Raising Sufficiency of the Evidence Claims in Gang Cases

by Patrick McKenna 2014

A. Introduction.

My colleague, Lori Quick, has already addressed the wide array of evidentiary issues that may arise in gang cases. As her discussion indicates, statutes and case law place a high burden on prosecutors to provide adequate proof of both the substantive gang crime (Pen. Code, § 186.22, subd. (a)) and the gang enhancement (Pen. Code, § 186.22, subd. (b)(1)).[1] This burden is even more onerous for prosecutors when one considers the strict limitations placed on the testimony of expert witnesses. Hence, I strongly reiterate Lori's advisal that upon receiving a gang case, appellate counsel should review the testimony of gang experts with a fine-toothed comb.

The reality of appellate practice is that, as high of a burden as the prosecution may have in gang cases, defense counsel maintains an equally high burden to appropriately object to any evidentiary errors; absent an objection, many potential appellate claims may be forfeited on appeal. Thus, in my (admittedly) limited experience as an appellate attorney, the best way to challenge gang enhancements is often through sufficiency of the evidence claims since the merits of such claims do not depend on whether a proper objection was made.

---

[1]If your client is charged with an enhancement pursuant to subdivision (d), as opposed to subdivision (b), of section 186.22, the cases and discussion below will still be applicable since the elements of the two provisions are the same.

After beginning as a staff attorney with SDAP, one of my first cases was an appeal of a jury trial where my client was pulled over on Christmas night by two Salinas police officers. The officers eventually learned that the car my client was driving had been stolen. The car was subsequently searched, and a loaded handgun and various gang indicia were found inside the car. The client sustained various vehicle- and firearm-related convictions, plus a conviction for the substantive gang offense and true findings as to two gang enhancements. The client was initially granted probation, but, after picking up some new charges, was sentenced to a state prison term of nine years and eight months.

When I picked up the case, I was initially struck by a few things. It was entirely unclear how this offense was gang-related at all. The client was, at the very least, affiliated with Nortenos, but, on the night of the incident, he was driving the car on his own. He was not located in gang territory, he wore no gang clothing, and he exhibited no gang symbols. There was no evidence that any gang members had directed his actions, and he never brandished the firearm so as to "terrorize the community" as the gang expert had opined.

As I began my research, I found the gang-related case law overwhelming - both in its breadth and in its inconsistency. In this article, I will strive to provide a representative overview of the published cases dealing with sufficiency of the evidence claims for both the substantive gang offense and enhancement. The inconsistency in the gang-related case law is something that you can potentially use to your advantage; there is usually some case that you can effectively utilize to make a solid (or, at the very least, arguable) sufficiency of the

evidence claim.

I have organized the article into three main sections: one is a general overview and compares and contrasts the substantive offense from the enhancement, the second focuses on sufficiency challenges to the substantive offense, and the third deals with sufficiency claims as to the enhancements.

B. The Substantive Gang Offense vs. The Gang Enhancement.

1. Elements of the Offense and Enhancement.

Though Lori's article already mentions the elements of the substantive gang offense, it is worth reiterating these elements here. Under Penal Code section 186.22, subdivision (a), the prosecution must show:

(a) The defendant actively participated in a criminal street gang;

(b) When the defendant participated in the gang, he or she knew that members of the gang engage in or have engaged in a pattern of criminal activity; and

(c) The defendant willfully assisted, furthered, or promoted felonious criminal conduct by members of the gang either by:

(1) Directly and actively committing a felony offense; or

(2) Aiding and abetting a felony offense.

The elements of the gang enhancement look similar, but are different in subtle ways. Pursuant to subdivision (b) of section 186.22, the prosecution must provide proof of the following elements:

(a) The defendant committed or attempted to commit the crime for the benefit of, at the direction of, or in association with a criminal street gang; and

(b) The defendant intended to assist, further, or promote criminal conduct by gang members.

