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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. KENNETH HAMMOND et al., Defendant and Appellant.	B271915 (Los Angeles County Super. Ct. No. TA138491)

APPEAL from judgments of the Superior Court of Los Angeles County, John J. Lonergan, Judge. Affirmed.

Linda L. Gordon, under appointment by the Court of Appeal, for Defendant and Appellant Kenneth Hammond.

Lori A. Quick, under appointment by the Court of Appeal, for Defendant and Appellant Eddie Garlin.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

Kenneth Hammond and Eddie Garlin appeal from judgments entered after a jury convicted them of conspiracy to commit robbery and found not true an accompanying special allegation that the crime had been committed for the benefit of a criminal street gang. A companion charge of robbery was dismissed after the jury could not reach a unanimous verdict. Hammond and Garlin contend on appeal there was insufficient evidence apart from their own statements to support the conspiracy conviction in violation of the corpus delicti rule and the trial court abused its discretion by denying their motion to bifurcate trial on the gang allegation. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Amended Information*

In an amended information filed January 26, 2016 Hammond and Garlin were charged with one count of conspiracy to commit robbery (Pen. Code, §§ 182, subd. (a)(1), 211)[1] and one count of second degree robbery (§ 211). As to both counts it was specially alleged the offenses had been committed for the benefit of, at the direction of or in association with a criminal street gang with the specific intent to promote, further or assist in criminal conduct by gang members. (§ 186.22, subd. (b)(1)(C).) It was further specially alleged that Hammond had suffered a prior serious felony conviction within the meaning of section 667, subdivision (a)(1), and the three strikes law (§§ 667, subds. (b)-(j), 1170.12).

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[1] Statutory references are to this code.

2. *The People's Evidence at Trial*

a. *The conspiracy*

Beginning in July 2015 the Los Angeles County Sheriff's Department (LASD) conducted an authorized wiretap of a telephone number associated with Hammond, a member of the Carver Park Crips criminal street gang, who was a target of an unrelated investigation. On August 15, 2015 the wiretap recorded a series of calls from Garlin, who had been friends with Hammond since childhood. In the first call made at 11:46 a.m., Garlin addressed Hammond as "Cheek," an allusion to Hammond's gang moniker, Baby Chico, and asked, Do "you want to make a quick hundred on some fast shit real quick?" Garlin explained to Hammond, "I got to meet up with . . . my cousin's peoples. I was gonna take something from them, but I really don't want to take it. I really don't want to book 'em for it, 'cause a nigga gonna need 'em for a plug, but a nigga is starvin'. So I was just gonna tell you, just walk up and fake like you took 'em from me and take the moneys so a nigga keep them . . . ." Hammond agreed to meet Garlin in 20 to 30 minutes.

LASD Detective Marc Boisvert explained to the jury that Garlin had been asking Hammond if he wanted to make some fast money; Garlin knew the proposed victims and did not want to rob them himself because he might need them in the future; and Hammond could pretend to rob Garlin and take whatever he and the victims had.

Twenty minutes later, Garlin called Hammond again and asked where he was. Hammond said he was about to get on the freeway. Garlin told Hammond to come to the grocery store at the corner of Vermont Avenue and 120th Street in Los Angeles. In another call just minutes later, Garlin told Hammond he had

wanted him to be early so he could see the intended victim. Garlin planned to get in the victim's car, after which Hammond "could just walk up and fake like, get up on a nigga, nigga gonna give you everything but hurry up man, 'cause I might have to do this shit." Detective Boisvert testified this meant Hammond would see Garlin greet the victim and get in his car, then rob both Garlin and the victim.

