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⌘ Vol. 14, No. 43, November 6, 2006

Case Name: *Jesse Chaddock v. The State of Texas*

- OFFENSE: Engaging in Organized Criminal Activity (Aggravated Assault)
- COUNTY: Dallas
- C/A CASE No. 05-05-0609-CR
- DATE OF OPINION: October 13, 2006
- DISPOSITION: Conviction Affirmed
- OPINION: Francis, J.
- TRIAL COURT: Cr D/C 4: Hon. John Cruetzot
- LAWYERS: Russ Henrichs (Defense); Lisa Braxton-Smith (State)

⌘ **276.06 Extrinsic Offenses / Signature" or Similar Offenses:** Appellant was convicted of engaging in organized criminal activity by committing aggravated assault while acting as a member of a criminal street gang, the offense having occurred in 2004. Appellant complains that the trial court erred by allowing the State to impeach him with the facts of an aggravated assault that occurred in 1996, for which Appellant had successfully completed a deferred adjudication probation. Appellant had been a member of the racist Confederate Hammerheads (CH) since 1996, and badly beat a man while in the company of other gang members eight years later. Appellant complained that the introduction of these facts violated Rules 609(b), 401, and 403, Tex.R.Evid.

Holding: Rule 609 is not implicated because no evidence of the deferred adjudication probation was ever introduced. The evidence was relevant and admissible because the State was required to prove that Appellant and his companions "continuously or regularly associate in the commission of criminal activities." The 1996 attack was a classic CH racist attack on a Hispanic man and an African-American security guard. The attack was the first in a string of attacks against ethnic minorities or people with non-racist views, this case being just the latest. Evidence of prior gang-related attacks is admissible to prove that the latest attack was also gang-related. Additionally, the trial court gave a limiting instruction, minimizing the potential or improper influence on the jury.

⌘ **276.02 Extrinsic Offenses / Used for Impeachment or Rebuttal ("Opening the Door"):** Appellant also complained about the introduction of extraneous threats and assaults involving six other victims. A police officer testified that she had established, through interview witnesses, that Appellant was a gang member. Defense counsel insinuated that the view that Appellant was a current gang member was not corroborated and was arrived at by ignoring contrary evidence. On re-direct, over Appellant's objection that the evidence was more prejudicial than probative, the officer further testified that Appellant had assaulted four men and threatened two other men between 2000 and 2004. The officer characterized these assaults, one against an African-American and the others against non-racist skinheads, as gang-related. Several of the victims were allowed to testify. The jury was charged that they could only consider the evidence to determine "the defendant's intent, motive, or membership in a criminal street gang, and for no other purpose."

Holding: The testimony was admissible because defense counsel opened the door, and the other offenses were gang-related, thus establishing Appellant's intent, motive, and membership in a street gang. The evidence was not unduly prejudicial, in that the jury had already heard evidence about the brutality of the instant offense. Therefore, the evidence was highly probative, and only marginally prejudicial.

§ 276.02 Extraneous Offenses / Used for Impeachment or Rebuttal (“Opening the Door”): Appellant objected under Rule 403, Tex.R.Evid., to a transcript of a 2003 telephone interview given by CH gang member and co-founder Sean Tarrant, a close friend of Appellant who was at least present during the instant offense. The interview was broadcast on "Panzerfaust Internet Radio 88." In the interview, Tarrant described in detail his involvement as a founding member of the Hammerskin Nation, the skinhead movement generally, Tarrant's time in prison, and Tarrant's belief that "once a skinhead, always a skinhead." Tarrant advised listeners to blend in and not to commit felony crimes, but included epithets against African-Americans and homosexuals. The exhibit was admitted to rebut Appellant's contention that Tarrant was no longer an active gang member. Appellant objected to SX 75 because it contained extremely objectionable language and a discussion about how to deal with informants. Appellant contended that, although Tarrant was present during the instant offense, Tarrant did not participate in the assault, and there was no conspiracy to commit assault.

Holding: The interview is probative because it supports the testifying officer's opinion that Appellant is a current gang member, undermines Appellant's credibility by disputing his testimony regarding Tarrant's current views, and suggests that Appellant's purported efforts to distance himself from the gang and cover his tattoos was merely a subterfuge to disguise his continuing gang membership. Tarrant's presence at the scene makes Appellant's continuing gang membership more likely. Witnesses testified that Tarrant collaborated in the assault by providing support for Appellant, pulling Appellant away so that he would not be arrested, lying to cover for Appellant, returning to taunt the complainant, and advising Appellant afterward. An agreement to perform a common project may be inferred when each group member's actions is consistent with realizing the common goal. Although Tarrant did not assault the complainant, one need not perform a criminal act to engage in organized criminal activity. Evidence demonstrating Tarrant's involvement in CH is highly relevant and probative.

§ 292 Hearsay & Confrontation / Oral Statements: Appellant also objected that the Tarrant interview constituted inadmissible hearsay. The State argued that Tarrant's comments were statements against interest, while the interviewer's comments were not offered to prove the truth of the matter asserted, but merely to contextualize Tarrant's comments. The State later argued that Tarrant's comments were not admitted to prove their truth, either, and that the evidence was admissible to support the testifying officer's opinion about Appellant's continuing gang membership.

Holding: As the State focused on the interferences that could be drawn from Tarrant's interview rather than the substance of the interview, SX 75 was not inadmissible hearsay. Alternatively, Tarrant's interview contained statements against interest that would subject the declarant to hatred, ridicule or disgrace such that a reasonable person would not have made those statements unless they were true.

§ 310 Cross-Examination & Impeachment: Facts: Defense witness Beggs testified that Tarrant has abandoned the skinheads and his racist beliefs. The State introduced SX 74, the lyrics to two songs by Tarrant's band, the Bully Boys, a "white power" musical group. The first song, "Jigrun," describes a group excitedly preparing to assault African-Americans. The second song, "Six Million More," advocates the mass extermination of the Jews. Appellants objected to the admission of SX 74 because its probative value was substantially outweighed by the danger of unfair prejudice.

Holding: Appellant's argument is only addressed to "Six Million More," and not "Jigrun," which is highly probative, because this assault occurred because as a result of the complainant's objecting to the Appellant flicking a lit cigarette at an African-American. The evidence is admissible because the testifying officer's opinion about Appellant's continuing gang membership is grounded in Appellant's relationship with Tarrant. The evidence also reflects Tarrant's intent and motivation in gathering with his associates on the night of the offense and is relevant to Appellant's intent and motivation in assaulting the complainant. The evidence also damaged Beggs's credibility because he listened to and promoted this vile material. Assuming that the introduction of the lyrics of "Six Million More" was error, it was harmless. The jury was already aware that Appellant had Nazi tattoos and the testimony, taken as a whole, amply demonstrated

Tarrant's and Appellant's animosity toward ethnic minorities. There was also another song introduced into evidence, "Hammerskins," which outlined the group's violent ideology.

Sidebar: ([Karyl Anderson Krug](#)) Nice job by Judge Francis. We often complain about not having enough detail in opinions - there was detail a-plenty in this opinion. If you Google "Bully Boys," you will discover that the song titles named in the opinion are not even close to the most offensive song titles in the "White Power" or "Hate Rock" catalog. I guess the question I have is, why go to all the trouble to prove up this gang affiliation, with all the apparent evidentiary twists and turns attendant, when this was already a perfectly horrible assault to begin with? The Appellant got 19 years, so all the extra effort and risk in defending this conviction on appeal did not gain anything for the State.

Ed Note: Appellant also made a legal sufficiency claim, but the analysis is too fact-specific and non-meritorious to be of any importance.