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# Recent Developments: White v. Illinois: Spontaneous Declaration and Medical Examination Hearsay Exceptions Do Not Offend Sixth Amendment Confrontation Clause Requirements Regardless of Declarant's Availability

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nothing about the character of the Delaware chapter of the Brotherhood since it failed to link the beliefs of the California chapter to the Delaware chapter. *Id.* at 1098. The Court thus concluded that the narrow phrasing of the stipulation impermissibly invited the jury to infer that the abstract beliefs of the Delaware chapter were identical to those of the California chapter. *Id.*

The Court assumed for the sake of argument that the beliefs of the Delaware chapter were shown to be racist, concluded that evidence of Dawson's membership in the Brotherhood was nevertheless irrelevant because both Dawson and his victim were of the same race. *Id.* The Court distinguished Dawson from other cases where it had held membership in an organization to be relevant for sentencing purposes. In those cases, the membership was in some way related to the underlying crime of conviction and probative of the defendant's bias or indicative of his propensity for future violence. *Id.* (citing *Barclay v. Florida*, 463 U.S. 939 (1983)) For example, in Barclay, the defendant's membership in the Black Liberation Army was relevant in a sentencing proceeding because the underlying conviction was for the murder of a white hitchhiker. Similarly, in *United States v. Abel*, 469 U.S. 45 (1984), the evidence of the defendant's and a defense witness' membership in the Aryan Brotherhood was relevant because the members were sworn to lie on behalf of each other.

Unlike these cases cited by the Court, the stipulation as to Dawson's membership in the Delaware chapter of the Brotherhood was not related to the underlying conviction and did not establish that the Brotherhood had a propensity for violent acts. Therefore, Dawson's membership in the Brotherhood was not relevant to the sentencing proceeding. *Dawson*, 112 S. Ct. at 1098.

Finally, the Court rejected the state's assertion that the stipulation was relevant to prove any aggravating circumstance. *Id.* The Court recognized that in certain instances membership in an organization, such as one that endorses racial killing, may be relevant to the jury's inquiry as to whether a defendant would be likely to commit future violent acts. However, the Court reasoned that the inference which the jury was invited to draw from the stipulation proved nothing more than the abstract beliefs of the Delaware chapter of the Brotherhood. The Court concluded that with nothing more than an abstract showing of Dawson's beliefs, the admission of the stipulation violated Dawson's First Amendment rights. *Id.*

In *Dawson v. Delaware*, the United States Supreme Court refined the test for determining the admissibility of evidence of organizational associations and beliefs in a sentencing proceeding. Evidence of a defendant's associations or abstract beliefs must be relevant to the issues being decided or related to the underlying conviction in order to protect a defendant's First Amendment rights. This decision illustrates the Court's fear that the defendant may be unfairly prejudiced by the admission of such evidence.

*- David E. Canter*

## *White v. Illinois*: SPONTANEOUS DECLARATION AND MEDICAL EXAMINATION HEARSAY EXCEPTIONS DO NOT OFFEND SIXTH AMENDMENT CONFRONTATION CLAUSE REQUIREMENTS REGARDLESS OF DECLARANT'S AVAILABILITY.

In *White v. Illinois*, 112 S. Ct. 736 (1992), the United States Supreme Court held that the Confrontation Clause of the Sixth Amendment of the U.S. Constitution does not require a declarant to testify at trial or be found unavailable by the trial court where the declarant's testimony can be admitted under an established hearsay exception. Because the declarant's out-of-court statements carried substantial probative value that could not be duplicated by mere courtroom repetition, the Court reasoned that the Confrontation Clause did not require proof of unavailability before the statements were permitted under exceptions to the hearsay doctrine.

Petitioner, Randall D. White, was charged with the sexual assault of S.G., a four year old girl. Trial testimony established that on April 16, 1988, S.G.'s babysitter, Tony DeVore, was awakened by screams coming from S.G.'s room. Upon nearing S.G.'s bedroom, DeVore witnessed White leaving the room. DeVore identified White as a friend of the child's mother, Tammy Grigsby. According to DeVore's trial testimony, S.G. stated that White had put his hand over her mouth, choked her, threatened to whip her if she screamed, and had "touch[ed] her in the wrong places" (indicating the vaginal area).

S.G.'s mother found her daughter "scared" and a "little hyper" when she returned home about thirty minutes after DeVore had first been awakened. S.G. repeated her claims to her mother, which led Grigsby to call the police. Officer Terry Lewis questioned S.G. alone upon arrival at the Grigsby residence a few minutes later. Lewis' summary of S.G.'s statements at trial indicated that, again, the child had given the same account of the evening's events. The hospital personnel who examined S.G. that night, nurse Cheryl Reents and Dr. Michael Meinzen, heard essentially the identical story S.G. told DeVore, Grigsby, and Lewis.