At 12:32 p.m. Garlin made another call to Hammond: "Where you at, Trick? Yo trick-ass made this nigga spread over my toe on us." Detective Boisvert testified Garlin was "talking smack" about Hammond and commenting that the victim's car (an SUV) had run over Garlin's toe. Hammond replied, "I know. I seen that. . . . And his fucking chain broke too, cuz." Garlin then said, "On Carver. I ain't trippin'. . . . Tell that nigga get that shit fixed. And this nigga ran over the pills, cuz." Hammond disagreed: "Nah, he didn't run all of them over. He ran over some of them. . . ." Garlin answered, "That's why when I was on the ground picking them up and you got off on him, I was like yeah, that's cool. . . . Make it seem like 'Fuck this nigga.'" Boisvert interpreted this exchange to mean that, while Garlin was picking up pills, Hammond got into an altercation with the victim and Garlin approved. Garlin then told Hammond he was about to "pull up" to "the dub"—a location where the men frequently gathered—to meet him.

b. *The surveillance video of the alleged robbery*

Although the LASD detectives running the wiretap investigation were informed a crime was underway, they took no immediate action. A detective was sent hours after the incident to ask personnel at the grocery store identified by Garlin whether a crime had been reported. None had. Nor had the Los Angeles

Police Department received a report of any crime at that location. Moreover, no broken pills were found in the store's parking lot.

The grocery store, however, was equipped with a video surveillance system. The surveillance video retrieved from the system[2] with the date and time matching those of the calls between Garlin and Hammond depicted a dark colored sedan (Detective Boisvert testified that Garlin drove a charcoal gray BMW) entering the lot at 12:11 p.m. and parking in the southeast corner. At 12:18 p.m. the video showed a dark colored SUV parking next to the sedan. A person got out on the driver's side of the SUV, walked over to the sedan and appeared to be interacting with someone inside the sedan. At 12:20 p.m. a light colored sedan (resembling a silver Subaru sedan Hammond was known to drive) entered the lot and parked near the dark colored sedan. Someone wearing a white shirt left the light colored sedan, walked to the SUV and appeared to engage in some sort of altercation. The SUV moved forward a small distance and stopped. A person on the passenger side of the SUV was seen bending down multiple times to pick something off the ground and was joined briefly by the man in the white shirt. Twenty seconds after reaching into the SUV, the man in the white shirt returned to the light colored sedan and drove quickly out of the parking lot. Another person was seen picking something off the ground by the SUV, after which the driver of the SUV repositioned the vehicle. A few minutes later, at 12:28 p.m., the dark colored sedan drove out of the lot.

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[2] The parties agree the poor quality of the video prevented the identification of individuals (including their race), the make or model of cars, license plate numbers and other potentially distinguishing features and movements.

c. *The gang evidence*

Detective Boisvert testified as the People's gang expert. He knew Hammond to be a member of the Carver Park Crips with the moniker Baby Chico and identified his tattoos as gang-related. Boisvert identified specific cases in which members of the Carver Park Crips had been convicted of murder and assault with a firearm. Boisvert also knew Garlin, who had identified himself in 2012 as a member of the Mona Park Compton Crips. Garlin bore a replica of the Mercedes-Maybach emblem (two interlocking M's) between his eyebrows that signified his membership in the gang. Boisvert identified predicate offenses committed by Mona Park gang members and testified the Carver Park Crips and Mona Park Compton Crips were allies and sometimes committed crimes together. He stated it was not uncommon for gangs to commit crimes against other criminals; however, such crimes are rarely reported. Boisvert opined the crime depicted in the video and discussed in the telephone calls was committed for the benefit of both the Carver Park Crips and the Mona Park Compton Crips. The grocery store was not located within the territory of either gang.

3. *The Defense Evidence*

Hammond and Garlin did not testify. Garlin called two witnesses, professors of his at El Camino College, who testified they had never heard Garlin speak of any gang activity or use gang slang. He was a good student until forced to withdraw when arrested for this crime and had not associated with gang members on campus. Neither teacher knew the tattoo between his eyebrows meant he was a member of a gang.

