

VICTIM AND FAMILY THROWING A ROCK THRU THE WINDOW OF HER HOME. THE STATE HAS OFFERED EVIDENCE OF THREE PRIOR ACTS OF AGGRAVATED ASSAULT OR ASSAULT AGAINST THIS SAME VICTIM (OR HER DAUGHTER), AND OPPOSING COUNSEL HAVE OFFERED, NEGATIVE THAT THE PRIOR ACTS DO NOT FALL WITHIN THE PURVIEW OF THE PENN CODE SECTION ON DOMESTIC VIOLENCE; THAT THEY CONSTITUTE CHARACTER EVIDENCE AND, AS SUCH, ARE INADMISSIBLE; AND THAT, IN ANY CASE, THIS COURT SHOULD EXCLUDE THEM AS UNFAIRLY PREJUDICIAL.

AS WILL BE DEMONSTRATED BELOW, ALL OF THE ACTS ARE ADMISSIBLE, SIMILAR CASES IN THIS JURISDICTION HAVE UPHOLD THE USE OF SUBSTANTIALLY SIMILAR EVIDENCE

IN THE PAST, AND THE SAME RESULT SHOULD OBTAIN
IN THIS CASE.

1. AN INDIVIDUAL WHO ASSAULTS HIS CURRENT OR FORMER
COHABITANT IS WITHIN THE PURVIEW OF SECTION 501.

SECTION 501 CLEARLY DEFINES THE OFFENSE OF DOMESTIC

VIOLENCE AS APPLYING TO A "COHABITANT [OR] FORMER

COHABITANT," SO MY REASONING THAT THE PARTIES

WERE NOT SO RELATED AS SIMPLY SPECIES. IN THIS CASE

AT BNC, THE DEFENDANT AND VICTIM LIVED TOGETHER FOR

ALMOST A YEAR, SHARED SEXUAL RELATIONS, AND HAD KEYS

TO THE SAME APARTMENT, AND APPARENTLY SHARED

EXPENSES DURING THE ENTIRE PERIOD. ALTHOUGH THEIR

RELATIONSHIP COULD NOT BE CHARACTERIZED AS LENGTHY,

THEY CLEARLY FALL WITHIN THE PURVIEW OF SECTION 501.

Moreover, the ~~Supreme~~ ^{Texas Ct of Appeals (Hereafter Ct App)} ~~Ct~~ ^(Hereafter Set) held in Simme v Beck

That the two estranged spouses fell within the purview of the statute, despite the fact that they were separated and living apart.

Although circumstantial evidence is generally inadmissible to

prove the likelihood that defendant committed this crime,

it is admissible to show motive, opportunity,

intent, a common plan, etc

Rule 404 allows the use of prior acts of the

accused to show the above listed factors. In

this case at bar, the prior acts of the accused

show a striking similarity to the offenses with

which he is currently charged. The ^{21 SEP 02} ~~430701~~

INCIDENT INVOLVING VICTIM'S DAUGHTER, SARA, IS PROBABLY THE

WORST OF THE STATE MILENTS FOR ADMISSION SINCE

THE RESULT CLEARLY WAS NOT AGAINST ONE OF THE ENUMERATED

CLASSIFICATIONS IN THE STATUTE. HOWEVER, THE FACT THAT

THE ACCUSED SLAPPED AND PUSHED THE CHILD IN VERY

MUCH THE SAME WAY THAT HE ^{SLAPPED &} PUSHED HER MOTHER, PORTER
HER HEAD INTO A WALL,

AS WELL AS THE FACT THAT MANY OF THE ESTIMATED

COUPLES MILENTS DEAL WITH THE CHILD, MAKE STRONG

FOR ITS ADMISSION.

THE 4 JULY 01 AND 12 FEB 03 INCIDENTS, BY

CONTRAST, DID INVOLVE THE SAME VICTIM. THE ACTS OF THE

ACCUSED WERE THE SAME - PUSHING AND SLAPPING HIS

GIRLFRIEND, PUSHING HER HEAD INTO A WALL (ON 12 FEB)

LATER, ON THE 12 FEB 63 INCIDENT, ACCUSED THREW A

ROCK THROUGH HER WINDOW - IN MUCH THE SAME WAY

AS HE IS ACCUSED OF DOING IN THE OTHER INCIDENT.

THUS, THE PREVIOUS 3 INCIDENTS ARE ALL EVIDENCE OF

THE ACCUSED'S MOTIVE (POSSESSIVENESS OF HIS GIRLFRIEND

AND ENVY OF HER FORMER HUSBAND), THE COMMON FEATURES

OF THE RESULTS, AND THE FACT THAT THE ACCUSED

IS THE MOST LIKELY SUSPECT IN THE ROCK THROWING

INCIDENTS SINCE HE WAS PRESENT IN BOTH OCCASIONS.

SECTION 419 B CLEARLY DOES NOT PRECLUDE THE ADMISSION

OF THE OFFERED EVIDENCE, IT SIMPLY CAUTIONS AGAINST

ITS USE IF IT IS UNUSUALLY PREJUDICIAL.

IN SOME v BEER, THE SUSPECT COMMITTED A SIMILAR

STIMULUS AND HELD TIME VERY SIMILAR WAS ADMISSIBLE TO

SHOW WHAT TO WANT AND LACK OF ACCIDENT.

SUMMARY, TO BACK THE APPROX GT SET OUT A BALANCING

TEST REQUIRING YOU TO WEIGH A NUMBER OF FACTORS

IN MAKING YOUR DECISION. THOSE FACTORS WERE.

NATURE, RELEVANCE AND REMOTENESS (AND WE CONCEDE THAT

THE EARLIEST INCIDENT IN CASE MAY BE TOO REMOTE TO BE

PROBATIVE), THE DEGREE OF CERTAINTY, THE BURDEN ON THE

DEFENDENT IN DISPROVING THE ALLEGATIONS, THE LIKELIHOOD OF

CITIZENS, JURORS, AND LIKELY PROSECUTOR EFFECT.

THE SOURCE IS CONFIDENT THAT THE SIMILARITY OF THE

CHARGED OFFENSES TO THE PROFFERED EVIDENCE, THE

CLERK COVER BY OF THE SERVICE, AND THE

LEGISLATURE'S CLEAR INTENT TO ALLOW JUDGES TO HEAR

ABOUT SUCH PRIOR OFFENSES TO PROVE MOTIVE, OPPORTUNITY

ETC, WITH CONVINCING YOU TO ADMIT THE TESTIMONY

OVER DEFENSE COUNSEL'S OBJECTIONS. THE Ct of Appeals

INDICATED THAT IT PLACED GREAT VALUE IN

THE LOWER COURTS DISCRETION IN THESE MATTERS ~~AND~~
AND NOTED THAT IT WILL OVERTURN SUCH DECISIONS BASED ONLY
ON A CLEAR ABUSE OF DISCRETION.

~~DE CASE.~~

SO DO WE. WE URGE YOU TO ALLOW THE STATE

TO USE THIS PROBATIVE EVIDENCE IN ITS CASE IN

CHARGE.

2104 mPT2

Memorandum

To: Thomas Isely

From: Applicant

Subject: Evidence in Rivera v. Baldisari Amusement
Parks, Inc.

Date: Feb 24, 2004

I have prepared this memo as you requested, setting out how each item of evidence can be authenticated. I also noted if any item could be introduced by an easier procedure than calling witnesses.

Cara Rivera Personnel file from Frank
Electronics, Inc.