S.G. did not testify at petitioner's trial, due to emotional difficulty upon entering the courtroom. DeVore, Grigsby, Lewis, Reents, and Meinzen testified at trial, all relating the account of the incident as told to them by S.G. Petitioner objected on hearsay grounds to the testimony of these witnesses, regarding S.G.'s statements to them. The trial court overruled each objection on the basis of relevant hearsay exceptions. Testimony given by DeVore, Grigsby, and Lewis was admitted under the spontaneous declara-

tion exception, and that of Reents and Meinzen was received under the exception for statements made in the course of securing medical treatment. Petitioner's motion for mistrial based on S.G.'s "presence [and] failure to testify" was also denied by the trial court.

The jury found petitioner guilty of aggravated criminal sexual assault, residential burglary, and unlawful restraint. The Appellate Court of Illinois affirmed the conviction, holding that the trial court had properly exercised its discretion in ruling that the statements offered by the aforementioned witnesses qualified for the relevant exceptions to the hearsay doctrine.

The Illinois Supreme Court denied certiorari to petitioner. The Supreme Court, however, granted certiorari to address the limited issue of whether permitting such testimony violated petitioner's Sixth Amendment Confrontation Clause right.

The Court found that S.G.'s statements, as repeated by various witnesses, were reliable, carrying substantial probative value adequate to qualify as well-established exceptions to the hearsay doctrine. *White v. Illinois*, 112 S. Ct. 736, 743 (1992). This, the Court reasoned, satisfied Sixth Amendment concerns of confrontation, which do not require that the declarant either be present at trial or be found unavailable before hearsay testimony may be admitted. *Id.* at 741. The Court found unavailability analysis necessary only where the out-of-court statements at issue were made at a prior judicial proceeding. *Id.*

Petitioner's primary contention was that *Ohio v. Roberts*, 448 U.S. 56 (1980), demanded his conviction be vacated, under the theory that the prosecution must either produce the declarant at trial or prove the declarant to be unavailable prior to the introduction of hearsay testimony. The court rejected the argument. *White*, 112 S. Ct. at 741. In *Roberts*, the Court considered a Confrontation Clause challenge involving the introduction at trial of testimony from a previous probable-cause hearing, where the witness was not present at the trial, but was subject to cross examination at the hearing. *Id.* While implying that the Sixth Amendment generally requires that a declarant either be produced at trial or found unavailable before hearsay testimony may be received, the Court in *Roberts* nonetheless rejected the Confrontation Clause argument. *Id.*

In the case at bar, however, the Court reasoned that *Roberts*'s expansive reading of the Confrontation Clause was negated by the subsequent decision of *United States v. Inadi*, 475 U.S. 387 (1986). *White*, 112 S. Ct. at 741. In light of *Inadi*, where the Court considered the admission of hearsay statements made by a co-conspirator in the course of the conspiracy, the Court read *Roberts* to represent the "proposition that unavailability analysis is a necessary part of the Confrontation Clause inquiry *only* when the challenged out-of-court statements were made in the course of a prior judicial proceeding." *Id.* (emphasis added).

The statements made by S.G. in the case at bar were distinguished by the Court from those made in *Roberts*, where the statements sought to be introduced were made at a prior court proceeding, and thus, lost no "evidentiary value if the out-of-court statements were replaced with live testimony." *Id.* at 743. S.G.'s statements made under the stress of a startling event and in the course of procuring medical treatment, however, carried unique and valuable guarantees of credibility that the jury may not perceive if repeated by the declarant in the antiseptic environment of a courtroom. *Id.* "The preference for live testimony . . . is because of the importance of cross examination . . . . But where [the] proffered hearsay has sufficient guarantees of reliability to come within a firmly rooted exception to the hearsay rule, the Confrontation Clause is satisfied." *Id.*

The Court also rejected the adoption of an "unavailability rule," which would require that a declarant either be present at trial or be found unavailable prior to the introduction of hearsay testimony. *Id.* at 742. The Court stated that implementation of such a rule would prove to be neither an absolute bar to out-of-court statements, nor aid in the fact-finding process. *Id.* Such a rule, the Court noted, would merely prove an additional burden on litigants without offering any additional protection to an accused's Sixth Amendment right to face his accuser. *Id.* The rule would make it necessary to repeatedly locate and keep available each declarant, even if neither party intended to call such witnesses to the stand.

The Court concluded that an individual's Sixth Amendment Confrontation Clause right is not violated by the introduction of hearsay testimony under the spontaneous declaration and medical examination exceptions, irrespective of the declarant's availability. Under the Court's reasoning, the nature of these exceptions demands that such utterances not be repeated by the declarant in the clinical atmosphere of the courtroom, as they would lose their situational sincerity and value.

The Court thus continued a trend of Sixth Amendment Confrontation Clause interpretation where only probative evidence, which is based on a "firmly rooted" hearsay exception, or otherwise carries particular guarantees of credibility, is admissible. In so doing, the Court opened the door to further litigation over the reliability of such out-of-court statements, as each state may observe and give credence to hearsay exceptions not unanimously accepted. The amendment was originally ratified to prevent the abuses of prosecution by ex parte affidavits in sixteenth century England. Therefore, interpreting the Confrontation Clause to regulate the admission of hearsay may unnecessarily strain the actual language and original intent of the framers of the Sixth Amendment's Con-

frontation Clause.