4. *The Verdict and Sentencing*

The jury convicted Hammond and Garlin of conspiracy to commit robbery but was unable to reach a verdict on the robbery count. The jury found the gang allegation not true. Hammond, who had waived his right to a jury trial on the prior serious felony allegation, admitted he had been convicted of robbery in 2010. He was sentenced as a second strike offender to an aggregate state prison term of 11 years (three years doubled, plus five years for the prior serious felony conviction). Garlin was sentenced to a term of three years in state prison.

DISCUSSION

1. *The Recorded Statements Were Not Subject to the Corpus Delicti Rule*

a. *The charged crime of conspiracy*

A conspiracy conviction requires proof that the defendant and one or more other persons had the specific intent to agree or conspire to commit an offense, as well as the specific intent to commit the elements of that offense, and proof of the commission of an overt act by one or more of the parties to the agreement in furtherance of the conspiracy. (*People v. Smith* (2014) 60 Cal.4th 603, 616; *People v. Homick* (2012) 55 Cal.4th 816, 870; *People v. Russo* (2001) 25 Cal.4th 1124, 1131.) ""The punishable act, or the very crux, of a criminal conspiracy is the evil or corrupt agreement."" (*Homick*, at p. 870.) Although it is frequently necessary to infer the existence of a conspiracy through circumstantial evidence of "'the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy'" (*People v. Thompson* (2016) 1 Cal.5th 1043, 1111; accord, *People v. Powers-Monachello* (2010) 189 Cal.App.4th

400, 418-419), the statements of coconspirators made during the conspiracy are admissible under Evidence Code section 1223, if not admissible under other hearsay exceptions. (See *People v. Herrera* (2000) 83 Cal.App.4th 46, 59; *Thompson,* at p. 1111; see also *People v. Hughey* (1987) 194 Cal.App.3d 1383, 1391-1392.)[3]

b. *The corpus delicti rule*

"In every criminal trial, the prosecution must prove the corpus delicti, or the body of the crime itself—i.e., the fact of injury, loss, or harm, and the existence of a criminal agency as its cause. In California, it has traditionally been held, the prosecution cannot satisfy this burden by relying *exclusively* upon the extrajudicial statements, confessions, or admissions of the defendant." (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1168-1169 (*Alvarez*); accord, *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1127.) The rule "is intended to ensure that one will not be falsely convicted, by his or her untested words alone, of a crime that never happened." (*Alvarez,* at p. 1169.)[4]

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[3] Garlin and Hamlin do not contend on appeal that it was error to admit their recorded statements.

[4] As the Court noted in *Alvarez,* "A majority of jurisdictions, like California, require some independent proof of the corpus delicti itself, i.e., injury, damage, or loss by a criminal agency. [Citation.] In federal prosecutions, and in a minority of states, the rule is simply that the accused's incriminating statement cannot be proof the crime occurred unless there is some independent evidence that the statement is *trustworthy*." (*Alvarez, supra,* 27 Cal.4th at p. 1169, fn. 3, citing, inter alia, *Opper v. United States* (1954) 348 U.S. 84, 93 [75 S.Ct. 158, 99 L.Ed. 101] [defendant's statements must be corroborated not by proof of corpus delicti, but by "substantial independent evidence which would tend to establish the trustworthiness of the statement"].)

"[T]he quantum of evidence the People must produce in order to satisfy the corpus delicti rule is quite modest; case law describes it as a 'slight or prima facie' showing." (*People v. Jennings* (1991) 53 Cal.3d 334*,* 368; accord, *People v. Gutierrez, supra,* 28 Cal.4th at p. 1128.) "The independent proof may be circumstantial and need not be beyond a reasonable doubt, but is sufficient if it permits an inference of criminal conduct, even if a noncriminal explanation is also plausible. [Citations.] There is no requirement of independent evidence 'of every physical act constituting an element of an offense,' so long as there is some slight or prima facie showing of injury, loss, or harm by a criminal agency. [Citation.] In every case, once the necessary quantum of independent evidence is present, the defendant's extrajudicial statements may then be considered for their full value to strengthen the case on all issues." (*Alvarez, supra,* 27 Cal.4th at p. 1171; accord, *People v. Ledesma* (2006) 39 Cal.4th 641, 722; *People v. Martinez* (2014) 226 Cal.App.4th 1169, 1187.)

