

A jury convicted Albert Albillar, his twin brother Alex Albillar, and their cousin John Madrigal — all of whom were members of the Southside Chiques criminal street gang — of forcible rape “in concert” (that is, together) and other sex offenses against a 14-year-old girl in December 2004. This appeal concerns the sufficiency of the evidence supporting the jury’s additional findings that defendants actively participated in a criminal street gang (Pen. Code, § 186.22, subd. (a)) and that the sex offenses were committed for the benefit of, at the direction of, or in association with the gang with the specific intent to promote, further, or assist in any criminal conduct by gang members (*id.*, § 186.22, subd. (b)(1)). Defendants’ challenges to the substantive gang offense and the gang enhancement may require the Supreme Court to define more explicitly the elements of those offenses.

Penal Code section 186.22, subdivision (a), punishes “[a]ny person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang.” The Supreme Court requested supplemental briefing on — and the parties are likely to discuss at oral argument — the question whether the phrase “felonious criminal conduct” in this substantive offense should be interpreted to apply only to *gang-related* felonious criminal conduct or should be interpreted instead to apply to *any* felonious criminal conduct.

Penal Code section 186.22, subdivision (b)(1), provides for enhanced punishment for “any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.” The People offered expert testimony at trial that the sex offenses were committed for the benefit of, at the direction of, or in association with the gang based on the way the gang members worked cooperatively to accomplish the crimes, the brutality and viciousness of the crimes, and their effect on the gang’s reputation for violence and viciousness.

At oral argument, the parties may discuss whether the evidence supported a finding that the sex offenses were committed for the benefit of or in association with the gang. The parties may also discuss whether the phrase “any criminal conduct” in the enhancement provision should be interpreted to apply only to *gang-related* criminal conduct or should be interpreted instead to apply to *any* criminal conduct, and whether the criminal conduct that is promoted, furthered, or assisted must be criminal conduct *apart from* the charged offenses.