
In the Supreme Court of the United States

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BENJAMIN YOUNG,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

—◆—
On Petition for a Writ of Certiorari to the
Court of Criminal Appeals of Alabama

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

(Restated)

The Petitioner, Benjamin Young, asks this Court to consider the question of whether the admission of gang-membership evidence at the culpability phase of his capital trial violated his First and Fourteenth Amendment rights under *Dawson v. Delaware*, 503 U.S. 159 (1992). Young never presented his First Amendment claim under *Dawson* to the Alabama courts. The Alabama Court of Criminal Appeals held that, as a matter of state evidentiary law, the evidence concerning Young's association with the gang was relevant to his motive in participating in the murder and that the trial court committed no error, plain or otherwise, by admitting the evidence.

1. Should the Court deny the petition for a writ of certiorari because Young failed to properly present his First Amendment claim in state court?
2. Did the trial court properly admit evidence of Young's association with a gang as proof of his motive for participating in the murder?

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STATEMENT OF THE CASE AND FACTS

A. Facts from trial.

In 2016, Thomas Hubbard was the leader of the Almighty Imperial Gangsters. (R. 728, 806.) The gang's members included Hubbard, Benjamin Young, Peter Capote, De'Vontae Bates, Austin Hammonds, Michael Blackburn, and Trey Hamm. (R. 743, 811.) Young was Hubbard's "second man in charge." (R. 806.) On February 28, 2016, Hubbard's home was burglarized, and Hammonds's Xbox videogame console and some other items were stolen. (R. 809.) Hubbard told the gang he was going to find out who had burglarized his home and kill that person, enlisting the assistance of the other members. (R. 812.)

A meeting at Hubbard's home was held on March 1, at which the plan to kill the burglar was discussed; at the meeting, Hammonds told the group that Ki-Jana Freeman had an Xbox for sale and that it was the one taken from Hubbard's home. (R. 814.) Both Bates and Hammonds were familiar with Freeman, and Hammonds had purchased drugs from Freeman in the past. (R. 753–54, 813.) At the meeting, Bates volunteered to communicate with Freeman under the guise of wanting to buy acid to lure him to Spring Creek Apartments to be killed. (R. 753–61.) Young volunteered to purchase ammunition for Hubbard's SKS rifle. (R. 763.)

Young drove his girlfriend, Capote, and Capote's girlfriend to a store in Florence, where Young's girlfriend went inside and purchased the ammunition at Young's direction. (R. 876, 878.) They returned to Hubbard's home. From there, Young, Capote, Hamm, and Hubbard left at around 10:35 p.m. in a white Dodge

pickup for Spring Creek Apartments; Young drove with Capote in the passenger seat. (R. 764–65.) Bates stayed at Hubbard’s home and continued to communicate with Freeman while relaying information to the others, including what type of vehicle Freeman was driving and where Freeman would park. (R. 765–66.)

Meanwhile, Freeman waited in his blue Mustang at the rear of the apartment complex with his friend, Tyler Blythe, under the impression that he was meeting Bates to sell him acid. (R. 546, 548.) Young’s group arrived and shooting ensued, resulting in injury to Blythe and Freeman’s death. (R. 554–55, 561.) Surveillance video showed two men exiting the truck and firing at the Mustang; from the video, Hammonds and Bates identified Young and Capote as the driver and passenger, respectively. (R. 770–71, 832–33.)

After police learned of Young’s involvement in the shooting, Young led officers on a high speed chase into Tennessee, with Young eventually crashing his car and being arrested. (R. 960–63.) Police located the white Dodge pickup near Hubbard’s home, inside of which was a soda can that was subsequently determined to contain Young’s DNA. (R. 854, 1067.) Additionally, the fifteen cartridge cases collected at the scene as well as projectiles recovered from Freeman’s body were determined to have been fired from Hubbard’s SKS rifle. (R. 1196, 1203.)