"Under CALCRIM No. 359, a jury may not consider a defendant's out-of-court statement unless the jury concludes that

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The Ninth Circuit applies a two-pronged test more aligned with the traditional rule: (1) there must be "sufficient evidence to establish that the criminal conduct at the core of the offense has occurred"; and (2) unless the defendant's statement is inherently reliable, there must be "independent evidence tending to establish the trustworthiness of the admissions." (*United States v. Lopez–Alvarez* (9th Cir. 1992) 970 F.2d 583, 592; accord, *United States v. Niebla-Torres* (9th Cir. 2017) 847 F.3d 1049, 1057 [both prongs of *Lopez-Alvarez* test satisfied as to a charge of conspiracy to possess marijuana with intent to distribute where defendant was arrested in a smuggling corridor in southern Arizona and admitted being a scout for smugglers].)

'other evidence shows that the charged crime [or a lesser included offense] was committed.'" (*People v. Reyes* (2007) 151 Cal.App.4th 1491, 1498.)[5]

c. *The corpus delicti rule does not apply to statements that constitute the crime*

Hammond and Garlin contended at trial and argue on appeal that the surveillance video failed to establish the corpus delicti of the conspiracy because it was insufficiently clear to establish the existence of any loss or harm caused by some criminal agency. Interpretation of the events shown in the video as criminal conduct, they insist, is impossible without superimposing the narrative provided by their recorded statements.

Arguing to affirm Hammond and Garlin's convictions, the Attorney General relies on the decision in *People v. Muniz* (1993) 16 Cal.App.4th 1083 (*Muniz*), in which a gang member confessed he and some fellow gang members had been on their way to

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[5] The jury in this case was instructed with CALCRIM No. 359: "The defendants may not be convicted of any crime based on their out-of-court statements alone. You may rely on the defendants' out-of-court statements to convict them only if you first conclude that other evidence shows that the charged crime or a lesser-included offense was committed. That other evidence may be slight and need only be enough to support a reasonable inference that a crime was committed. This requirement of other evidence does not apply to proving the identity of the persons who committed this crime. If other evidence shows that the charged crime or the lesser-included offense was committed, the identity of the person who committed it may be proved by the defendants' statements alone. You may not convict the defendant unless the People have proved his guilt beyond a reasonable doubt."

commit a drive-by shooting in a rival gang's territory when they were arrested. (*Id.* at p. 1086.) Acknowledging the corpus delicti of the crime of conspiracy to commit an assault with a firearm could only be proved by evidence independent of Muniz's statement, the court found that requirement satisfied by an officer's description of the circumstances of their arrest and a gang expert's testimony: "The evidence that Muniz, holding the butt end of a loaded semiautomatic rifle with a banana clip, was sitting in a parked car with three fellow gang members, combined with Deputy Corrigan's expert opinion that four gang members in a car with a semiautomatic weapon suggests preparation to do a drive-by shooting, is more than adequate to establish the corpus delicti. These facts lead logically to the conclusion that there was a conspiracy between Muniz and his cohorts to commit an assault with a firearm (and do not reasonably suggest they were working on their marksmanship merit badges for their scout troop or any other innocent conclusion). No more was required." (*Id.* at p. 1088.)

Comparing this case to *Muniz*, the Attorney General points out that Hammond and Garlin belonged to allied gangs; it was not uncommon for allied gangs to commit crimes together; and the detectives were familiar with the cars ordinarily driven by each defendant. In the surveillance video the person believed to be Garlin (because the first individual drove a dark colored sedan) engaged with the driver of the SUV; a person wearing a white shirt (believed to be Hammond because he arrived in a light colored sedan) walked over and interacted with the passengers of the SUV; the SUV moved forward a few feet, possibly as a result of the interaction with the man in the white shirt; two individuals bent over to pick up something from the

ground; and the man in the white shirt returned to his car and quickly drove away.

