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# Recent Developments: Dawson v. State: Enforcement of State's Drug-Free School Zone Statute during Non-School Hours Held Constitutional

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§ 611, cmt. c). The court found that this caveat did not apply to Dr. Rosenberg because there was nothing in the record to suggest that he intended in bad faith to harm Mr. Helinski by his testimony or the statements made to the news media. Dr. Rosenberg testified as an expert witness and his statements to the news media "accurately and fairly recounted the substance of his testimony." *Rosenberg*, 328 Md. at 686, 616 A.2d at 877.

*Rosenberg v. Helinski* is significant because the Court of Appeals of Maryland addressed an issue which is certain to arise again; the right of the public to reports of judicial proceedings, and the legal privilege extended to those who make fair and accurate reports.

-Bonnie S. Laakso

### ***Dawson v. State: ENFORCEMENT OF STATE'S DRUG-FREE SCHOOL ZONE STATUTE DURING NON-SCHOOL HOURS HELD CONSTITUTIONAL.***

In *Dawson v. State*, 329 Md. 275, 619 A.2d 111 (1993), the Court of Appeals of Maryland upheld the constitutionality of the state's drug-free school zone statute, which prohibits the distribution of controlled dangerous substances within 1,000 feet of a school's perimeter. After reviewing whether the statute's objective of protecting children from the dangers of the drug trade is constitutionally achieved by the statute's broad imposition of criminal liability on offenders during non-school hours, the court found that the statute does not offend the due process requirements of either the United States Constitution or the Maryland Constitution.

During the course of an undercover drug operation in Harford County, county deputies purchased a quartergram of cocaine from Stacey Eugene Dawson ("Dawson"). The transaction occurred within 1,000 feet of Halls Cross Elementary School, at approximately 9:30 p.m. After the sale, a uniformed officer returned to the scene and arrested Dawson.

Dawson was indicted by the Grand Jury for Harford County for unlawful distribution of a controlled dangerous substance, under Md. Ann. Code art. 27, § 286(a)(1) (1957, 1992 Repl. Vol.), and for unlawful distribution of a controlled dangerous substance within 1,000 feet of school property, under Md. Ann. Code art. 27, § 286D ("§ 286D"). A jury in the Circuit Court for Harford County found Dawson guilty on both counts. Dawson appealed to the Court of Special Appeals of Maryland, but prior to its review of the case, the Court of Appeals of Maryland granted certiorari.

After first rejecting Dawson's contention that the evidence was insufficient to convict him, the court focused on Dawson's argument that § 286D, Maryland's drug-free school zone stat-

ute, violated the equal protection clauses of both the United States Constitution and the Maryland Declaration of Rights. Dawson argued that the statute's objective of protecting children from exposure to drug activities was not served by its imposition of criminal liability during non-school hours. The court explained that Dawson was alleging a "direct" substantive due process challenge by claiming that the statute was not reasonably related to the goal it intended to serve and that in the face of such a claim, a determination must be made whether the statute "bears a real and substantial relation to the public health, morals, safety, and welfare of the citizens of this state." *Dawson*, 329 Md. at 283, 619 A.2d at 115 (quoting *Bowie Inn v. City of Bowie*, 274 Md. 230, 236, 335 A.2d 679, 683 (1975)). If this test is satisfied, the statute will be upheld.

In applying this test to § 286D, the court first examined the statutory language and found that the statute was aimed at decreasing schoolchildren's drug use and enriching their educational environment by creating a drug-free school zone. *Dawson*, 329 Md. at 285, 619 A.2d at 116. In addition, the court determined that the statute sought to limit schoolchildren's exposure to the negative environment and crime associated with the drug trade by shielding them from such activity. *Id.* In light of these purposes, the court rejected Dawson's substantive due process challenge and found that a twenty-four hour prohibition against drug activity in school zones was a legitimate method of accomplishing the statute's purposes. *Id.*

