

Answers to Rochester City Attorney

1. MN statute 609.229 controls the definition of criminal street gang for the purpose of 604.12, equal access to motorcyclists. This means that only determinations made under Minnesota state law are applicable. Adkin's reference to the US Department of Justice is not relevant to 604.12. Remember, MN statute 609.229 has very specific criteria to determine that a group is a criminal gang. It is not merely an investigatory tool or an arbitrary label.

2. The critical question is, "Who determines whether an organization meets the definition of criminal gang in MN statute?" The answer is the judiciary. The criminal street gang statute in MN is intended to provide sentencing enhancements for members of criminal gangs convicted of a crime in furtherance of the gang. This means that the ultimate and final determination is made by the judiciary. The huge impacts involved with legally being considered a member of a criminal gang, and the constitutional rights issued involved, require that the courts of MN have the final decision in an impartial setting.

3. The Rochester City Attorney's opinion does not meet the judicial determination criteria. The City Attorney is drawing a conclusion, and convicting without trial, members of the Sons of Silence and Med City Crew before they have been found by a MN court to be members of a criminal street gang. The City Attorney's biased opinion is shaped by the exact stereotype that led the legislature to change the law in 1998.

4. MN Courts have concluded that the Sons of Silence should be allowed access to public accommodations.

5. *State v. Carlson*, 268 N.W.2d 553, 559 (Minn. 1978) (holding that evidence of motorcycle club insignia, relevant only to defendant's state of mind in prosecution for obstructing arrest, was too prejudicial to be admissible).

State v. Russell, 477 N.W.2d 886, 887 (Minn.1991) (citation omitted). But in Minnesota, our courts have applied a more stringent rational basis test than the federal equivalent. (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Additionally, appellant contends that the gang statute does not have a rational basis because it does not cover similarly situated organizations that do not have a "common name or common identifying sign or symbol." But appellant bears the burden of

demonstrating beyond a reasonable doubt that a statute is unconstitutional. *Id.* And appellant fails to identify a similarly situated criminal organization that may escape the gang statute's purview because it does not have a common name or identifying symbol. Thus, appellant fails to prove beyond a reasonable doubt that the gang statute violates equal protection guarantees.

Minnesota v. Yang. MN Supreme Court October 29, 2009

Expert testimony in the form of an opinion that a group is a criminal gang under Minn. Stat. § 609.229, subd. 1 (2008), or that a defendant committed the charged offense, is an ultimate conclusion reserved for the jury, and therefore is improper.

An investigatory stop of a vehicle is justified if police have a “ „particularized and objective basis for suspecting the particular person stopped of criminal activity.” ” *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). We apply a totality-of-the-circumstances test to analyze the legality of vehicle stops near a recent crime scene. *Appelgate v. Comm’r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987) (citing 3 W. LaFare, Search and Seizure §

State of Minnesota vs. Jose Isidrio Mireles November 21, 2000 (STATE OF MINNESOTA IN COURT OF APPEALS, C3-00-742)

Minn. Stat. 609.229 includes a specific-intent element, which requires that the defendant act “with intent to promote, further, or assist in criminal conduct by gang members.” This specific-intent requirement limits the reach of the statute to those individuals who engage in criminal conduct for the benefit of a criminal gang with the specific intent to promote, further, or assist in criminal conduct by gang members. The freedom of association protected by the First Amendment does not extend to “joining with others for the purpose of depriving third parties of their lawful rights.” *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 776, 114 S. Ct. 2516, 2530 (1994). Because it is limited by this specific-intent requirement, Minn. Stat. § 609.229 does not reach so broadly as to burden innocent associations.

STATE IS RESPONSIBLE FOR PRIVATE PARTY ACTIONS IF STATE PROVIDED ENCOURAGEMENT OR EXERCISED

As the Court noted in *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982), “although the factual setting of each case will be significant, our precedents indicate that a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.” Citing *Flagg Bros., Inc. v. Brooks* 436 U.S. 149, 166 (1978).

Bill of Rights Transcript

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.[note 1][1]