In the Supreme Court of the State of California

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ZACKERY PRUNTY,

Defendant and Appellant.

Case No. S210234

Appellate District Third, Case No. C071065
Sacramento County Superior Court, Case No. 10F07981
The Honorable Marjorie Koller, Judge

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED

The issue for review in this case arose out of a incident in which appellant, an admitted member of the Norteños, confronted a family that included a man whom appellant perceived to be a member of the rival gang Sureños. Appellant shot that man and also one of the man's young companions. During the confrontation, appellant was heard exchanging derogatory gang names with the adult victim.

Appellant claimed in the Court of Appeal that there was insufficient evidence presented at trial to show that various subsets of the Norteños gang were connected to each other. The relevant issue this Court has asked the parties to address is:

1. Does the law require the prosecution to prove any sort of collaborative or organizational nexus before multiple subsets of the Norteños can be treated as a whole for the purpose of determining whether a group constitutes a criminal street gang within the meaning of Penal Code section 186.22, subdivision (f)?

STATEMENT OF THE CASE

On the night after Thanksgiving in 2010, 21-year-old Gustavo Manzo was headed to a fast food restaurant near Safeway in midtown Sacramento with his girlfriend and her 10- and 14-year-old brothers. (1 RT 34-37, 53-55, 72-73, 94, 96.) Manzo was wearing black pants and shirt, a gray sweater, and an L.A. Dodgers baseball cap. (1 RT 50, 82, 92, 104.) Though Manzo claimed no gang membership at the time, he admittedly had participated in a gang-related fight as a juvenile (1 RT 104-108, 122), and an officer testified that Manzo had been "validated" as a Sureño gang member in 2007 (1 RT 228). In terms of his dress and language, Manzo "looked and acted the part." (1 RT 137, 228.)

As Manzo and his group approached the restaurant (1 RT 137, 142), two young men dressed like gangsters in "really long shirts" confronted them. One of those young men, later identified as appellant, was wearing a red checkered jacket. He asked Manzo where Manzo was from and screamed, "Fuck a Scrap, 916." Scrap is a derogatory term Norteño gang members use for Sureño gang members. (1 RT 38-39, 43, 61, 67, 79, 98, 109.) Taking exception to the slur and feeling disrespected, Manzo in return called the two males "Buster" – a derogatory term for Norteños. (1 RT 66, 99, 109.) During the argument, something was also said about the color red, while Manzo had on blue. (1 RT 138.)

Defendant's companion, later identified as Emilio Chacon – a known affiliate of the Varrio Franklin Boulevard Norteños, a local subset (1 RT 197, 233) – tried to get appellant to leave, but appellant resisted and kept saying, "This is Norte, Fuck a Scrap, 916." As Manzo took a couple of steps toward appellant and Chacon, who were about 20 feet away, appellant drew a gun and fired six times, hitting Manzo and his girlfriend's 10-year-old brother, Santiago. (1 RT 40, 62, 79, 142.)

As a result of the shooting, Manzo required surgery and a two-week hospital stay. (1 RT 81, 103, 104.) Santiago was in a cast for two to three months and on crutches for about four months. (1 RT 41.)

Investigation of the shooting incident led detectives with the gang suppression unit to Chacon. (1 RT 197, 233.) At the time of that contract, Chacon had tattoos consistent with the Norteño street gang. (1 RT 156, 157, 198.) That contact eventually led detectives to appellant. (1 RT 154.)

Detectives contacted appellant at his residence, which they searched. During the search, officers found a loaded .38-caliber revolver under appellant's mattress (1 RT 159, 160, 201) and other ammunition in a nearby dresser (1 RT 161-162). They also found and seized various items of Norte gang-related paraphernalia. (1 RT 163, 218, 219) These items included an

envelope decorated with a "diamond-looking" object glued to its front. (The Varrio Diamonds is an active crew of Norteños involved in several criminal investigations.) The graffiti, including the word "Norte," on a box found was all in red. Also on the box was written "fuck a scrap." (1 RT 217-220.)