The court next considered Dawson's argument that the drug-free school zone statute was overbroad due to its imposition of criminal liability during non-school hours. *Dawson*, 329 Md. at 286, 619 A.2d at 116. The court, however, rejected Dawson's characterization of both school ground activities and the drug market, and found that the presence of children in school areas is not predictable, particularly in light of the

extracurricular, community, and social activities which occur at or near schools. *Id.* Therefore, the court noted that children often may be present in school areas during non-school hours. *Id.* In addition, the court emphasized that the statute was not aimed at regulating the hours of drug marketplaces, but instead at deterring such activity within school zones entirely. *Id.* The court reasoned that preventing a school zone from becoming known as a drug market would reduce children's exposure to drug activities by discouraging the presence of persons involved in drug activities and reducing the litter of drug paraphernalia. *Id.* Furthermore, the court recognized that one of the purposes behind the statute was to make the risks associated with drug activity within a school zone outweigh the potential for drug profits. *Dawson*, 329 Md. at 286, 619 A.2d at 116-117. Thus, the court concluded that the statute was a reasonable and rational method of achieving the state's goals, and accordingly, was constitutional. *Dawson*, 329 Md. at 287, 619 A.2d at 117.

The court completed its analysis by comparing Maryland's drug-free school zone statute with its federal counterpart, 21 U.S.C. § 845a, and with similar statutes in other states. The court noted that allegations similar to those

made by Dawson have been rejected in federal courts on the ground that the objective of the federal drug-free school zone statute could not be achieved by allowing drug activity during non-school hours. *Dawson*, 329 Md. at 288, 619 A.2d at 117-18 (quoting *United States v. Crew*, 916 F.2d 980, 983 (5th Cir. 1990)). In addition, the court emphasized that its holding was in accord with all other states which have reviewed the constitutionality of similar statutes. *Dawson*, 329 Md. at 288-89, 619 A.2d at 118.

In *Dawson v. Maryland*, the Court of Appeals of Maryland held that Maryland's drug-free school zone statute does not violate the equal protection or due process clauses of either the United States Constitution or the Maryland Constitution. In so holding, the court took a positive step in fighting the drug war which plagues this country by recognizing that Maryland's drug-free school zone statute legitimately functions to protect children from the evils of the drug trade. The court's decision has placed Maryland in accord with both federal and nationwide state law, and therefore, has created a more unified front in fighting the war on drugs.

-Kimberly A. Kelly

***Patrick v. State: RESULTS OF POLYGRAPH TESTS ARE DISCOVERABLE AS "SCIENTIFIC TESTS."***

In *Patrick v. State*, 329 Md. 24, 617 A.2d 215 (1992) the Court of Appeals of Maryland held that non-exculpatory polygraph test results of potential witnesses qualified as "scientific tests" within the meaning of Maryland Rule 4-263(b)(4), and were therefore discoverable by a defendant upon request. Though this holding has no effect upon the admissibility of polygraph test results as evidence at trial, it makes them available to the defendant as an investigatory aid for the purpose of preparing his defense.

Delmar William Patrick, III ("Patrick") was charged with the murder and attempted rape of a thirteen year old girl whose body was found in a wooded area near his home. Originally, Patrick denied any involvement in the crime, stating that had he found the girl's body but had been afraid to tell anyone. Subsequently, he provided various conflicting admissions and accounts. During the investigation, police experts for the State conducted polygraph tests of several potential witnesses. Patrick sought discovery of these test results including the questions asked, the responses given, and the tracings made by the polygraph machine. The State, however, refused to comply with his pretrial discovery motions.

At trial, Patrick renewed his efforts to obtain the polygraph test results and informed the court of the State's failure to cooperate. Patrick argued that he was entitled to this information under Maryland Rule 4-263(b)(4) even though the materials were not admissible in evidence. The relevant portions of this criminal discovery rule provides for the disclosure of reports, including the results of any scientific test, made in connection with experts consulted by the State, upon the defendant's request. The Circuit Court for Cecil County denied Patrick's motion to compel dis-