The California Supreme Court's plurality decision in *People v. Rodriguez* (2012) 55 Cal.4th 1125 clarifies the distinction between the substantive offense and the enhancement. There, the Supreme Court considered whether a criminal defendant could be found in violation of section 186.22, subdivision (a) if the defendant was acting on his own. A plurality concluded that, based on both statutory interpretation and due process grounds, the answer to this question was "no." A fourth member of the court – Justice Baxter – agreed that the language of the statute required this result; however, he disagreed with the plurality as to the due process claim. Hence, if your client committed the crime on his or her own, he or she cannot be convicted of the substantive gang crime pursuant to *Rodriguez.*

For purposes of this article, the court's ultimate holding is potentially less important than the discussion that led to this conclusion. In footnote 3 of *Rodriguez*, the Court contrasted the substantive gang offense with the gang enhancement, noting that "[u]nlike the substantive offense, the enhancement does not require proof of participation in a gang. It is further distinguished from the substantive offense by applying only to gang-related offenses and by requiring the defendant to act with the specific intent to promote, further, or assist any criminal conduct by gang members." (*Rodriguez, supra*, 55 Cal.4th at p. 1130, fn. 5.) When receiving a gang case, appellate counsel should keep these subtle distinctions in mind.

The case I mentioned at the beginning of this article resulted in a large benefit for my client, though it also resulted in the first published opinion that rejected the application of the *Rodriguez* court's holding in the context of gang enhancements. In *People v. Rios* (2013) 222 Cal.App.4th 542, we argued that the reading of the specific intent prong of the gang enhancement ["The defendant intended *to assist, furthered, or promote criminal conduct by gang members*"] should be read comparably to the third prong of the substantive offense ["The defendant *willfully assisted, further, or promoted felonious criminal conduct by members of the gang*"]. The court did not bite, despite the argument that the *Rodriguez* plurality's analysis of the differences between the substantive gang offense and enhancement was couched in its discussion of due process principles, which was NOT agreed to by a majority of the court. The court in *Rios*, however, found that language in Justice Baxter's concurrence similarly supported the distinction made by the plurality. (*Rios, supra*, 222 Cal.App.4th at pp. 561-564.) Even though the distinctions noted by the *Rodriguez* court were dicta, the *Rios* court found that the reasoning was not "inadvertent, ill-considered or a matter lightly to be discarded" and rejected the claim. (*Id*. at pp. 563-564, citations omitted.) Division Three of the Fourth District Court of Appeal has similarly followed suit. (*People v. Sanchez* (2014) 223 Cal.App.4th 1, 11.) Hence, while I am not convinced the *Rios* court got it right, the issue may be dead at this point.

2. Proving the Existence of a Criminal Street Gang.

There are several important distinctions between the substantive gang offense and the enhancement. Nonetheless, there are several similarities between the provisions that should be considered regardless of whether your client was charged with the offense or enhancement. Foremost among these similarities is the fact that, in either scenario, the prosecution must prove the existence of a criminal street gang.

A criminal street gang is an ongoing organization, association, group of three or more persons, whether formal or informal: (1) that has a common name, identifying sign or symbol; (2) that has, as one or more of its primary activities, the commission of [an enumerated offense under section 186.22, subdivision (e)]; and (3) whose members, whether acting alone or together, engage in, or have engaged in, a pattern of criminal activity. (See Pen. Code, § 186.22, subd. (f); *People v. Louen* (1997) 17 Cal.4th 1, 8; *In re Jorge G.* (2004) 117 Cal.App.4th 931, 934.) If the prosecution has failed to provide adequate proof as to any of these elements, appellate counsel should raise a sufficiency of the evidence claim.