At the conclusion of the guilt phase, the jury found Young guilty of capital murder and first-degree assault. (R. 1344.) Following the penalty phase, the jury unanimously found the existence of two aggravating factors: that Young was previously convicted of a violent felony, Ala. Code § 13A-5-49(2), and that Young

knowingly created a great risk of death to many persons, Ala. Code § 13A-5-49(3). (R. 1585.) The jury voted 11-to-1 that Young be sentenced to death. (R. 1585–86.) After weighing the aggravating and mitigating circumstances, the trial court followed the jury’s recommendation and sentenced Young to death. (C. 349–61.)

B. Direct appeal.

On appeal, Young argued that the trial court erred in allowing evidence of his gang involvement at trial, even though no objection was raised to the gang-related testimony before, during, or after trial. Young primarily relied on *Ex parte Boone*, 228 So. 3d 993, 996–97 (Ala. 2016), in which the Alabama Supreme Court held that evidence in that case of the defendant’s gang membership was not admissible under Rule 404(b) of the Alabama Rules of Evidence because there was no evidence that the murder had been gang affiliated. In his petition for discretionary review in the Alabama Supreme Court, Young argued the CCA’s holding conflicted with *Ex parte Boone*. Though Young cited *Dawson v. Delaware*, 503 U.S. 159 (1992), in his briefs to the Alabama appellate courts, he did so in passing and without any reference to the First Amendment.

Because “Young did not object to any of the many references at trial to Young’s gang affiliation,” the Court of Criminal Appeals (“CCA”) reviewed the issue for plain error only. *Young v. State*, CR-17-0595, 2021 WL 3464152, at *20 (Ala. Crim. App. Aug. 6, 2021). The CCA held that evidence of Young’s gang affiliation was relevant to his motive for participating in killing Freeman, observing:

The evidence at trial showed that Young was a member of the Almighty Imperial Gangsters. Although Young was a top-ranking member of the gang, Hubbard was the leader of the gang and was above Young in the hierarchy. After Hubbard's house was burglarized, Hubbard had a "business discussion" with the members and told them that he wanted to find and kill the person who broke into his house. (R. 744.) He asked the gang for their help. This meeting, which Young attended, took place in Hubbard's bedroom, where, according to testimony, Hubbard generally conducted gang-related business. When Hammonds told Hubbard that Freeman might be the person who broke into Hubbard's house, Hubbard and the other members of the gang planned to kill Freeman. This evidence of Young's gang affiliation—and especially his rank in the gang below Hubbard—was relevant to show Young's motive for participating in killing Freeman at Hubbard's behest.

Id. at *21. In response to Young's argument that, under *Ex parte Boone*, "a defendant's membership in a gang is inadmissible to show motive when the offense arose out of a personal dispute between the defendant and the victim, rather than out of gang-related animosity," the CCA distinguished *Ex parte Boone* from the facts of Young's case:

Here, though, the State did not advance as Young's motive a personal dispute between Young and Freeman unrelated to his (Young's) gang affiliation. Rather, the State's theory of Young's motive was that Hubbard, as the leader of the Almighty Imperial Gangsters, had a personal dispute with whoever broke into his house—who he believed to be Freeman—and that, because of that personal dispute, Hubbard rounded up other gang members to kill Freeman for him. So, regardless of Hubbard's personal dispute with Freeman that made him to want to kill Freeman, Young's motive for shooting Freeman was not personal animosity but carrying out his gang leader's wishes. Thus, evidence of Young's gang affiliation was admissible under Rule 404(b) to show Young's motive for killing Freeman.

Id. The CCA affirmed Young's convictions and death sentence. *Id.* at *56. The Alabama Supreme Court denied discretionary review.

REASONS THE PETITION SHOULD BE DENIED

The Court should deny the petition because Young did not present his First Amendment claim in the state courts and his claim would fail, even if he had preserved it. The CCA's conclusion that the evidence was relevant and not unfairly prejudicial was reasonable and satisfies *Dawson's* holding. The Court would first have to disturb the CCA's fact-bound determination as to the relevance of the evidence, making Young's case a poor vehicle to reach the constitutional question of whether Young's First Amendment rights were implicated by that evidence. Additionally, Young fails to show a conflict among jurisdictions in applying *Dawson*. His alleged conflict regards whether *Dawson* is equally applicable to guilt phases, but that would not have made a difference in the single case he cites to question *Dawson's* applicability at the guilt phase.

