



Roll Call Reporter

May 2015

LEGAL UPDATES FOR MARYLAND LAW ENFORCEMENT OFFICERS

QUESTION: What evidence is needed to prove that a juvenile participated in a criminal gang in violation of Maryland law?

ANSWER: Under § 9-804 of the Criminal Law Article, the State must prove that the juvenile participated in the criminal gang knowing that the members of the gang engaged in a pattern of criminal gang activity and knowingly participated in an underlying crime at the direction of or in association with a criminal gang.

CASE: *In Re: Kevin T., Court of Special Appeals of Maryland*
Decided April 30, 2015

This case concerns, in part, what evidence is needed to prove a juvenile's participation in a criminal gang in violation of Maryland law.

The Assault: In 2013, Austin R. was a student at High Point High School in Prince George's County. In April 2013, Kevin T. tried to fight him at school because of "run ins" that Austin R. previously had with the gang known as MS-13. On August 19, 2013, Austin R. was called into the

security office of the school. He was warned that members of MS-13 were planning to fight him. Later that day, Kevin T., who was accompanied by two other juveniles, followed Austin R. to class and yelled "Salvatrucha." Austin R. responded, "I don't give an F who you are," and continued to walk to class. Kevin T. and the other two juveniles continued to follow Austin R., telling him that each wanted to fight him "one on one". One of the juveniles with Kevin T. began fighting with Austin R., and Austin R. quickly gained the upper hand in the fight. At that point, Kevin T. and the other juvenile jumped in. School security then broke up the fight and everyone was taken into the security office. Kevin T. was charged with multiple delinquent acts, including second-degree assault and participation in a criminal gang (in violation of § 9-804 of the Criminal Law Article).

The Juvenile Hearing and the Testimony of the Sergeant Norris: At the proceeding in circuit court (sitting as a juvenile court), Sergeant George Norris of the Prince George's County Police Department, a gang investigator and expert in MS-13 gangs in the Maryland area, was called to testify. He explained that MS-13 stands for Mara Salvatrucha, and that the goal of MS-13 is to be the most powerful or most controlling gang in the area they are in, including the Langley Park area of Prince George's

County. Sergeant Norris testified that the members of MS-13 achieve this goal through fear, intimidation, and violence. He explained that MS-13 members shout out their gang name to announce who they are and intimidate others. Finally, Sergeant Norris testified that he knew the two juveniles who accompanied Kevin T. were members or associates of MS-13 and that Kevin T. was, at the least, associated with MS-13. Kevin T. was found to be involved in the delinquent acts and committed to "Level B" placement. He appealed.

The Appeal Related to Gang

Participation: One of the issues on appeal was whether the State had actually proven under the statute that MS-13 was engaged in a "pattern of criminal gang activity", *i.e.*, that members of the gang actually committed (or attempted to commit) two or more acts of specified criminal conduct (the detailed list of crimes encompassed by the law is found in § 9-801 (f) of the statute and includes, among many others, crimes of violence, second degree assault, human trafficking, distribution of CDS, second degree arson, and theft). The appellate court agreed with this aspect of Kevin T.'s appeal. The court found that the State had failed to offer any evidence that MS-13 had actually committed, attempted to commit, or conspired to commit any of the crimes identified in the statute. The court concluded based upon its review of the entire record that "non-specific incidents of gang activity and attempts to fight...are insufficient to satisfy the State's burden of proof." The statute requires the State to prove not only that the juvenile was a member of a criminal gang, but that the gang engaged in a pattern of specific criminal behavior. Since there was no such evidence before the court, the finding as to the offense of participation in a criminal gang was reversed.

NOTE: Police officers with gang expertise must, when testifying as experts, speak in terms of specifics, not generalities. This is what the statute requires. This requires, at a minimum, knowledge that gang members actually committed, or attempted to commit, at least two or more of the specific crimes identified in the statute. Here, the questioning of Sergeant Norris by the prosecutor was seemingly incomplete. This underscores the importance of police officers testifying as experts (and all officers for that matter) meeting with the prosecutor to ensure that the basis of their findings and opinions are sufficient under the law.

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