Appellant was taken to juvenile hall to be interviewed. (1 RT 202.) During that interview, appellant explained that he had claimed Norte as his set since 7th grade because almost all of his family members, particularly on his mother's side, claimed Norte. (1 CT 141, 144, 182.) Appellant acknowledged that the gun seized from his room was a .38-caliber Smith and Wesson special. (1 CT 145.) He claimed that he had had the gun the night Manzo was shot because some Scraps had shot at him just the day before on Thanksgiving night. (1 CT 146.) That previous incident had started when a Mustang had pulled up and someone in the car had put a hand out the window and started "mugging" appellant (i.e., giving him a stare or dirty look [1 RT 208, 209]). After the passenger had eventually shot out of the car at appellant with what sounded to appellant like a "little .22" (1 CT 147, 152), appellant had returned fire with his .38, shooting all six rounds before running (1 CT 149, 150).

Appellant admitted that, just before the Manzo shooting, appellant and Chacon had been on their way to Safeway to steal a bottle of alcohol. (1 CT 173, 175.) But before getting there, appellant saw Manzo, his girlfriend, and two little kids. (1 CT 169, 170.) Appellant believed that Manzo, whom he thought looked like a Scrap, was mugging him, so appellant mugged him back. Hard looks led to an exchange of gang signs, profanities, and derogatory names. (1 CT 166, 169, 170.)

Appellant flashed his gun, warning the man to stay away. Despite the warning, Manzo kept talking and continued to throw signs. (1 CT 171.) Appellant was going to walk away until he heard Manzo laugh and tell him

to keep walking like the rest of the "Busters" (a derogatory term for Norteños). (1 CT 166, 167.) Appellant admitted firing all six shots. (1 CT 167, 169, 171.) He claimed that he had not intended to hit the little boy, insisting he was just "aiming for that Scrap."

Appellant believed he had killed Manzo from the way he fell to the ground. (1 CT 172, 180.) When asked during the interview now he would have felt had he killed Manzo, appellant respondent that, if he had killed him, he killed him; it would be another Scrap out of his life trying to kill him. (1 CT 180.) Appellant translated one of the titles found in his bedroom "BPC Killer" as standing for "Brown Pride Criminal Killer," with Brown Pride referring to Scraps. (1 CT 183.)

Appellant was charged with the attempted murder of Manzo and assault with a firearm on Manzo's girlfriend's brother. Various enhancements were also alleged, including criminal street gang enhancements under section 186.22, subdivision (b)(1). (1 CT 81-83.) At trial, the prosecution presented testimony from its gang expert, a Sacramento police detective assigned to the Street Gang Enforcement Team who had broad experience with and training on Hispanic street gangs during his time as a patrol officer between 1997 and 2007 and from his investigation of more than 100 gang-related felonies. (1 RT 195, 205, 206.) The detective explained to the jury how today's street gang rivalries began with the California prison gangs in the late 60s and early 70s. One of the strongest of those prison gangs was the Mexican Mafia, "MM," which preyed on other Mexican inmates who were not part of a gang. The MM was affiliated primarily with prisoners from Southern California. Outside prison, this group is associated mostly with Sureños. (1 RT 211, 219.)

Eventually the other Mexican inmates, mostly from Northern California, bonded together as "Nuestra Familia," or "NF," which affiliated with the color red and represented with the 14th letter, N. The intense

rivalry poured into the street, becoming generational with parents or other family members passing along the gang lifestyle to younger children in the family. The NF were primarily out of Northern California. At the time of trial, there were more Norteños then Sureños in Sacramento. (1 RT 213, 219, 235, 236.)

Generally speaking, the Norteños are known as a Hispanic street gang active in Sacramento as well as throughout California. The detective testified that there were approximately 1500 local Norteños. Some of their common identifying names, signs, or symbols include any derivatives of the words north, Norteño, or Northerner. They, like the NF, use the letter N, the 14th letter of the alphabet, as a common identifying symbol. They will also use derivatives of the number 14, like the Roman numeral XIV or a one with four dots. The color associated with Norteños is red. Norteños are affiliated with the prison gang Nuestra Familia. Norteños are predominant in Northern California. Their primary enemies are the Sureño gang members. (1 RT 209-210.) Norteños are not generally restricted to a particular area in Sacramento, but claim "turf" all over Sacramento, with different subsets based on different neighborhoods. (1 RT 209.)