I. The Court Should Deny the Petition Because Young Never Raised His First Amendment Claim in the State Courts.

It is essential to the Court's jurisdiction under 28 U.S.C. § 1257(a) that a substantial federal question have been properly raised in the state-court proceedings. The claim Young presents in his petition—that, under *Dawson v. Delaware*, his First and Fourteenth Amendment rights were violated by the admission of gang-related testimony at the guilt phase of his trial—was not properly raised in the state courts. Young challenged the admissibility of the gang evidence primarily under state law,

with general references to the Constitution; he did not, however, raise a challenge based on the First Amendment or this Court's holding in *Dawson*.¹

Young failed to raise an objection at trial, and he argued on appeal that the gang evidence was inadmissible as improper collateral-acts evidence under Rule 404(b) of the Alabama Rules of Evidence and under Rule 403 due to unfair prejudice. Because Young failed to raise the issue at trial, the CCA could not grant relief unless the alleged error “seriously affect[ed] the fairness or integrity of the judicial proceedings.” *Ex parte Hodges*, 856 So. 2d 936, 947 (Ala. 2003); Ala. R. App. P. 45A. The CCA held that the trial court committed no error in allowing the testimony because “Young’s gang affiliation was admissible under Rule 404(b) to show Young’s motive for killing Freeman.” *Young*, 2021 WL 3464152, at *21. The court also held that the trial court “did not err in not sua sponte providing a limiting instruction to the jury about Young’s gang affiliation.” *Id.* at *24.

Young never presented an argument to the Alabama courts concerning *Dawson* nor claimed a First Amendment violation—much less urged the courts to make a constitutional ruling. He does so now for the first time, without establishing that his constitutional claim was properly presented in the state courts. *See Adams v. Robertson*, 520 U.S. 83, 86–87 (1997) (dismissing writ as improvidently granted where petitioner failed to show that the federal question was properly presented in

¹ At the very end of Young’s argument based on state law, he asserted that the admission of the evidence violated his “rights to due process, a fair trial, the presumption of innocence, and a reliable verdict, as protected by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Alabama law.” Young’s CCA Brief, at 28. It is telling that he did not throw in the First Amendment along with the others in his boilerplate conclusion.

state court); *see also* Sup. Ct. R. 14(g)(i) (stating that the petitioner must “show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari”). His petition should be denied for this reason alone. *See Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969) (“The Court has consistently refused to decide federal constitutional issues raised here for the first time on review of state court decisions. . . .”); *Bd. Of Dir. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1987) (“It is well settled that this Court will not review a final judgment of a state court unless ‘the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system.’” (quoting *Webb v. Webb*, 451 U.S. 493, 496–97 (1981))).

II. The Court of Criminal Appeals Correctly Applied General Evidentiary Principles of Relevancy to Conclude that Evidence of Young’s Gang Affiliation was Admissible, Satisfying *Dawson* and *Abel*.

This Court should deny Young’s petition because his assertion of error concerns “erroneous factual findings or the misapplication of a properly stated rule of law.” Sup. Ct. R. 10. To reach the issue of whether the evidence of Young’s gang affiliation implicated his rights under the First Amendment, Young asks the Court to make the highly fact-bound determination as to the relevance of that evidence to his trial.

In *Dawson*, this Court recognized that the First Amendment “does not erect a *per se* barrier to the admission of evidence concerning one’s beliefs and associations.” 503 U.S. at 165. Rather, a defendant’s First Amendment rights are not implicated where evidence of his beliefs or associations is relevant to a material issue at trial. *E.g., United States v. Abel*, 469 U.S. 45, 53 n.2 (1984) (First Amendment rights not

implicated by evidence of defendant's membership in prison gang, where evidence was relevant to prove bias of defense witness); *see also Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993) ("The First Amendment ... does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent.").