Turning to the "common name, identifying sign, or symbol" element, an expert will commonly opine that, based on the years of experience he or she has spent investigating gang offenses, he or she knows, for example, that Nortenos associate with the number "14," the color red, and the huelga bird. This prong is rarely ripe for a sufficiency challenge – except potentially as to the name of the gang. In *People v. Valdez* (1997) 58 Cal.App.4th 494, the Sixth District Court of Appeal held that when members of seven different Norteno subgroups

combined together to commit an attack against Surenos, this group did NOT constitute a criminal street gang; this reasoning suggests that "Nortenos" is not specific enough to constitute a criminal street gang and that the individual subgroups more accurately fit within the meaning of section 186.22, subdivision (f). (*Id*. at p. 508.) In *Valdez*, however, the court found that expert testimony regarding the subgroups – and how the attack would benefit each of these groups – was relevant to prove the gang enhancements. (*Id*. at pp. 508-509.)

People v. Williams (2008) 167 Cal.App.4th 983 similarly analyzed the relationship between a larger umbrella gang and its subgroups. The court there stated:

> In our view, something more than a shared ideology or philosophy, or a name that contains the same word, must be shown before multiple units can be treated as a whole when determining whether a group constitutes a criminal street gang. Instead, some sort of collaborative activities or collective organizational structure must be inferable from the evidence, so that the various groups reasonably can be viewed as parts of the same overall organization.

(*Id*. at p. 135.) The *Williams* court then concluded that, for purposes of that case, only the defendant's specific subgroup could be considered a criminal street gang, and the defendant's sufficiency claim could only be analyzed based upon that group's activities. (*Id*. at p. 989.) In contrast, in *People v. Ortega* (2006) 145 Cal.App.4th 1344 and *In re Jose P.* (2003) 106 Cal.App.4th 458, 463, the courts found there was sufficient evidence that several subgroups of a larger gang acted together and were loyal to each other; indeed, the courts found sufficient evidence of "criminal street gangs" in those circumstances. As the aforementioned cases indicate, if appellate counsel is presented with a case in which subgroups of a larger

gang are at issue, the relationship between the defendant's subgroup and the larger gang – or with other subgroups – should be analyzed to determine whether the prosecution, and its expert, provided sufficient evidence as to the existence of a discrete gang.

In the rare case, there will be evidence that a group has more than one name. "The association of multiple names with a gang satisfies the statute's requirement so long as at least one name is common to the gang's members." (*In re Nathaniel C.* (1991) 228 Cal.App.3d 990, 1001.) In *Nathaniel C.*, the court found sufficient evidence of the name/sign/symbol element where the gang went by two names and during the commission of the defendant's offense, "there was graffiti which signified the gang, though no particular color or clothing was associated with gang membership;" regardless of the dual name of the gang, the court found that such evidence was sufficient to indicate the defendant's involvement in a discrete criminal street gang. (*Id*. at p. 1001.)

Moreover, the relationship between subgroups can also be relevant in proving the primary activities of a gang and whether the prosecution has provided adequate proof of the requisite predicate offenses. "The phrase 'primary activities,' as used in the gang statute, implies that the commission of one or more of the statutorily enumerated crimes [listed in subdivisions (e)(1)-(25) & (31)-(33) of section 186.22] be one of the group's 'chief' or principal occupations. . . . That definition would necessarily exclude the occasional commission of those crimes by the groups' members." (*People v. Sengdpadychith* (2001) 26 Cal.4th 316, 323.)

Most of the time, the gang expert will list a variety of offenses that the gang routinely commits as "primary activities." As Lori's article illustrates, the primary basis for a sufficiency challenge as to this prong often rests on the basis of the expert's knowledge of this element. (Compare, e.g., *In re Alexander L.* (2007) 149 Cal.App.4th 605, 611 [expert's testimony that he "knew" of the primary activities serves as insufficient basis for expert's opinion regarding primary activities] with *People v. Martinez* (2008) 158 Cal.App.4th 1324, 1330 and *People v. Gardeley* (1996) 14 Cal.4th 605, 617-620 [experts stating that their opinions stemmed from years of experience serves as a sufficient basis for opinion as to primary activities].)