With both Norteños and Sureños, the idea of respect is very important to their gang culture. (1 RT 206.) Norteños used terms like "scrap" or sewer rat to refer disrespectfully to city-dwelling Sureños. (1 RT 219.) In turn, Sureños used terms like "buster" to insult Norteños. (1 RT 208, 231.) Rivals often "mugged" (gave a stare or dirty look) at each other. (1 RT 208, 209.) Confrontations between rivals could start over trading verbal insults or "mugging" and then escalate into fights or crimes involving weapons. (1 RT 201, 213.)

The primary criminal activities of Norteños include unlawful homicide or attempted homicide, assaults with firearms, shooting at occupied motor vehicles, shooting into inhabited dwellings, and weapon

possession. (1 RT 210, 215.) In fact, a gang member's main "tool" is his gun, as many gang crimes are crimes of violence, often involving some sort of weapon. (1 RT 230.)

The parties stipulated at trial to two convictions obtained in 2010 in which validated Norteño gang members were convicted of violent crimes including murder, attempted murder, and assault with a firearm. (1 RT 281, 282.) In addition to those stipulated crimes, the gang expert testified generally about Norteños being involved in two other recent cases: a murder and an assault on a gang drop-out with thrown bottles and a .40-caliber semiautomatic. (1 RT 211-214.)

The expert explained that of some 11 validation points to determine gang membership, appellant met 6 points, not the least of which was his admission of Norteño membership on multiple occasions. (1 RT 216.) Besides appellant's admission, there was an incident while he was in custody on the current charges. Appellant and another inmate assaulted a Sureño gang member. Jail employees found a letter from appellant claiming responsibility with some other Norteños for an assault from the day before. Appellant had also described a plan to fight additional Sureños, including the stabbing of an inmate. (1 RT 223-225.) It was the detective's opinion that appellant was an active Norteño. (1 RT 223.)

The defense rested without presenting any testimony. (1 RT 282.) From counsel's argument, the defense theory at trial was that appellant acted in self-defense.

The jury found appellant guilty of attempted voluntary manslaughter as a lesser included offense of attempted murder and of assault with a firearm and found the various enhancements allegations – including the criminal street gang enhancement – to be true. (1 CT 244-246, 247-152.) The court sentenced appellant to state prison for an aggregate term of 30 years 8 months. Appellant timely appealed. (2 CT 311.)

The Court of Appeal affirmed the judgment, rejecting appellant's contention that there was insufficient evidence to prove that the Norteños as a whole constitute a criminal street gang within the meaning of Penal Code section 186.22. Rather, the Court of Appeal determined:

> The jury could have reasonably found . . . that the Norteños in the Sacramento area constitute an 'informal,' 'ongoing organization, association, or group of three or more persons' that has 'a common name [and] common identifying sign[s] or symbol[s]' and has 'as one of its primary activities the commission of one or more of the criminal acts enumerated in [section 186.22]' and 'whose members individually or collectively . . . have engaged in a pattern of criminal gang activity.'

(Slip Opn at 14.)

On June 26, 2013, this Court granted appellant's petition for review.

SUMMARY OF ARGUMENT

The California Street Terrorism Enforcement and Prevention Act of 1988, otherwise known as the STEP Act, was enacted in response to the "clear and present danger to public order and safety" presented by the criminal activities of violent street gangs. Its explicit purpose, as declared by the Legislature, was to try to eradicate criminal activity by those criminal street gangs, activity that had caused a state of crisis in California. (Pen. Code, §186.21.) As part of the Act, the Legislature set out to penalize under statutorily defined circumstances participation in or criminal activity committed for a "criminal street gang," defined by Penal Code section 186.22, subdivision (f), as an

> ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in [the statute], having a common name or identifying sign or symbol, and whose members individually or

collectively engage in or have engaged in a pattern of criminal gang activity.

This statutory language contains no explicit requirement of proof of a collaborative or organizational nexus between various subsets that identify themselves as part of a larger group before that larger group can be found to constitute a criminal street gang within the meaning of section 186.22, subdivision (f). Under the ordinary rules of statutory construction and in the absence of any constitutional impediment, plain unambiguous language of this statutory definition should not be added to or altered. In other instances in which this Court has been called upon to construe other provisions of the STEP Act, this Court has refused to read into the Act's plain language other requirements or restrictions. Adding as a requirement proof of some collaborative or organizational nexus to the statutory definition of a "criminal street gang" would be contrary to the fundamental rules of statutory construction. Adding such a requirement that the statutory language does not mandate would be a departure from this Court's previous practice of construing the STEP Act as it stands enacted. Most significantly, inserting a requirement of a collaborative or organizational nexus would no doubt frustrate the intent of the Legislature as well as the purpose of the law to impose additional punishment to those who commit criminal activity for or in connections with violent street gangs. So long as the statutory elements defining a criminal street gang have been met, the law should require no more.

