

STATE OF TENNESSEE, ex rel,
NEAL PINKSTON
DISTRICT ATTORNEY GENERAL

vs.

GANGSTER DISCIPLES,
And
GRAPE STREET CRIPS

NO(S): 299828, 299829

CRIMINAL COURT, DIVISION I
11TH JUDICIAL DISTRICT
CHATTANOOGA, HAMILTON COUNTY
TENNESSEE

PROCEDURAL HISTORY

A Verified Petition for Abatement of a Nuisance and Request for Injunctive Relief was filed on September 25, 2016. On October 3, 2016 the Court conducted a hearing and on December 20, 2016 entered an Order for Temporary Injunctive Relief. Thereafter multiple pleadings have been filed and discovery, including the taking of depositions, has been concluded. The Court conducted a trial on April 17, 2018. Testimony during the trial established that the Chattanooga Police Department had not yet instituted any enforcement action in regard to the Injunction (See Transcript of Hearing on Petition for Permanent Injunction, April 17, 2018, p. 32 line 12 - line 16). On the trial date the Court sustained the State's Motion to Dismiss Demetrius Buchanan from the Temporary Injunction. Also Norman Williams exercised his right to "opt-out" by renouncing his involvement with the Gangster Disciples and was dismissed from the Temporary Injunction pursuant to § 29-3-110(b)(4). On June 19, 2018 a post-trial brief in support of a Motion in Limine and Motion to Dismiss was filed on behalf of several defendants. On August 7, 2018 the State filed a post-hearing brief in support of a Permanent Injunction.

FILED IN OFFICE
2018 OCT -8 PM 3:15
VINCE DEAN, CLERK

SUMMARY OF TESTIMONY

Investigator Curtis Penney

On October 3, 2016 Investigator Curtis Penney of the Chattanooga Police Department testified that he is assigned to the Department's Organized Crime Division within the Criminal Intelligence Unit. This unit collects crime data in efforts to identify perpetrators of violent crime and to "do targeting" and "direct resources". Investigator Penney explained a "Gang Validation Process" as a standardized method utilized by the Chattanooga Police Department to assess the affiliation of individuals with specific gangs. He testified that a "standardized" form is utilized and that the form has been developed through the Tennessee Gang Investigators Association in conjunction with the National Gang Investigators Association. The "validation" is a points based determination with points attributed for self admission, displaying gang signs and/or symbols and/or communication or contact with other gang members or associates. He explained that when an individual accumulates a total of ten points then he is considered a "validated" gang member.

Investigator Penney testified that he is familiar with the Gangster Disciples in Chattanooga as a result of his work in the Criminal Intelligence, Street Crimes Response and Crime Suppression Units of the CPD. He also has been assigned, while in patrol, in East Chattanooga where Crips, Rolling 60 Crips, Five Deuce Hoover Crips and "a lot of Gangster Disciples" were predominant. Investigator Penney explained that he educated himself about various gangs in the Chattanooga area while he was in patrol.

Investigator Penney explained that the Gangster Disciples originated in Chicago during the late 1960's to early 1970's and that the gang's activities included extortion,

murder for hire and the dissemination of drugs. He described an organizational structure including a Board of Directors, Overseers and Security Detail. He testified that Chattanooga has a "Governor of the City", a "Chief of Security" or "Area Coordinator" or "Education Coordinator" and an "Exercise Coordinator". He also explained that directives for the organization are within a "blueprint" referred to as the "Book of Knowledge".

Investigator Penney identified Thaddeus Montgomery and Antonio Watkins as members of the Gangster Disciples. He testified that ranks within the organization are not stationary but that the last documented rank for both of these men were as "Chief Enforcer, Chief of Security". The investigator referenced Exhibit 6 for identification, Mr. Watkins' Gang Validation Form, and testified that Mr. Watkins form indicates a total of 15 points. He also referenced Exhibit 7 for identification, the Gang Validation Form pertaining to Mr. Montgomery. Mr. Watkins has never admitted gang involvement to Investigator Penney, he has no gang tattoos and his alleged self admission was arguably equivocal.

