.) The man was Richards, who was pounding on the front door "saying that he was going to be killed and please let him in." (14 RT 3568.) Day cracked open the front door to talk with Richards. (14 RT 3568-3569.) Richards kept repeating that someone was trying to kill him and please let him inside the house. (14 RT 3568-3569.)

At first, Day was reluctant to let Richards into his house because he was not sure "whether this was for real or not." (14 RT 3569.) Day realized the reality of the situation when he looked out into the street and

saw Wilson standing next to a cab pointing a handgun directly at Richards and Day. (14 RT 3569-3570.) Wilson tried firing the gun again, but again the gun misfired. (15 RT 3857.) As Wilson continued his efforts to clear the jam on the gun, Day quickly let Richards into his house. (14 RT 3571-3572; 15 RT 3857.) Day and his family called 911. (14 RT 3571-3572.) Wilson got into the cab and screeched the car's tires as he sped off down the street. (14 RT 3571.)

Once the police arrived to the scene, Richards provided a detailed description of Wilson. (15 RT 3858-3859.) But the police were not able to locate Wilson that night, and Richards did not hear from the police for some time. (15 RT 3861-3862.) This worried Richards because he thought Wilson may try to come after him, particularly because Wilson had Richards's personal information from his wallet. (15 RT 3865.)

Several weeks passed during which time Richards did not have contact with the police regarding Wilson's whereabouts. (15 RT 3861-3862.) That changed when, about 45 days later, Richards saw on the news that a San Bernardino Yellow Cab driver was robbed and murdered at the exact same location where Wilson previously tried to kill Richards. (15 RT 3862.)

B. Wilson Robs and Murders Andres Dominguez

Andres Dominguez worked as a Yellow Cab driver in the City of San Bernardino. (14 RT 3576-3577, 3580.) Shortly before midnight on February 20, 2000, Dominguez was dispatched to the Stater Brothers Grocery Store in downtown San Bernardino to pick up a fare—the exact same grocery store where Richards had previously picked up Wilson. (14 RT 3580.) The fare had Dominguez take him to the end of Laurel Avenue in Bloomington—the exact same rural location where Wilson previously robbed and attempted to kill Richards. (See 15 RT 3773-3774.)

Shortly after midnight, Raul Gonzalez was with his family inside his home at the end of Laurel Avenue when he heard the sound of a loud gunshot come from outside near his house. (15 RT 3773-3776.) Gonzalez looked outside in the direction of the gunshot and saw a cab with the driver's side door open. (15 RT 3775-3776.) Gonzalez's wife called the police. (15 RT 3777.) Gonzalez went outside and discovered the dead body of Andres Dominguez laying near the cab. (15 RT 3777.)

Dominguez had been shot once in the head from close range. (15 RT 3811-3812.) The bullet entered Dominguez's head near his left ear, went through his skull, and lodged in his brain. (15 RT 3811.) The coroner removed the bullet from Dominguez's head; later analysis revealed it was fired from a .44 Magnum. (See 15 RT 3922, 3937-3943.)

Dominguez's cell phone was found missing from his person, even though he always carried it with him. (14 RT 3577; 16 RT 4176.) Wilson's fingerprints were discovered inside Dominguez's cab. (15 RT 4001-4002.)

C. Wilson Murders Victor Henderson

On February 21, 2000, at approximately 1:40 a.m.—less than two hours after Dominguez was shot and killed—Dominguez's cell phone was used to call for a cab in nearby Pomona. (15 RT 3840-3841; 16 RT 4177-4178.) Victor Henderson, who worked as a Yellow Cab driver in Pomona, was dispatched to pick up the fare. (15 RT 3840-3841.)

The fare had Henderson take him to a neighborhood in Pomona near the corner of Hemlock Way and Roderick Avenue. (See 15 RT 3976-3979; 16 RT 4029-4030.) At about 2:30 a.m., several residents in that area awoke to the sound of gunfire near their homes. (15 RT 3976-3979; 16 RT 4029-4030.) Karen Smith, who lived on Hemlock Way, heard the sound of multiple gunshots come from just outside her bedroom window. (15 RT 3977-3978.) Smith could hear someone yelling in pain outside her house.