ARGUMENT

NEITHER THE STATUTORY LANGUAGE DEFINING A "CRIMINAL STREET GANG" NOR THE LEGISLATIVE INTENT OR PURPOSE IN ENACTING THE STEP ACT REQUIRES EVIDENCE OF A COLLABORATIVE OR ORGANIZATIONAL NEXUS BETWEEN SUBSETS OF A LARGER PROVEN CRIMINAL STREET GANG

On appeal below, appellant contended that, before true findings as to gang enhancements under Penal Code section 186.22 may be sustained, due process requires some evidence of collaborative-effort among various Norteño subsets that committed the predicate acts used to establish the pattern of criminal activity that marks the Norteños as a criminal street gang. (AOB 6-8.) The Court of Appeal below rejected the contention, finding that whether an organization, association, or group such as that defined by section 186.22, subdivision (f), exists does not necessarily depend on proof of collaborative activities or collective organizational structure between the various subsets that identify themselves as part of a larger group. (Slip Opn. at 13.) Rather, where the evidence presented, if believed by the trier of fact, establishes the statutory elements of a criminal street gang, the question is one of fact rather than one of law. (*Ibid.*) This Court now asks the parties to address whether evidence of a collaborative or organizational nexus is required before multiple subsets of the Norteños can be treated as a whole for determining whether the group constitutes a criminal street gang within the meaning of the statute. As the court below concluded, respondent submits there is no such requirement in the statute. Nor should this Court add that requirement as a matter of statutory construction.

A. Section 186.22, subdivision (f), Has No Explicit Requirement Of Organizational Or Collaborative Nexus.

Respondent starts with the general premise that a legislature has the power, within reasonable limits, to prescribe legal definitions of its own language. When that legislature passes an act that embodies those definitions, they are binding on the courts. (*Buchwald v. Superior Court of San Francisco* (1967) 254 Cal.App.2d 347, 354.) It is the function of courts to construe and apply the law as enacted and not to add or detract from it. (*People v. Moore* (1964) 229 Cal.App.2d 221, 228.) Thus, a legislative enactment must be construed according to the ordinary meaning of its language, and in construing that language, courts may not insert any omitted provision. (Civil Proc. Code, § 1858; *Tracy A. v. Superior Court* (2004) 117 Cal.App.4th 1309, 1317; *Gilbert v. City of Los Angeles* (1973) 33 Cal.App.3d 1082, 1087.) This rule is codified in California in section 1858 of the Code of Civil Procedure, which provides that a court must not "'insert what has been omitted'" from a statute. (*People v. Guzman* (2005) 35 Cal.4th 577, 587.) A court is not authorized to insert qualifying provisions not included in the statutory language or to rewrite a statute to conform to some assumed legislative intent that does not appear from its language. (*In re Hoddinott* (1996) 12 Cal.4th 992, 1002; *Crusader Ins. Co. v. Scottsdate Ins. Co.* (1997) 54 Cal.App.4th 121, 134.) Where the words of a statute are clear, an appellate court should not add to or alter such words to accomplish some purpose that does not appear on the statute's face or in its legislative history.

Referring to the statute at issue here, this Court has characterized as a "thicket of statutory construction" the issues presented by the STEP Act of 1988. (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 319.) In construing its provisions, the Court has followed a restrained approach to conform to

the necessary limitations on its proper role in statutory construction. (*People v. Garcia* (1999) 21 Cal.4th 1, 14.) The Court has identified its task as ascertaining and effectuating the Legislature's intent. (*People v. Robles* (2000) 23 Cal.4th 1106, 1111; *People v. Casteneda* (2000) 23 Cal.4th 743, 746.) Finding the statutory language as generally providing the most reliable indicator of legislative intent (*People v. Robles*, *supra,* at p. 1111; *People v. Gardeley* (1996) 14 Cal.4th 605, 621), this Court has turned to the words themselves, giving them their usual, ordinary meanings in construing them in context (*People v. Casteneda*, *supra*, at p. 747). If the language contains no ambiguity, a court should presume the Legislature meant what it said and the plain meaning of the statute governs. (*Ibid.*) Applying these general principles, the statutory language of section 186.22, subdivision (f), defining criminal street gangs has no explicit requirement of evidence of any organizational or collaborative nexus. Nor should such a requirement be imputed.