Investigator Penney testified that he is familiar with the Grape Street Crips from his work in patrol and the Gang Unit of the CPD. He explained that the structure of the gang is not as elaborate as that of the Gangster Disciples but that the gang has "central focus persons" who "head up the gang itself". He testified about his familiarity with Guy Wilkerson and identified him as the central focus person with the Grape Street Crips in Chattanooga, the "shot caller" and "leader". Penney referenced the Gang Validation Form pertaining to Mr. Wilkerson, marked as Exhibit 8 for identification, in which Mr. Wilkerson received 17 points. The District Attorney General tendered deposition testimony of Guy Wilkerson from September 1, 2016, marked as Exhibit 9, evidencing Mr. Wilkerson's admission that he was "calling the shots" in 2015.

Investigator Penney estimated that the Gangster Disciples in Chattanooga have a membership total of 100-200. Penney testified that the gang has engaged in a pattern of criminal activity for the last 20 plus years in Chattanooga. He submitted a sworn "verification", in support of the State's petition.

Investigator Penney estimated the number of the Grape Street Crips to be 10-15 and testified that the gang operates in a very small area. Investigator Penney testified that he had reviewed the criminal histories of the individuals noted in the Petition and alleged to be gang members. He testified that the histories met the statutory requisites necessary to establish a pattern of criminal gang activity. He testified that both gangs have ties in and around the East Lake area.

Investigator Penney testified that one of the activities of the Grape Street Crips is the commission of criminal acts. The investigator explained that this knowledge has been gained by examining the criminal offenses that have been committed and examining whether the individuals who were together at the time of the events were gang members and also from the divulging of information from "confidential sources".

Investigator Penney later testified in the April 17, 2018 trial. He presented an exhibit purporting to illustrate the differences in the numbers of crimes recorded in the East Lake area during the 2016 and 2017 years. The statistics illustrated a marked reduction in the number of violent crimes reported in the East Lake area after the entry of this Court's Temporary Injunction Order.

Chief Fred Fletcher

Fred Fletcher, then chief of the Chattanooga Police Department, testified as an expert witness pertaining to gangs. He testified that he was familiar with the East Lake

area. He described the area as one of the busiest in town. At the time of his testimony, Chief Fletcher had been acting chief for two years in Chattanooga, and immediately prior for twenty years was employed in the Austin, Texas Police Department.

He testified that gangs exist for the socialization provided by a group so that gang members rarely act alone or independently and that congregations of gang members, whether physically present or through a virtual presence, via social media, cause crime issues.

Chief Fletcher testified that the City of Chattanooga was divided into three police sectors and that the vast majority of murders and shootings occur in the Baker sector which includes East Lake. He described East Lake as an area of town that routinely "pops up" in "heat maps" illustrating locations of prevalent street, gun and gang violence. He was not able to testify about the percentages of homicides, gun or drug crimes comparatively between the police sectors in Chattanooga because he had no statistics in his possession at the time of his testimony. However, he testified that although gang members are transient by nature, the crimes they commit occur "overwhelmingly" in the East Lake area and that the Gangster Disciples and Grape Street Crips operate "criminally significantly" in the area around East Lake.

Felix Vess

Felix Vess testified in his capacity of Chief of the Chattanooga Housing Authority Police Department. According to Chief Vess, the department investigates drug crimes, violent crimes and pro-actively polices the Housing Authority properties. One such property is located in East Lake and is called the East Lake Courts. The police department office is actually located within the East Lake Courts.