In Young's case, the CCA reasonably concluded that evidence of Young's gang membership was relevant to his motive for participating in the murder:

The evidence at trial showed that Young was a member of the Almighty Imperial Gangsters. Although Young was a top-ranking member of the gang, Hubbard was the leader of the gang and was above Young in the hierarchy. After Hubbard's house was burglarized, Hubbard had a "business discussion" with the members and told them that he wanted to find and kill the person who broke into his house. (R. 744.) He asked the gang for their help. This meeting, which Young attended, took place in Hubbard's bedroom, where, according to testimony, Hubbard generally conducted gang-related business. When Hammonds told Hubbard that Freeman might be the person who broke into Hubbard's house, Hubbard and the other members of the gang planned to kill Freeman. This evidence of Young's gang affiliation—and especially his rank in the gang below Hubbard—was relevant to show Young's motive for participating in killing Freeman at Hubbard's behest.

* * *

Here, though, the State did not advance as Young's motive a personal dispute between Young and Freeman unrelated to his (Young's) gang affiliation. Rather, the State's theory of Young's motive was that Hubbard, as the leader of the Almighty Imperial Gangsters, had a personal dispute with whoever broke into his house—who he believed to be Freeman—and that, because of that personal dispute, Hubbard rounded up other gang members to kill Freeman for him. So, regardless of Hubbard's personal dispute with Freeman that made him to want to kill Freeman, Young's motive for shooting Freeman was not personal animosity but carrying out his gang leader's wishes. Thus, evidence of Young's gang affiliation was admissible under Rule 404(b) to show Young's motive for killing Freeman.

Young, 2021 WL 3464152, at *21. Because the CCA, correctly applying general evidentiary principles of relevancy, reasonably concluded that evidence of Young's

gang membership was admissible as proof of his motive for participating in the murder, Young's case is not useful to reach the constitutional question of whether the First Amendment was implicated by the use of such evidence in his case. *See Fuller v. Johnson*, 114 F.3d 491, 498 (5th Cir. 1997) ("The issue in this case is not whether the Aryan Brotherhood evidence was relevant to Fuller's future dangerousness in the sentencing phase, nor whether the evidence was more probative than prejudicial. Those are not constitutional issues but evidentiary issues, properly considered under the Texas Rules of Criminal Evidence on direct appeal."), *cert. denied*, 522 U.S. 963 (1997).

To illustrate, the evidence of Young's gang membership bears little resemblance to the evidence at issue in *Dawson*, which allowed the Court to easily confront the constitutional question. At Dawson's capital sentencing hearing, the parties stipulated to the following being read to the jury:

The Aryan Brotherhood refers to a white racist prison gang that began in the 1960's 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, 503 U.S. at 162. The stipulation was read to the jury, and other evidence was introduced that Dawson had tattooed the words "Aryan Brotherhood" on his hand. *Id.*

Even though Delaware law allowed evidence of a defendant's character at capital sentencing, the Court concluded that the "narrowness of the stipulation," *id.* at 165, "proved nothing more than Dawson's abstract beliefs" and, without more, had no relevance to the proceeding thereby violating Dawson's rights under the First

Amendment. *Id.* at 167; *see also Turner v. Brannon-Dortch*, 21 F.4th 992, 997 (7th Cir. 2022) (“The irrelevance of the Aryan Brotherhood evidence is a key limit on *Dawson*’s reach. The decision does not extend to the admission of relevant evidence, even if the evidence concerns constitutionally protected conduct.”). Indeed, the Court noted that it would have been “a much different case” had the state introduced evidence showing more than Dawson’s abstract beliefs, such as evidence that the “Aryan Brotherhood is a white racist prison gang that is associated with drugs and violent escape attempts at prisons, and that advocates the murder of fellow inmates.” *Dawson*, 503 U.S. at 165.

In contrast, the evidence at Young’s trial spoke to much more than just his association with a gang, and it was not introduced merely to prove that he associated with a morally reprehensible group. *See generally Dawson*, 503 U.S. at 167 (“[O]n 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.”); *see also People v. Merriman*, 332 P.3d 1187, 1264 (Cal. 2014) (distinguishing *Dawson*, stating that “evidence of defendant’s membership in the SHD gang, and the gang’s shared antisocial beliefs, proved more than defendant’s association and abstract beliefs,” and that the “evidence was highly relevant to the circumstances surrounding the capital offense”). The evidence plainly showed that Young’s gang had planned and implemented a murder in retaliation to the burglary of the leader’s home. It was not merely Young’s association, but Young’s actions driven by that association that supplied proof of his motive to participate in the murder.

