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Recent Developments: Dawson v. Delaware: Evidence of Defendant's Racist Associations or Beliefs Not Admissible in Capital Sentencing Proceeding Unless Relevant to the Issues Addressed in the Underlying Conviction

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though an excise tax created a lien upon the land between the time the property was sold and the time the tax was paid, this lien did not convert the tax into a tax upon real estate; it remained a tax upon the Indians' activity of selling the land. *Id.* at 693-94.

In *County of Yakima v. Yakima Indian Nation*, the Supreme Court concluded that the Act explicitly authorized taxation of fee patented land but not taxation with respect to or involving land, or based upon the value of land. As a result, counties are forbidden to impose an excise tax on fee patented land. While this decision clarified the limits upon which a county may tax fee patented property held by individual tribe members, it also deprived these Indians of the federal protection from state and local taxation originally given to them by Congress.

- Carolyn M. Brennan

Dawson v. Delaware: EVIDENCE OF DEFENDANT'S RACIST ASSOCIATIONS OR BELIEFS NOT ADMISSIBLE IN CAPITAL SENTENCING PROCEEDING UNLESS RELEVANT TO THE ISSUES ADDRESSED IN THE UNDERLYING CONVICTION.

In *Dawson v. Delaware*, 112 S. Ct. 1093 (1992), the United States Supreme Court held that in a capital sentencing proceeding, evidence of the defendant's membership in a racist prison gang was inadmissible because it was not relevant to the issues being decided at the penalty proceeding or related to the underlying conviction. In vacating the judgment of the Supreme Court of Delaware, the Court determined that the admission of a stipulation evidencing the defendant's membership in the Aryan Brotherhood violated his First and Fourteenth Amendment rights under the United States Constitution.

David Dawson and three other inmates escaped from a Delaware prison in late 1986. After burglarizing a house in Kenton, Delaware, Dawson pro-

ceeded to another house nearby where he brutally murdered a white woman and then stole her car and money. Dawson was subsequently apprehended by the police.

At trial, the jury convicted Dawson of first-degree murder, possession of a deadly weapon during the commission of a felony, and various other crimes. A penalty hearing was then held before the jury to determine whether to impose the death penalty for the first degree murder conviction.

The State notified the court that it intended to introduce expert testimony pertaining to Dawson's membership in a prison gang known as the Aryan Brotherhood ("Brotherhood") as well as evidence of Dawson's tattoos and other indicia of his membership in the Brotherhood. The State submitted that such testimony would explain the origin and nature of the Brotherhood. Dawson opposed admission of such evidence arguing that its admission would be inflammatory and would violate his rights under the First and Fourteenth Amendments.

Prior to the start of the penalty hearing, the parties agreed upon a negotiated stipulation concerning the evidence of the defendant's membership in the Brotherhood. In essence, the stipulation stated that the Brotherhood was a white racist prison gang which originated in California and that separate gangs existed in Delaware using the same name. As a condition of the stipulation, the State did not introduce expert testimony during the penalty phase.

During the penalty hearing, the State introduced the stipulation, Dawson's tattoos relating to the Brotherhood, his use of the name "Abaddan," and his lengthy criminal record. In rebuttal, Dawson presented mitigating "good character" evidence consisting of testimony of family members and records of his enrollment in drug and alcohol programs in prison for which he had received good time credits.

The jury concluded that the mitigating evidence was outweighed by

the aggravating evidence and recommended that Dawson receive the death penalty. Upon that binding recommendation, Dawson was so sentenced.

The Supreme Court of Delaware, holding that it was desirable for the jury to have as much information before it as possible during the penalty hearing, affirmed the underlying conviction and the death penalty. The United States Supreme Court granted certiorari to consider whether the admission of evidence concerning Dawson's membership in the Brotherhood during the sentencing proceeding violated his First and Fourteenth Amendment constitutional rights.

The Court began its analysis by addressing Dawson's argument that the First Amendment absolutely barred the admission of evidence of an individual's beliefs or associations during a sentencing proceeding. *Dawson*, 112 S. Ct. at 1096. While recognizing that the First Amendment protects an "individual's right to join groups and associate with others," the Court rejected Dawson's assertion because it was overly broad. *Id.* By doing so, the Court reinforced its previous position that the sentencing authority is "free to consider a wide range of relevant material," even that material which may otherwise be constitutionally protected. *Id.* at 1097.

Having recognized that in certain instances otherwise constitutionally protected material may be admitted during a sentencing proceeding, the Court then considered whether the admission of the stipulation as to Dawson's membership in the Delaware chapter of the Brotherhood was constitutional error. *Id.* at 1097. The touchstone of the Court's inquiry was whether the stipulation was in any way relevant to the issues to be determined in the sentencing proceeding. *Id.*

The Court first noted that the absence of expert testimony to show the violent nature of the Brotherhood limited the relevancy of the admitted stipulation. *Id.* The Court reasoned that the narrow phrasing of the stipulation said

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 cir-

cumstance. *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 dupli-

cated 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-