He described the high definition cameras located within the Housing Authority properties as well as the expense associated with the cameras. He testified of his familiarity with the Gangster Disciples and the Grape Street Crips and that gang members frequent the area in and around the East Lake Courts "representing or intimidating". During his testimony, a series of video recordings, recorded by the high definition cameras, were displayed illustrating gun violence or gun possession, each occurring within months immediately preceding the hearing, with only one being attributable to a named subject of the Petition, Ronnie Dobbins. Chief Vess knows that Ronnie Dobbins is a Gangster Disciple. According to Vess, Dobbins is not a resident of East Lake Courts and is on the No Trespass list. He has been twice arrested for Possession of a Firearm while on the property. The recordings which did not include Mr. Dobbins illustrated actions of perpetrators whose identities were not readily apparent. Vess testified that "a lot" of incidents like illustrated on the videos "lead back to gang members". The incident from the April 16, 2016 at 2:00 p.m. video involved gun shots fired from moving vehicles at pedestrians on 4th Avenue and Vess testified that these vehicles belong to Gangster Disciples.

Kimberly George

Kimberly George testified that she is the Director of Marketing and Development for the Salvation Army, located in the East Lake area, where she has been employed for twenty years. This location houses a six-county Social Service Department and Community Center. She testified regarding the safe haven provided by the Salvation Army, the heightened crime in the area around the Community Center and its impact, particularly upon children. She hears from children and adults of the community that there

are gangs in the community.

Ricky Etherton

Ricky Etherton testified that he is the Chief Financial Officer for Adman Electric, an electrical contractor located in East Lake. He testified regarding security measures employed by his company to prevent theft and the related costs. He testified about a work van being stolen recently. There was no direct evidence of any gang activity related to the stolen van.

Debbie Gray

Debbie Gray testified that she is employed as Executive Vice President of the Chattanooga Boys and Girls Clubs. The clubs have an East Lake location across the street from the East Lake Courts Housing Project. The club has implemented a lock down procedure in cooperation with the Chattanooga Police Department due to the number of gun fire/violent incidents that occur in the immediate vicinity of the club.

Ruthie Wright

Ruthie Wright, an elderly resident of East Lake, testified that she has lived in the community for five years. She has observed crime and violence in the area, including drive by shootings. She also has observed drug sales and the hiding of guns while viewing the area from her front porch. She has been warned to be careful where she walks because she has been vocal about the problems in the community related to violence and crime and she characterized herself as being perceived as a "snitch". Because she has reported her concerns of safety to the police she had at the time of the hearing police protection.

GANG VALIDATION FORMS

Gang Validation Forms are not admissible as substantive evidence because they are records or reports of matters observed by police officers and other law enforcement personnel, expressly excluded by Tennessee Rule of Evidence 803(8).

The State argues that Gang Validation Forms are admissible pursuant to Tennessee Rule of Evidence 803(6), Records of Regularly Conducted Activity. This rule is commonly referred to as the “Business Records” exception. Defendants Jonathan Horton, Perry Thomas, Horatio Houston, and Guy Wilkerson argue that the Forms are not admissible because the threshold requirements of Rule 803(6), defining what constitutes a “business record”, have not been satisfied. The Post Trial Brief in support of their Motion in Limine and Motion to Dismiss argues that:

- 1) there is no requirement that the person creating the record do so at or near the time of the event;
- 2) there is no requirement that the record be compiled by a person with knowledge;
- 3) there is no business duty to record or transmit;
- 4) it is not the regular practice of the Chattanooga Police Department to make the report; and
- 5) the source of information or method or circumstances of preparation indicate a lack of trustworthiness.

Some of the arguments in the brief are persuasive, but no findings of fact or conclusions of law are necessary regarding the application of 803(6), because the admissibility of these Forms is controlled instead by Rule 803(8).

Rules 803(6) and 803(8) pertain to “Records of Regularly Conducted Activity” and to “Public Records and Reports”, respectively. Both rules are substantially similar as they

pertain to records, reports and data compilations, to activities of the entity and matters observed pursuant thereto, in requiring a duty to report and/or record, and in requiring indices of trustworthiness. Significantly, the rules are distinguishable, as Rule 803(6) pertains generally to a “business, institution, profession, occupation, and calling of every kind, whether or not conducted for profit”, but Rule 803(8) pertains specifically to “public offices or agencies”. The distinguishing point most relevant to the issue before this Court is that 803(8) applies specifically to public entities, like the Chattanooga Police Department, but expressly prohibits the admission of police reports.

