



Fall 9-1-1992

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Recommended Citation

DAWSON V. DELAWARE 112 S. Ct. 1093 (1992), 5 Cap. Def. Dig. 6 (1992).

Available at: <https://scholarlycommons.law.wlu.edu/wlucdj/vol5/iss1/4>

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DAWSON V. DELAWARE

112 S. Ct. 1093 (1992)
United States Supreme Court

FACTS

A jury convicted David Dawson of first degree murder, possession of a deadly weapon during the commission of a felony, and various other crimes. Following Dawson's conviction, the trial court conducted a penalty hearing before the jury to determine whether Dawson should be sentenced to death for the first degree murder conviction. At this point in the proceeding, the prosecution gave notice that it would introduce evidence of the defendant's prior membership in the Aryan Brotherhood, a white racist gang, which included evidence of the defendant's gang-related tattoos. The prosecution also stated that it would introduce expert testimony regarding the nature and origin of the Aryan Brotherhood.

Dawson responded to the State's intentions by arguing that this evidence was inflammatory and that its admission would infringe on his First and Fourteenth Amendment rights to freedom of association. As a result, the parties agreed to a stipulation stating that "the Aryan Brotherhood refers to a white racist prison gang that began in the 1960s in California in response to other gangs of racial minorities. Separate gangs calling themselves the Aryan Brotherhood now exist in many state prisons including Delaware." Dawson agreed to the stipulation after the prosecution stated that it would not call any expert witnesses to testify about the Aryan Brotherhood. Dawson's agreement to the stipulation, however, was conditioned on a continuing objection that his constitutional rights had been violated by the admission of the Aryan Brotherhood evidence.

At the penalty phase, the prosecution read the stipulation and introduced evidence that Dawson had tattooed the words "Aryan Brotherhood" and "Abaddon" (the name the defendant had given himself upon joining the Brotherhood) on his body. The defense presented as mitigating evidence the testimony of two family members and evidence that Dawson had earned good time credits in prison for enrolling in various drug and alcohol programs. After both sides presented aggravating and mitigating evidence, the jury found three statutory aggravating circumstances: (1) that the murder was committed by an escaped prisoner, (2) that the murder was committed during the commission of a burglary, and (3) that the murder was committed for pecuniary gains. Each circumstance made Dawson eligible for the death penalty under Delaware law. The jury concluded that the aggravating evidence outweighed the mitigating evidence and sentenced Dawson to death.

The Delaware Supreme Court affirmed the convictions and the death sentence.¹ The Delaware court stated in response to Dawson's constitutional claims that "[p]unishing a person for expressing his views or for associating with certain people is substantially different from allowing ... evidence of [the defendant's] character [to be considered] where that character is a relevant inquiry."² Thus, because the introduction of the contested evidence focused the jury's attention on Dawson's character and did not appeal to the jury's prejudices concerning race, religion or political affiliation, the court upheld its introduction during the penalty phase. The United States Supreme Court granted certiorari to decide whether the First and Fourteenth Amendments prohibit the introduction of evidence in a capital sentencing proceeding that shows

that the defendant was a member of a white racist prison gang.

HOLDING

The Supreme Court held that the Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment.³ However, the Court stated that in this case the admission of the Aryan Brotherhood evidence proved nothing more than Dawson's abstract beliefs and that this type of evidence cannot be viewed as relevant "bad" character evidence in its own right.⁴ In addition, the Court held that the prosecution did not meet the relevance standard set forth in *Barclay v. Florida*,⁵ as it failed to show any connection between Dawson's abstract beliefs and the issue being tried.⁶ Thus, the Court held that the admission of the Aryan Brotherhood evidence by the trial court was constitutional error.⁷ Justice Thomas was the lone dissenter.

ANALYSIS/APPLICATION IN VIRGINIA

I. The Use of Constitutionally Protected Activity as Aggravating Evidence

The Court in *Dawson* concluded that "Dawson's First Amendment rights were violated by the admission of the Aryan Brotherhood evidence in this case, because the evidence proved nothing more than Dawson's abstract beliefs."⁸ The Court noted that the prosecution had originally claimed that it would introduce expert witnesses who would testify that the Aryan Brotherhood was a prison gang that advocated, among other things, violent prison escapes, murder of fellow inmates, and drug use. The Court suggested that this type of evidence would have presented a much different case. The majority concluded that "Delaware might have avoided this problem if it had presented evidence showing more than mere abstract beliefs on Dawson's part, but on the present record one is left with the feeling that the Aryan Brotherhood evidence was employed simply because the jury would find these beliefs morally reprehensible."⁹

The Court's opinion could be seen as having a built-in expansion clause for the admission of aggravating evidence. The case, if not read carefully, seems to imply that if the prosecution simply details "abstract belief" evidence, the Court will find otherwise impermissible evidence admissible. Because the Court did not clearly distinguish between "abstract beliefs" and "active advocacy," the prosecution may attempt to read the case as one in which any type of "abstract belief" evidence is admissible, so long as the beliefs are sufficiently detailed.

Defense counsel should strongly argue against any such prosecutorial interpretation as a misreading of *Dawson*. Because this is a First Amendment issue, in order to admit evidence based on a group's beliefs, the prosecution must go beyond simply establishing that the defendant is a member of a particular group, but must show an active advocacy and pursuit of the group activities and goals.¹⁰ Even then, the prosecution

¹ *Dawson v. State*, 581 A.2d 1078 (Del. 1990).