In some cases, the prosecution may have an expert testify regarding past offenses in order to prove this element. Generally, such evidence is sufficient only if it indicates a discrete pattern of activity and is based on reliable information. (Compare, e.g., *Alexander L., supra*, 149 Cal.App.4th at pp. 612-614 [two convictions by gang members insufficient with no other evidence provided by gang expert] with *People v. Vy* (2004) 122 Cal.App.4th 1221, 1225 [three attacks by three gang members within three months sufficient to show that such crimes were a primary activity of the gang].) In *People v. Perez* (2004) 118 Cal.App.4th 151, evidence of a gang's history of racial hatred toward Asians, including several shootings over the course of a week, and a beating of a child six years earlier was held insufficient to show that the primary activities of the gang included the offenses enumerated in section 186.22, subdivision (e). (*Id*. at p. 160.) In *Perez*, such evidence was

not sufficient to meet the "primary activities" prong as it only indicated the existence of several different instances of criminal activity over an extended period of time.

Accordingly, when reviewing the sufficiency of the evidence as to the "primary activities" prong, appellate counsel should closely review the basis for the expert's conclusion and determine whether it is backed up by (1) the expert's years of experience OR (2) sufficient evidence, as in *Vy*, of the consistent commission of enumerated offenses by gang members. Moreover, the distinction between the larger umbrella gang and its subgroups should be explored in the context of this prong to determine whether the prosecution showed that the enumerated criminal activity constituted a primary activity of the specific subgroup.

Finally, the prosecution must show that the gang engages in a "pattern of criminal activity." This prong is met through the admission of "predicate offenses." The types, dates, and number of convictions are governed by section 186.22, subdivision (e). Effectively, the bare minimum requirement of this element is that the prosecution provide proof of at least one enumerated offense committed on two separate occasions or by at least two gang members; the most recent offense must have occurred within three years of one of the other offenses. (*Louen, supra,* 17 Cal.4th at pp. 9-10.) Moreover, only crimes occurring after September 26, 1988 are admissible as predicates, and if the prosecution attempts to use one of the enumerated offenses in subdivision (e)(26)-(30), it MUST be coupled by one of the other enumerated offenses for the prosecution to meet its burden. (§ 186.22, subds. (e), (j).)

A few other principles should be noted regarding the predicate offenses. The charged crime can constitute one of the predicates. (*Louen, supra*, 17 Cal.4th at pp. 9-10.) The predicate offenses need not be gang related, but must have been committed by gang members. (*Gardeley, supra*, 14 Cal.4th at p. 625.) Prior offenses committed by the defendant can also constitute predicate offenses. (*People v. Tran* (2011) 51 Cal.4th 1040, 1046.) Surprisingly – at least to me – is that the prosecutor need not prove that the alleged predicate offenses resulted in an actual conviction (*People v. Zermeno* (1999) 21 Cal.4th 927, 932, fn. 2), though it is highly uncommon for the prosecution to advance such an offense as a predicate. Note, however, that two predicate offenses are not established by evidence of two defendants committing the offense together (*Zermeno*, *supra*, 21 Cal.4th at p. 931), and a predicate offense is not valid if it occurred after the commission of the charged offense (*People v. Godinez* (1993) 17 Cal.App.4th 1363, 1370, disapproved on other grounds in *People v. Russo* (2001) 25 Cal.4th 1124, 1134).

Most of the time the prosecution will be smart enough to abide by these rules, but counsel should go over each of them thoroughly before concluding there was no error. In most of the gang cases I get, I chart out each of the predicate offenses – with the defendant's name, the date of the offense, the type of offense, and the specific gang-affiliation – to ensure compliance with these rules.

As the aforementioned discussion makes clear, the requirements to prove the existence of a criminal street gang are complex and varied, and in any gang case, appellate counsel

should closely review the record to determine whether the prosecution met its burden.