The advisory commission comment to Rule 803(8) cites McBee v. Williams, 56 Tenn. App. 232, 405 S.W. 2d 668 (1966), and T.C.A. 55-10-114(b), both excluding traffic accident reports. The McBee Court concluded that excluding the contents of a traffic accident report was in accord with fundamental rules of evidence because information in such a report could contain an opinion or conclusion thus invading the province of the fact finder. The holding of the McBee Court was limited to a traffic accident report, but the opinion was rendered prior to the adoption of the Tennessee Rules of Evidence in 1990. These rules, now codified, in 803(8) include “records, (and/or) reports, (and/or) statements . . . in any form of public offices or agencies . . . setting forth the activities of the office . . . excluding, however, matters observed by police officers and other law enforcement personnel.” (Emphasis added.) The codified Rule of Evidence does not limit the prohibition of 803(6) to only traffic accident reports. Furthermore, case law subsequent to the adoption of the Tennessee Rules of Evidence does not limit the application of this rule to accident reports. In State v. Thompson the Court of Criminal Appeals, considering the appeal of a rape conviction, referenced “the general inadmissability of police reports” when

called upon to consider whether the trial court correctly excluded a police report pertaining to the investigation. 36 S.W. 3d 102, 109 (Tenn. Crim. App. 2000).

While records of the Chattanooga Police Department arguably could be included within the breadth of Rule 803(6), such records are clearly and directly controlled by the specific and narrow parameters and prohibition of Rule 803(8). This conclusion is consistent with general principles of statutory construction and interpretation. "Where a conflict is presented between two statutes, a more specific statutory provision takes precedence over a more general provision." Lovlace v. Copley, 418 S.W. 3d 1, 20 (Tenn. 2015) citing Graham v. Caples, 325 S.W. 3d 578, 582 (Tenn. 2010). Because reports of matters observed by police officers and other law enforcement personnel may not be admitted in evidence pursuant to this Rule, this Court will not consider the Gang Validation Forms as substantive evidence.

PETITION AND VERIFICATION

The Petition for Abatement of a Nuisance and Request for Injunctive Relief, with the contemporaneously filed, sworn, and notarized Verification of Detective Curtis Penney was sufficient for this Court's Order of Temporary Injunction awarded in accordance with TCA § 29-3-105. The Temporary Injunction has remained in full force and effect while the parties conducted discovery, see TCA § 29-3-109, and while this matter has been under advisement after the trial and while this Court has considered the post-trial briefs.

Each Answer filed by defendants in response to the Petition and Verification demands strict proof of the petitioner's allegations. TCA § 29-3-108 and 29-3-110(b)(1), (2) clearly require a "trial" in which the petitioner may attempt to prove a Nuisance "through

the testimony of a Fact Witness, an Expert Witness, or a combined Fact - Expert Witness pursuant to the Rules of Evidence.”, by clear and convincing evidence. TCA § 29-3-110(b)(1).

The Petition and Verification was served on individuals named in the Petition, and was, during the October 3, 2016 hearing, a subject of inquiry from Attorney Hill relative to alleged apparent differences in multiple forms served. This Court then Ordered two Petitions to be marked as Exhibits 3 and 4, for identification. Pursuant to a subsequent Motion by Attorney Hill, the Court Ordered that a third such copy of the Petition and Verification be marked as Exhibit 5 for identification. None of these Exhibits were admitted into evidence in the April 17, 2018 trial as they remained only marked for identification from the prior hearing. Had any Petition and Verification been tendered as a trial exhibit, then such could have been considered by the Court, subject to any objection, for admission into evidence.

Penney's Verification, in paragraph 5, references his familiarity with street gangs, their activities and their membership. The Petition avers that he has interviewed gang members. His verification also attributes his familiarity to his review of “records” and his case notes, personal knowledge and experience with these gangs. Investigator Penney's Verification in paragraphs 6 and 7 references “records” and, after considering his testimony, the Court concludes these records are primarily Gang Validation Forms. This Court has determined that Gang Validation Forms are not admissible as substantive evidence.