² *Id.* at 1103.

³ *Dawson v. Delaware*, 112 S.Ct. 1093,1097 (1992).

⁴ *Id.* at 1099.

⁵ 103 S.Ct. 3418 (1983).

⁶ *Dawson*, 112 S.Ct. at 1099.

⁷ *Id.* at 1097.

⁸ *Id.* at 1098.

⁹ *Id.*

¹⁰ See *Scales v. United States*, 367 U.S. 203, 229 (1960) (stating that under the First Amendment mere association would not support Smith Act conviction; rather, there must be clear proof that a defendant specifically intended to accomplish the aims of the organization).

must show that the belief is relevant to the issue being tried.¹¹ Thus, Dawson's membership in the Aryan Brotherhood might be relevant if he had actively tried to implement certain of the Aryan Brotherhood's goals, such as racial killings. But absent such activity, evidence of his beliefs based solely upon membership would be protected by the First Amendment, no matter how detailed the proof of the group's belief.

In *Zant v. Stephens*,¹² the court significantly expanded the role of aggravating factors by allowing the trier of fact to consider almost any type of aggravating evidence. However, the *Zant* Court held out as an exception aggravating evidence that involves constitutionally protected acts. The Court in *Dawson* further developed this prong of the *Zant* aggravating evidence test, relying on the statement in *Zant* that an aggravating circumstance is invalid if "it authorizes a jury to draw adverse inferences from conduct that is constitutionally protected."¹³ Thus, because the First Amendment protects freedom of association, evidence dealing with this type of activity generally should be held inadmissible as an aggravating factor.

Although the Court in *Dawson* did not erect a *per se* barrier to the admission of constitutionally protected beliefs, it does require that the prosecution show that the aggravating evidence is directly tied to the defendant's culpability. This is no different from the usual limitations on First Amendment rights. For example, freedom of speech is protected by the First Amendment, but "fighting words" or yelling "Fire!" in a crowded theater and inciting a panic are not.

II. The Use of Irrelevant and Prejudicial Evidence In Aggravation

Dawson also has significance as a case dealing with due process and Eighth Amendment relevancy concerns with aggravating evidence. *Dawson* can be argued as establishing that prejudicial aggravating evidence must be excluded if it is not sufficiently probative to the issue being tried. In order for aggravating evidence to be admitted, the prosecution must explicitly tie the aggravating evidence to the defendant's culpability.¹⁴

This proposition is apparent in the *Dawson* Court's finding that the defendant's first amendment rights give way if the prosecution is able to establish a relevant connection between the evidence and the defendant's

crime. The Court concluded that "the Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment."¹⁵ However, the Court further stated that the evidence must have an actual bearing on the issues being tried.¹⁶ For example, in *Dawson* the prosecution could not admit the Aryan Brotherhood evidence simply as a means of rebutting the defendant's "good character" evidence nor as "bad" character evidence in its own right.¹⁷ Viewed in this light, the broader proposition of *Dawson* is that introduction of irrelevant and prejudicial evidence violates the defendant's right to a fair proceeding under the Eighth and Fourteenth Amendments.

III. Conclusion: Dawson as a Shield Against Aggravating Evidence

Defense attorneys should be aware of how *Dawson* might limit the prosecutor's ability to introduce aggravating evidence. This is of great importance in Virginia, because Virginia generously allows the admission of aggravating evidence for sentencing consideration. When confronted with aggravating evidence that has slight probative value, defense counsel should argue that *Dawson* bars the admission of irrelevant and prejudicial evidence. For example, counsel might argue at both the pretrial and sentencing stages that questionable aggravating evidence is "not sufficiently relevant" under the *Dawson* standard. Thus, when the defense prepares its sentencing strategy, it must focus on and plan how it will argue the irrelevancy of any aggravating evidence presented by the State.

Although the Court has made it clear that there is no *per se* barrier to the use of group-based activities as aggravating evidence, defense counsel should attempt to use *Dawson* where associational First Amendment rights are involved. Counsel should argue that before the State is permitted to admit constitutionally protected activities, *Dawson* demands that it must first firmly establish a relevant relationship between the aggravating evidence and the defendant's culpability.

Summary and analysis by:
Lesley Meredith James

¹¹ *Dawson*, 112 S.Ct. at 1098. The *Dawson* Court adheres to this constitutional standard when it states that Delaware is prevented from "employing evidence of a defendant's abstract beliefs at a sentencing hearing when those beliefs have no bearing on the issue being tried."

¹² 462 U.S. 862 (1983). The *Zant* court held that "statutory aggravating circumstances play a constitutionally necessary function at the stage of legislative definition: they circumscribe the class of persons eligible for the death penalty. But the Constitution does not require the jury to ignore other possible aggravating factors in the process of selecting ... those defendants who will actually be sentenced to death."

¹³ *Dawson*, 112 S.Ct. at 1097 (citing *Zant*, 462 U.S. at 885).

¹⁴ Even in *Payne v. Tennessee*, 111 S.Ct. 2733 (1991), which allowed the prosecution to introduce "victim impact" testimony, the Court went to great pains to assert that evidence of the "harm" caused was relevant to the defendant's culpability for the crime. See case summary of *Payne*, Capital Defense Digest, Vol.4, No.1, p.14 (1991).

¹⁵ *Dawson*, 112 S.Ct. at 1097.

¹⁶ *Id.* at 1099.

¹⁷ *Id.*