The determination of relevance is a fact-bound determination that generally is best left to the discretion of the trial court. *See Abel*, 469 U.S. at 54 (“Assessing the probative value of common membership in any particular group, and weighing any factors counseling against admissibility is a matter first for the [trial] court’s sound judgment under Rules 401 and 403 and ultimately, if the evidence is admitted, for the trier of fact.”); *see also Spring/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 387 (2008) (“With respect to evidentiary questions in general and Rule 403 in particular, a district court virtually always is in the better position to assess the admissibility of the evidence in the context of the particular case before it.”). Here, Young raised no objection to the gang evidence at trial, stripping the trial court of the opportunity to weigh in on the issue, and, for this reason, his claim was reviewed under Alabama’s more demanding plain-error rule on appeal. While this Court could review whether the alleged error of federal law was “plain,” the fact that it would be required to do so through that state law prism further makes Young’s case a poor vehicle for addressing the constitutional question.

Turning to Young’s argument that *Dawson* should require a “predicate demonstration of relevancy to introduce evidence of association,” Pet. at 12, that argument should be rejected because it finds no support from *Dawson* and would displace Alabama’s rules of forfeiture, waiver, and plain error. Even assuming that *Dawson* extends to general association evidence at the guilt phase, *Dawson* had nothing to do with a “predicate demonstration” as Young suggests. In fact, it would have been “a much different case” had the prosecution actually introduced the

evidence that it detailed in its proffer to the trial court. *Dawson*, 503 U.S. at 165. Young offers no reason the CCA was unable to adequately assess the relevance of the gang evidence in his case or, for that matter, why this Court is in a better position to make that same determination. He cites to no case where an appellate court has declined to determine the relevancy of evidence and granted relief due to the prosecution's failure to make a proffer. Remanding the case to require the prosecution to make a relevance proffer would do nothing for Young's case, but it would waste judicial resources and reward Young's failure to properly raise his issue in the trial court.

Young's suggestion that the Court should require the prosecution to offer a predicate for associational evidence similar to *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Crawford v. Washington*, 541 U.S. 36 (2004), ignores that, under Alabama law, an objection is required to trigger the State's obligation to lay the proper predicate under *Miranda* and *Crawford*. See, e.g., *Ex parte Smith*, 832 So. 2d 89, 91 (Ala. 2001) ("His objection required the State to establish a proper *Miranda* predicate."); *Tinker v. State*, 932 So. 2d 168, 189 (Ala. Crim. App. 2005) (holding that appellant's *Crawford* argument was not preserved where issue not raised at trial); *Thomas v. State*, 155 So. 3d 270, 273–74 (Ala. Crim. App. 2013) (holding that defendant's objection at trial not specific enough to preserve his *Crawford* argument on appeal).

III. Young's Petition Fails to Show a Genuine Conflict.

Young appears to allege that jurisdictions are in conflict as to whether *Dawson* is applicable to the guilt phase of a capital trial. Pet. at 12. Even if that were the case, Young does not allege that courts are in conflict as to the precise legal rule or that courts are reaching different results when addressing the same issue. Indeed, in *Boyle v. Johnson*, the sole case Young cites as questioning whether *Dawson* applies to the guilt phase, the Court of Appeals for the Fifth Circuit assumed that *Dawson* did apply to the guilt phase and concluded “that a sufficient nexus existed to allow consideration of the evidence at issue,” 93 F.3d 180, 185 n.9 (5th Cir. 1996), satisfying *Dawson*'s holding. In short, none of the cases cited by Young indicate any sort of doctrinal conflict that needs to be resolved by the Court.

CONCLUSION

For the above-mentioned reasons, the Court should deny certiorari.

Respectfully submitted,

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