Penney's testimony did little to establish that his knowledge regarding which individuals are gang members was firsthand as he repeatedly, related to this issue,

referred to information gathered by others and documented in the Gang Validation Forms. (Transcript of 10/3/2016 Hearing p. 82 line 18 - p. 84 line 22, p. 130 line 5 - p. 143 line 15). Therefore, even had the Petition and Verification been admitted as a trial exhibit, it would have been insufficient, without additional supporting testimony, to satisfy the multi-faceted requirements of the Nuisance Statute, which requires proof by clear and convincing evidence.

NUISANCE CASE LAW

The lack of Tennessee case law relevant to the issues herein has resulted in this Court's consideration of decisions from the State of California which has a similar Nuisance Statute and an extensive history of law enforcement efforts directed against gangs. The Courts there "have recognized that the inquiry as to whether an individual is an active gang member is a fact-intensive one, whereby 'determining whether someone is involved and the level of involvement is not a simple matter' " (People v. Sanchez 18 Cal. App. 5th 727), "Determining whether an individual is an active gang member presents a considerable risk of error. The informal structure of gangs, the often fleeting nature of gang membership, and the lack of objective criteria in making the assessment all heighten the need for careful fact finding." (Vasquez v. Rackauckas 734 F. 3d 1025) Regarding the enforcement of a nuisance order the Sanchez Court expressed concern regarding the reliability of factors used by a gang investigator in the Stanislaus County District Attorney's Office to determine gang membership including associating with gang members, jail classifications, use of hand signs, symbols, words or phrases associated with the gang, wearing of gang attire or colors, gang tattoos and prior admissions of gang membership.

CRIMINAL GANG AS A NUISANCE

TCA. 29-3-101(a)(2)(B) defines a “**Nuisance**” as a “**criminal gang**, as defined by TCA 40-35-121(a)”.

§ 40-35-121 defines a “**criminal gang**” as:

(a)(1) “a formal or informal ongoing organization, association or group consisting of three (3) or more persons”

The Court finds from the testimony of Investigator Penney, Police Chief Fletcher, Chief Vess and the testimony of Guy Wilkerson, (see Exhibit 9), that the Gangster Disciples and Grape Street Crips are formal or informal groups consisting of three (3) or more persons.

To constitute a “**criminal gang**” § 40-35-121 also requires the organization to have:

(a)(1)(A) as one (1) of its primary activities, the commission of criminal gang offenses;

“**Criminal gang offense**” per § 40-35-121(a)(3) means:

- A criminal offense committed prior to July 1, 2013 in which the defendant knowingly caused or threatened to cause death or bodily injury to another; or
- Resulted or was intended to result in the defendant’s receipt of income, benefit, property, money or anything of value from the commission of any aggravated burglary, or sale, delivery or manufacture of a controlled

substance or analogue, or firearm; or

- The commission of or attempt to commit, facilitate, solicit or conspiring to commit any of 27 enumerated crimes on or after July 1, 2013.

The Court finds that most of the testimony and Exhibits from the October 3, 2016 hearing and the April 17, 2018 trial was/were insufficiently specific to establish, by clear and convincing evidence, that either the Gangster Disciples or Grape Street Crips **has, as a primary activity**, the commission of **criminal gang offenses** as required by § 40-35-121(a)(1)(A) and defined by § 40-35-121(a)(3). One exception is that Felix Vess testified that automobiles from which shots were fired at pedestrians on April 16, 2016 belonged to the Gangster Disciples. This testimony and the accompanying video evidence establish, as required by § 40-35-121(a)(1)(A) that on this occasion the Gangster Disciples engaged in the commission of a criminal gang offense by facilitating Aggravated Assault per § 40-35-121(a)(3)(B)(v). This single incident, although violent and disturbing, is not, without other evidence, clear and convincing evidence that the Gangster Disciples commit “Criminal Gang Offenses” (Plural emphasis added), as one of its “**primary activities**”. The Petition and Verification, alleging other numerous crimes, was not made an exhibit in the October 3, 2016 hearing or in the April 17, 2018 trial. Even had the Petition been an exhibit, and had the Court found that the crimes alleged therein had been committed by the named individuals, the proof was insufficient to establish, by clear and convincing evidence, that these individuals were **gang members**, because the majority of the evidence of gang membership status came from the inadmissible Gang Validation Forms.