The STEP Act defines a criminal street gang as "any ongoing organization, association, or group of three or more persons, *whether formal or informal*, having as one of its primary activities the commission of one or more of [certain enumerated] criminal acts ..., having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity." (Pen. Code, § 186.22, subd. (f), italics added.) Patterned on this statutory definition, jurors are instructed as to what must be proven to establish a criminal street gang:

> A criminal street gang is any ongoing organization, association, or group of three or more persons, whether formal or informal:
>
> 1. That has a common name or identifying sign or symbol;

2. That has, as one or more of its primary activities, the commission of murder (PC 187) [;] attempted murder (PC 664/187) [;] or assault with a firearm (PC 245(a)(2));

AND

3. Whose members, whether acting alone or together, engage in or have engaged a pattern of criminal activity.

(CALCRIM 1401; 1 CT 230.) Significantly, the crimes that establish a "pattern of criminal gang activity" need not be gang-related. (CALCRIM 1401; 1 CT 231.) The most cursory review of this definition shows no explicit statutory language requiring evidence of some organizational or collaborative nexus. Nor does the definition contain any ambiguous language that could reasonably be construed to require that additional element.

In fact, the contrary appears to be the case. The definition of a criminal street gang permits this association or group of three or more persons to be formal *or* informal. The definition's inclusion of informal associations within its coverage would seem the antithesis of some collaborative organizational structure. Instead, by requiring among its elements a common name or identifying symbol, the Legislature has ensured that totally random actors are not viewed collectively. By ascribing to the specific "trademarks" and visibility of a larger structure, those who identify with either the Norteños as a whole or with some subset of that whole may still be targeted for their criminal behavior. Because a gang member, whether as part of a Norteño subset or of the gang as a whole, trades off the well-known Norteño reputation and the fear it creates in the community, the Legislature could rationally determine that the statute need require – without more – only proof of the existence of the larger group of Norteños within the meaning of section 186.22(f). As the Third District Court of Appeal explained, while "proof of collaborative activities

or collective organizational structure between various subsets can support a finding that the larger group satisfies the statutory requirements necessary to be a criminal street gang," nothing in section 186.22 requires proof of such activities or structure. (Slip opn. at 13.) Because this Court must take a statute as it finds it, appellant's contention concerning a required organizational or collective nexus among subsets of Norteños should be rejected as contrary to the plain language of the statute.

B. Other Constructions of the STEP Act Support Reliance On The Plain Meaning Of The Statutory Language

As respondent previously noted, in construing other provisions of the STEP Act, this Court has generally remained faithful to the statutory language, when it is unambiguous, eschewing interpretations that deviated therefrom. This Court has stated that it would not lightly assume drafting error by the Legislature. (*People v. Robles, supra*, 23 Cal.4th at p. 1114.) In the face of other unambiguous provisions within the ACT, this Court has refused to rewrite the statute.

For example, to trigger the gang statute's sentence enhancement provision under section 186.22, subdivision (b), the trier of fact must find that one of the alleged criminal gang's primary activities was the commission of one or more of enumerated crimes listed in the gang statute. One appellate court grafted onto the Act a requirement that only "past activity, not current offenses" could be considered as evidence of an alleged gang's primary activities. (*In re Elodio O.* (1997) 56 Cal.App.4th 1175, 1181.) Looking to the statutory language, however, this Court concluded that nothing in that language prohibited the trier of fact from considering the circumstances of the present or charged offense(s) in deciding whether a group had the required primary activities as listed. (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 323.) Insofar as *Elodio O.* allowed evidence of only past offenses, it was disapproved. (*Ibid.*)

In *People v. Louen* (1997) 17 Cal.4th 1, a defendant argued that the two or more predicate offenses used to show a "pattern of criminal activity," one of the elements needed to demonstrate the existence of a criminal street gang, must have been committed on separate occasions *and* by two or more persons, though the statutory language used "or" rather than "and." This argument failed in the face of statutory language that did not require proof of both multiple occasions *and* multiple actors. Rather, by using the disjunctive "or," the Legislature indicated an intent to designate alternative ways of satisfying the statutory requirements. (*Id.* at pp. 9-10.) Thus, this Court found that the prosecution could establish the requisite "pattern" solely through evidence of crimes committed contemporaneously with the charged incident. (*Id.* at p. 11.)