C. The Substantive Gang Offense.

1. Active Participation in the Gang.

The gravamen of the substantive gang offense is the "participation in the gang itself." (*People v. Herrera* (1999) 70 Cal.App.4th 1456, 1467, fns. omitted.) Unlike the enhancement, the prosecution must prove that a defendant actively participated in a criminal street gang. (Pen. Code, § 186.22, subd. (a).) This does not require that a defendant be a gang member – and such evidence is not alone sufficient to prove this element (*People v. Garcia* (2007) 153 Cal.App.4th 1499, 1509) – but only that the defendant had "more than a nominal or passive involvement" with the gang. (*Jose P., supra*, 106 Cal.App.4th 458, 466.) A defendant's active participation must be shown at or near the time of the crime. (*Garcia*, *supra*, 153 Cal.App.4th at p. 1509.)

Here are some examples of the proof required as to this element:

> *People v. Castaneda* (2000) 23 Cal.4th 743, 752-753: Sufficient evidence of active participation when a defendant bragged to police officers about his gang association and was found with gang members on numerous different occasions in the months leading up the charged offense.
>
> *Garcia, supra*, 153 Cal.App.4th at p. 1509: Though the court noted that evidence of gang membership alone was not sufficient to prove active participation, defendant's admitted knowledge of the gang and their activities provided adequate proof of this element.
>
> *People v. Schoppe-Rico* (2006) 140 Cal.App.4th 1370, 1378, fn. 8: Sufficient evidence of active participation in a case where: (1) the defendant told his girlfriend he was a gang member; (2) the girlfriend saw the defendant argue with and point a gun at men wearing the color of a rival gang, and then shoot the gun; (3) the

defendant had numerous gang tattoos; and gang graffiti and (4) photographs of the defendant with gang members were found in his bedroom.

Jose P., supra, 106 Cal.App.4th at pp. 467–468: Sufficient evidence of active participation where a minor admitted associating with criminal street gangs, had been contacted by the police on several occasions in the company of known gang members, wore gang colors, had been involved in prior crimes for the benefit of the gang, and told the police "if his fellow gang members had asked him to do something, he would not be a chicken."

The case law is not helpful. Still, the aforementioned cases are pertinent in determining the type of evidence relevant in proving this prong. For an unpublished Sixth District case in which the court reversed on the active participation prong, please see: *In re Jesse H.* (Feb. 23, 2005, H026624 [unpub. opn.]. There, the outcome-determinative factor was that the prosecution had failed to show that the defendant had participated with the gang in the 15 months leading up to the commission of the offense at issue.

2. Knowledge of Gang's Pattern of Criminal Activity.

There is a considerable overlap between the evidence relating to a defendant's active participation in a gang and his knowledge of the gang's pattern of criminal activity. The policy underlying the latter element rests on due process principles: "[m]ere association with a group cannot be punished unless there is proof that the defendant knew of the intent to further its illegal aims." (*Castaneda, supra*, 23 Cal.4th at pp. 749-750, citing *Scales v. United States* (1961) 367 U.S. 203, 228.) During my research, I found few cases dealing explicitly with this element outside of the active participation requirement referenced above; accordingly, many of those cases may prove helpful in researching this issue.

3. The defendant willfully assisted, furthered, or promoted felonious criminal conduct by members of the gang.

As noted above, if you have a client acting on his own, you should argue that there is insufficient evidence of the substantive gang offense under *Rodriguez*. The substantive gang crime has become far less prevalent post-*Rodriguez*; beyond *Rios* and *Sanchez*, I actually found no published cases dealing with sufficiency of the evidence challenges as to the offense. Many of the cases regarding the enhancement will be instructive as to how an offense is gang-related.

D. The Gang Enhancement.

1. Introduction.

Once the prosecution has proven the existence of a criminal street gang, it must provide adequate evidence of two other elements for an enhancement to be upheld. I will refer, in shorthand, to these as: (1) the specific intent prong, and (2) the gang-related prong. The facts underlying the two prongs will be similar – if not identical – but counsel should heed the advisal of the Sixth District in *Rios, supra*, 222 Cal.App.4th at p. 565 and analyze the prongs separately.