To constitute a **“Criminal gang”** § 40-35-121(a)(1)(B) requires that the organization, association, or group must have **two (2) or more members**.

It is also required that these **members** individually or collectively, engage in or have engaged in a **“pattern of criminal gang activity”** per § 40-35-121(4)(A) **“Pattern of criminal gang activity”** means prior convictions for the commission of, attempted commission of, facilitation of, solicitation of, or conspiracy to commit:

- Two (2) or more **“Criminal gang offenses”** § 40-35-121(a)(3) that are **felonies**; or
- Three (3) or more **“Criminal gang offenses”** that are **misdemeanors**; or
- One (1) or more **“Criminal gang offenses”** that are **felonies** AND two (2) or more **“Criminal gang offenses”** that are **misdemeanors**; AND that
- the **“Criminal gang offenses”** are committed on separate occasions; AND that
- the **“Criminal gang offenses”** are committed within a **five year** period.

With the exception of testimony regarding Ronnie Dobbins, Jr. neither the Petition and Verification nor the proof establish the dates of convictions of any alleged gang member.

The Court finds from the testimony of Guy Wilkerson, Exhibit 9, that he is a member of the Grape Street Crips. From the testimony of Chief Vess the Court finds that Ronnie Dobbins, Jr. is a member of the Gangster Disciples. The testimony of Vess and the video marked as Exhibit 58 regarding the arrests of Dobbins on Chattanooga Housing Authority Property establish that Dobbins may have engaged in a “pattern of criminal activity” as required by the statute. However, the existence of two (2) or more **members** of the Gangster Disciples or Grape Street Crips, or such members who have individually or

collectively engage in a pattern of criminal gang activity, has not been established by clear and convincing evidence. The Petition and Verification were not admitted in evidence and the Gang Validation Forms may not be considered as substantive evidence. The testimony of Investigator Penney, who was not tendered as an expert witness, was often conclusory in nature (See Transcript of 10/3/2016 p. 76 Line 3 - Line 20, p. 89 Line 19 - p. 90 Line 10) and was not sufficiently clarified as being related to his first hand knowledge. Without such proof the Petition fails to meet the requirements of § 29-3-101.

TCA § 29-3-101 also requires a finding that a **criminal gang**, as defined by § 40-35-121(a), regularly engages in “**gang related conduct**”.

“**Gang related conduct**” occurs when one or more criminal gang **member** or **members**, as defined by TCA § 40-35-121(a), regularly engages in any of eleven (11) listed activities.

A criminal gang **member** is defined in TCA § 40-35-121(a) as a person who is a **member of a criminal gang** as defined in subdivision (a)(1) who meets two or more of seven (7) listed criteria. Absent clear and convincing evidence that any individuals except for Ronnie Dobbins, Jr. and Guy Wilkerson are criminal gang **members**, “**Gang Related Conduct**” cannot be proven.

CONCLUSION AND ORDER

Because the Petitioner’s proof from the October 3, 2016 hearing and the April 18, 2017 trial has failed to establish “Nuisance” by clear and convincing evidence as required by the specific and inter-related definitions of both § 29-3-101 and § 40-35-121 it is hereby

ORDERED that this Court's Order granting Temporary Injunctive Relief entered on December 20, 2016 is hereby terminated and the Verified Petition for Abatement of a Nuisance and Request for Injunctive Relief is denied and dismissed.

ENTER this the 8 day of October, 2018.



Barry A. Steelman
Judge