In construing the statutory phrase "actively participates," which is an element of the substantive gang crime defined in section 186.22, subdivision (a), one court determined that the phrase evidenced an intent to apply only to someone who devotes all or a substantial part of his time and efforts to the criminal street gang. (*People v. Green* (1991) 227 Cal.App.3d 692, 700.) This Court disagreed, again considering the "usual and ordinary meaning" of the plain language used in the statute. Under that construction, this Court found that a person actively participates in any criminal street gang, within the meaning of the statue, by involvement that is more than nominal or passive. (*People v. Castenada, supra*, 23 Cal.4th at p. 752.) By linking criminal liability to a defendant's criminal conduct in furtherance of a street gang, section 186.22(a) was said to reach only those gang participants whose involvement, by definition, was "'more than nominal or passive.'" (*Ibid.*) As in other instances where this Court was invited to adopt a construction of the statute that went beyond or was more restrictive than the statutory language, this Court declined, finding it unnecessary to do so to meet the due process requirement of "personal guilt" (*id.* at p. 749)

or to provide adequate notice so as to prevent arbitrary law enforcement (*id.* at p. 751). This Court concluded that nothing in the language of section 186.22, subdivision (a), would encourage arbitrary or discriminatory law enforcement. (*Id.* at p. 752.)

Nor have defendants fared better by claiming that their constructions of the STEP Act, though not mandated by statutory language, were nevertheless required to satisfy due process concerns. In *People v. Gardeley, supra,* 14 Cal.4th 605, not only did this Court find nothing in the statutory language of section 186.22, subdivision (e), showing legislative intent to require that the predicate offenses necessary to establish a pattern of criminal activity be gang-related (*id.* at pp. 621-622), it also rejected the defendant's counter-argument that, even in the absence of such legislative intent, considerations of due process required this Court to read the defendant's proposed limitation into 186.22, subdivision (e) (*id.* at pp. 622-623). This Court found that the detailed requirements of the STEP Act are sufficiently explicit to inform those subject to it about what constitutes a criminal street gang for purposes of the Act. (*Id.* at p. 623.) "These detailed requirements fully comport with due process." (*Id.* at 624, fn. omitted.)

Appellant attempts to make the due process argument rejected in *Gardeley*, contending that, without the qualification here proposed, the STEP Act suffers from vagueness (AOB 27-30) and that it violates due process by removing the concept of "personal guilt" (see *Scales v. United States* (1961) 367 U.S. 203; also *Lanzetta v. New Jersey* (1939) 306 U.S. 451). (AOB 15-17.) Appellant's point is not well taken for reasons already clear to this Court. As both *Leoun, supra,* 17 Cal.4th 1 and *Gardeley, supra,* 14 Cal.4th 605 pointed out, an attempt to draw analogies between statutes that infringe on protected associational rights and the STEP Act is inapt because the STEP Act punishes conduct, not group membership.

(*Louen, supra*, at p. 12; *Gardeley, supra*, at pp. 623-624.) The STEP Act satisfies the requirements of due process by imposing increased penalties only when the criminal conduct punished is felonious and is committed under specific statutory criteria, i.e., for the benefit of, at the direction of, or in association with a group that meets statutory conditions of a "criminal street gang" and with the specific intent to promote, further, or assist any criminal conduct by gang members. (*Ibid;* also see *People v. Castenada, supra*, 23 Cal.4th at pp. 750-752.) This Court has not previously found that due process requires more, and appellant has offered no persuasive reasons to deviate from that view.

In sum, when this Court has previously construed provisions of the STEP Act, it has kept in mind its limited role in interpreting enactments from the political branches of state government. Toward that end, this Court has taken the Legislature at its "word" by giving effect to the plain meaning of the actual words of the law. Respondent submits that appellant's proposed addition of a collaborative or organizational nexus to the definition of a "criminal street gang" is necessitated by neither statutory language nor due process concerns. Further, reading such a requirement into the law would be a departure from this Court's previous practice as well as a violation of a cardinal rule of statutory construction that courts not simply add provisions to unambiguous language, absent constitutional compulsion. Respondent urges this Court to reject appellant's contention.