Lori's article ably covers the extent of the opinions that experts can provide as to these elements – i.e., that an expert cannot testify as to the defendant's specific intent, but can do so via a hypothetical scenario, and that an expert can testify that a crime was committed "for the benefit of, at the direction of, or in association with a criminal street gang." As the cases below indicate, an expert's conclusion ultimately carries little weight in reviewing the

sufficiency of the evidence since appellate courts are more concerned with the facts underlying these opinions. Below, I have tried to compile a representative listing of the published cases determining the (in)sufficiency of the evidence as to both these prongs. When applicable, I have specified as to what prong a court premised its ruling.

2. Examples of Insufficient Evidence for a Gang Enhancement:

Rios, supra, 222 Cal.App.4th 542: Two gang enhancements were reversed as to the specific intent prong. Defendant was driving alone in a stolen car with a loaded firearm and gang indicia inside. The court found no evidence of specific intent as to the vehicle theft charge since "the prosecution could have presented evidence that another gang member had directed [the] defendant to steal a car to use in a robbery, or that [the] defendant was transporting the loaded gun from one gang member to another to use in a robbery or driveby shooting. There was no such evidence." (*Id*. at p. 572.) Finally, the court observed that "there was no evidence that [the] defendant was in Norteno territory or rival gang territory when he stole the car; that he called out a gang name, displayed gang signs or otherwise stated his gang affiliation; or that the victims of the car theft were rival gang members or saw his tattoos or gang clothing." (*Id*. at p. 574.) The court came to the same conclusion, under similar reasoning, as to the enhancement attached to the firearm charge.

People v. Gonzales (2011) 199 Cal.App.4th 219: The court found that the defendant's possession of methamphetamine was not gang-related. The conclusion largely stemmed from the fact that appellant was found not guilty of possession for sale and guilty only of simple possession. The court concluded that "There was no evidence Gonzales purchased or possessed the methamphetamine 'for the benefit of, at the direction of, or in association with' his gang. (*Id*. at p.. 233-234.)

In re Daniel C. (2011) 195 Cal.App.4th 1350: Gang enhancement was reversed as to the specific intent prong. There, a minor and his friends entered a supermarket. The minor took a bottle of whiskey without paying for it and, after being confronted by a store employee, hit him with it. All three minors had Norteno affiliations. On these facts, the court found there was no evidence that minor's companions knew of his intent to steal the whiskey and assault the employee. Indeed, the friends had left before the assault occurred. Accordingly, the court found no specific intent to support the gang enhancement. (*Id*. at p. 1363.)

People v. Ochoa (2009) 179 Cal.App.4th 650: Insufficient evidence of the gang-related prong of enhancements attached to multiple counts. The defendant committed the offenses alone outside of gang-territory. In addition to noting various factors absent from the case – i.e., no gang colors, gang clothing etc. – the court found "[t]here was no evidence that only gang members committed carjackings or that a gang member could not commit a carjacking for personal benefit, rather than for the benefit of the gang. Indeed, two of the People's witnesses testified that gang members can commit crimes on their own without benefitting the gang. While the sergeant effectively testified that carjacking by a gang member would always be for the benefit of the gang," the court no evidentiary basis to support it. (*Id*. at p. 662, italics omitted.)

Ramon, supra, 175 Cal.App.4th 843: Insufficient evidence as to specific intent prong. The court ruled that two gang members' possession of a stolen car and gun in a gang territory did not serve as a sufficient basis to conclude that one of the members committed the criminal acts to benefit the gang. (*Id.* at pp. 847-849, 853.) Relying on *Frank. S.*, the *Ramon* court found that "[t]here were no facts from which the expert could discern whether [the defendants] were acting on their own behalf the night they were arrested or were acting on behalf of their gang." (*Id.* at p. 851.)