- *Paula Elbich*

*Hilton v. South Carolina Public. Railway Commission*: **FEDERAL STATUTE IMPOSING LIABILITY ON STATE-OWNED RAILROADS FOR DAMAGES TO INJURED EMPLOYEES ENFORCEABLE IN STATE COURTS ONLY.**

In *Hilton v. South Carolina Public Railways Commission*, 112 S. Ct. 560 (1991), the United States Supreme Court held that the Federal Employers' Liability Act continued to authorize suits for damages against state-owned railroads and was enforceable in state courts, but not in federal courts. In reaching its decision, the Court determined that a federally-based action brought in state court did not abrogate a State's immunity from suit under the Eleventh Amendment to the United States Constitution, because that amendment has been held not to apply to state courts. The Court's ruling ensured that state-employed railroad workers would have a forum in which to redress work-related injuries.

The South Carolina Public Railways Commission, an agency of the State of South Carolina, was a common carrier engaged in interstate commerce by railroad. Kenneth Hilton, a railroad worker, claimed to have been injured while on the job due to the negligence of the Commission. Under South Carolina law, railroad workers were excluded from coverage under the workers' compensation statute. Thus, in order to recover for his injuries, Hilton sued the Commission under the remedial provisions of the Federal Employers' Liability Act (FELA) in a federal court.

While Hilton's case was pending, the Supreme Court decided the case of *Welch v. Texas Department of Highways and Public Transportation*, 483 U.S. 468 (1987), holding that a federal statute which incorporated the remedial provisions of FELA, did not allow a cause of action to be maintained against a state agency in a federal court. In light of this decision, Hilton dismissed his suit in federal court and refiled in a South Carolina state court. The state trial court dismissed Hilton's claim, basing its decision upon a reading of *Welch*, together with the subsequent Supreme Court decision of *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989). The trial court interpreted these cases as precluding a FELA suit for damages against a state agency, even if maintained in a state forum. Hilton appealed and the state supreme court affirmed the lower court's decision.

Reversing the state courts' decisions, the United States Supreme Court drew a sharp distinction between a FELA based action maintained in a federal court and one in a state court. The Court recognized that a FELA action brought in federal court implicated the States' Eleventh Amendment immunity from suit. *Hilton v. South Carolina Pub. Rys. Comm'n*, 112 S. Ct. 560, 563 (1991). Applying an Eleventh Amendment analysis, the Court found that FELA did not contain a clear expression of congressional intent to abrogate the States' Eleventh Amendment immunity, and therefore, FELA actions could not be maintained in a federal court. *Id.* (citing *Welch*, 483 U.S. at 474-76).

Because the Eleventh Amendment has been held not to apply to state courts, the Court determined that a FELA action brought in a state court did not implicate any constitutional rule of law. *Id.* at 565. Thus, *Hilton* presented a case of pure statutory construction, which left the Court to decide the issue of whether Congress, in enacting FELA, intended to create a cause of action against the States to be enforced in a state court. *Id.*

The Court re-examined its first interpretation of FELA in *Parden v. Terminal Railway of Alabama Docks Department,* 377 U.S. 184 (1964). The Court noted that in *Parden* the terms of FELA were construed to mean that when Congress used the phrase "[e]very common carrier by railroad" to describe the class of employers subject to FELA's terms, it intended to include state-owned railroads. *Hilton*, 112 S. Ct. at 563 (citing *Parden*, 377 U.S. at 187-88). The Court then reaffirmed that interpretation, holding that FELA continued to authorize suits for damages against state-owned railroads. *Id.* The Court concluded, however, that the second part of its decision in *Parden*, which held that by entering the business of operating a railroad a State waived its Eleventh Amendment immunity from suit in a federal court, had been overturned by its subsequent decision in *Welch. Id.* at 563. Thus, the Court narrowed the issue presented to whether FELA based actions could be enforced in a state court.

The Commission contended that this issue was controlled by the Supreme Court's decision in *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989). *Hilton*, 112 S. Ct. at 565. In *Will*, the Court held that a State is not a "person" suable under a federal statute which lacked any "clear statement" of congressional intent to impose liability. *Id.* at 563 (citing *Will*, 491 U.S. at 58). The Commission argued that the "clear statement" rule should be read in context with the Court's decision in *Welch*, that FELA did not contain a clear statement of congressional intent, to effectively overturn the entire holding of *Parden. Id.*

The Court disagreed, reasoning that the "clear statement" rule should not automatically be implemented when a case did not involve an issue of constitutional interpretation. *Id.* at 565-66. Instead, the Court categorized the clear statement rule as a canon of statutory construction in those cases which did not implicate the States' Eleventh Amendment immunity. *Id.* In resolving a case of pure statutory construction, the Court found the doctrine of stare decisis most compelling because it promoted stability, predictability and respect for judicial authority. *Id.* at 563-64. In the instant case, the Court determined that the policy consider-