C. Inserting A Requirement Of A Collaborative Or Organizational Nexus Would Be Contrary To Legislative Intent

In addition to the fact that neither the plain statutory language nor the concerns of due process require the construction of criminal street gang that appellant proposes, there is another, more significant reason for rejecting the proposal. At the outset, respondent recognized that the task of any

court in construing any statute is to ascertain and effectuate the Legislature's intent. (*People v Louen, supra*, 17 Cal.4th at p. 8, citing *People v. Gardeley, supra*, 14 Cal.4th at p. 621 and *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871; accord *People v. Vis* (1966) 243 Cal.App.2d 549 [statute must be construed in the light of the legislative design and purpose].) In interpreting statutes, courts are expected to follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law, "'whatever may be thought of the wisdom, expediency, or policy of the act.' (citations omitted.)" (*People v. Louen, supra*, at p. 9.) So while the Legislature could have defined a criminal street gang to include the limitation of a collaborative or organizational nexus, it did not. Further, respondent submits that such a limitation would ill serve the express statutory purpose.

In the previous examples cited of this Court's refusals to add to the plain language of various provisions of the STEP Act, a common factor appears: the construction proposed by the defendant would have served to restrict the application of the Act in ways unintended by the Legislature. In *Sengpadychith, supra,* 26 Cal.4th 316, that would have meant the prosecution would not have been able to rely on evidence of the current or charged offenses to establish an alleged gang's primary activities. In *Louen, supra*, 17 Cal.4th 1, it would have meant restricting a finding of "pattern of criminal" activity to those cases in which not only were there multiple predicate offenses, but each of those offenses was also committed by multiple actors. Adopting the defense's construction of "actively participates" as used in section 186.22, subdivision (a) would have shifted the focus from whether an alleged gang member committed a crime to benefit the gang to questions of whether demonstrated gang activity constituted "all or a substantial part" of that person's time and efforts. (See *People v. Castenada, supra,* 23 Cal.4th 743.) And in *Gardeley, supra*, 14

Cal.4th 605, the predicate offenses necessary to establish a pattern of criminal activity would have been required to be gang-related. In each and every instance, the proposed constructions would have adversely affected the STEP Act's ability to eradicate criminal activity by street gangs by simply removing from its purview many of the criminals and much of their criminal conduct the statute was enacted to remedy. Appellant's proposed addition to the definition of a criminal street gang suffers from this same defect and, for the same reasons outlined in a substantial line of this Court's previous decisions, should similarly be rejected.

Unlike some statutes where extrinsic aids such as legislative history or ballot summaries must be consulted to ascertain legislative intent, no such consultation is necessary with respect to the STEP Act. Instead, the Legislature included in its statutory language both the reason for the Act – the crisis in California caused by violent street gangs – and the Act's purpose – the eradication of criminal activity by street gangs. (Pen. Code, § 186.21; *People v. Gardeley, supra*, 14 Cal.4th at p. 4.) The urgency with which this legislation was passed as well as the manner in which its provisions have been expanded since its initial enactment would seem to refute any notion that the Legislature intended its provisions to be construed in a manner that constrained its application. Nothing in the stated purpose lends any support to the contention that the Legislature intended to increase the prosecutorial burden by requiring a level of formality in the structure of a criminal street gang that the language of the statutory definition ("whether formal or informal") does not. Presently, evidence that a group has a common name or identifying sign or symbol, commits one or more enumerated criminal acts, and exhibits a pattern of criminal gang activity suffices to establish a criminal street gang. This Court should require no more.

CONCLUSION

For the reason expressed, respondent urges this Court to affirm the judgment of conviction.

Dated: November 22, 2013

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **Answering Brief on the Merits** uses a 13 point Times New Roman font and contains 5,587 words.

Dated: November 22, 2013

KAMALA D. HARRIS
Attorney General of California

WANDA HILL ROUZAN
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Prunty**
No.: **C071065 / S210234**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 22, 2013, I served the attached

RESPONDENT'S ANSWER BRIEF ON THE MERITS

by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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Clerk of the Superior Court
Sacramento County
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 22, 2013, at Sacramento, California.

_____
Declarant

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