In re Frank S. (2006) 141 Cal.App.4th 1192: The court analyzed both prongs of the gang enhancement. During a routine traffic stop, the defendant was found to be in possession of methamphetamine and a knife. (*Id*. at p. 1195.) The defendant told the police officer that he had the knife to protect himself from "Southerners." (*Ibid*.) The prosecution's expert testified that the possession of the knife benefitted the gang because it could be used for the protection of the defendant and other gang members. (*Id*. at pp. 1195-1196.) The appellate court reversed the gang enhancement, noting that the expert's testimony was not sufficient to find that the defendant harbored the requisite intent. The court concluded: "The prosecution did not present any evidence that the minor was in gang territory, had gang members with him, or had any reason to expect to use the knife in a gang-related offense. In fact, the only other evidence was the minor's statement to the arresting officer that he had been jumped two days prior and needed the knife for protection." (*Id*. at p. 1199; but see *People v. Gonzales* (2011) 199 Cal.App.4th 219, 234 [upholding gang enhancement in a firearm case where defendant admitted that he had the gun because rival gang was "out to get us"].).)

3. Examples of Sufficient Evidence for a Gang Enhancement:

Albillar, supra, 51 Cal.4th at p. 63: The California Supreme Court found that sexual assaults by two brothers and their cousin were gang-related. The holding was largely premised on the expert's opinion that the defendants "not only actively assisted each other in committing these crimes, but their common gang membership ensured that they could rely on each other's cooperation in committing these crimes and that they would benefit from committing them together. They relied on the gang's internal code to ensure that none of them would cooperate with the police and on the gang's reputation to ensure that the victim did not contact the police." (*Id*. at pp. 61-62; see also People v. Galvez (2011) 195 Cal.App.4th 1253 [enhancements upheld under similar rationale and largely relying on Albillar].)

In re Cesar V. (2011) 192 Cal.App.4th 989: Sufficient evidence of the gang enhancement where minors threw up gang signs to challenge their rivals to a fight. In such a scenario, the jury could reasonably infer that they intended to enhance the gang's violent reputation. (*Id*. at p. 1100; see also *People v. Miranda* (2011) 192 Cal.App.4th 398, 411-413 [announcing gang membership during or prior to crime's commission can be sufficient to uphold the enhancement].)

People v. Morales (2003) 112 Cal.App.4th 1176: The court found that there was sufficient evidence as to both elements of the enhancement. The defendant entered a home with two gang members, and robbed a man at gunpoint; his compatriots robbed other people in the house and shot one. (*Id*. at 1182-83.) The court found that as to the gang-related prong, a jury could reasonably infer that the crimes were committed for the benefit of the gang since multiple gang members were involved. (*Id*. at p. 1198.) As to the specific intent element, the court found sufficient evidence because the defendant intended to commit the robberies with his fellow gang members and because he knew of their gang association. (*Id*. at p. 1198.)

In re Ramon T. (1997) 57 Cal.App.4th 201: Court found sufficient evidence as to specific intent element of gang enhancement where several gang members operated together to free a defendant from a police officer. The three members acting in concert proved the crime was committed "in association with" a criminal street gang. (*Id.* at pp. 207-208.)

*People v. Olguin (*1994) 31 Cal.App.4th 1355, 1382-1383: Shooting found to be gang-related and with the requisite intent where it was "precipitated by crossing out gang graffiti, replacing it with the name of another gang, and then shouting that gang's name to rival gang members. The record reflects no prior relationship between the

killers and their victim, and no reason for animosity other than gang-related insults." (*Id*. at pp. 1382-1383.)

E. Conclusion.

Gang cases can be rife with sufficiency of the evidence challenges as to each of the various elements. It takes a little ingenuity and a lot of patience to wade through each of these issues. Appellate counsel should remember, however, that the prosecution is required to provide evidence of numerous elements and should review a particular record carefully to ensure this burden was met.