The problem with the video, which we have reviewed, is its utter lack of clarity, something that was not an issue in *Muniz*. To be sure, under *Alvarez* the independent evidence need not be definitive, that is, it need not identify the defendant and is sufficient even if a noncriminal explanation is equally plausible (*Alvarez, supra,* 27 Cal.4th at p. 1171); but the Supreme Court has long held the evidence must show "'that a crime has been committed by someone.'" (*Alvarez,* at p. 1183 (conc. opn. of Brown, J.), citing *People v. Cobb* (1955) 45 Cal.2d 158, 161; see *People v. Ochoa* (1998) 19 Cal.4th 353, 450 ["[t]he corpus delicti in turn consists of at least slight evidence that somebody committed a crime"].) Absent the context provided by Hammond and Garlin's recorded statements, an observer of the grocery store surveillance video would have no way of knowing a crime had been committed or that Hammond and Garlin had conspired to commit a crime. Someone that might be Hammond and someone that might be Garlin interacted with the occupants of an SUV in a parking lot. Someone picked something up from the ground. Any interpretation of those actions is inherently speculative without the benefit of their recorded statements and Detective Boisvert's narrative explaining his interpretation of events. As the court in *People v. Herrera* (2006) 136 Cal.App.4th 1191 explained in rejecting the proffered evidence of the corpus delicti for conspiracy to manufacture methamphetamine, "A legal inference cannot flow from the nonexistence of a fact; it can be drawn only from a fact actually established. [Citation.] It is axiomatic that an inference may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture

or guesswork." (*Id.* at p. 1205, internal quotation marks omitted.)

Hammond and Garlin are thus correct the video is insufficient to establish a crime was committed when viewed independently of their statements on the wiretap. Nonetheless, in light of the holding and analysis by the Supreme Court in *People v. Carpenter* (1997) 15 Cal.4th 312 (*Carpenter*), the absence of independent proof of the corpus delicti in this case does not require reversal of Hammond's and Garlin's conspiracy convictions.

In *Carpenter* the defendant came upon a couple hiking in a remote area. (*Carpenter*, *supra*, 15 Cal.4th at p. 345.) He held them at gunpoint, told them to do what he said, and told the woman he wanted to rape her. (*Ibid.*) He subsequently shot both of them. The defendant was convicted of the murder and attempted rape of the woman and the attempted murder of the man. (*Id.* at p. 344.) In finding the trial court had properly refused to give a corpus delicti instruction, the Court explained, "We have extended the corpus delicti rule to preoffense statements of later intent as well as to postoffense admissions and confessions [citation], but not to a statement that is *part of the crime itself*. [Citation.] A statement to the victim of current intent can itself supply the corpus delicti. Unlike the cautionary instruction [regarding evidence of a defendant's out-of-court oral statements], the corpus delicti rule is designed to provide independent evidence that the crime occurred, not to help determine whether the statement was made. Its principle reason is to ensure 'that the accused is not admitting to a crime that never occurred.' [Citations.] Defendant's statement to [the victim] of present intent was part of the crime; it could not be a

confession to a crime that never occurred. That statement of intent did not have to be independently proved." (*Id.* at p. 394.)

In *People v. Chan* (2005) 128 Cal.App.4th 408, Division Five of this court followed *Carpenter* in finding the corpus delicti rule "has no application when the defendant's extrajudicial statements constitute the crime" and "does not extend to statements made during the commission of the charged crime." (*Id.* at p. 420.) In *Chan* the defendant was convicted of failing to register as a sex offender because he had provided false addresses when registering. (*Id.* at pp. 413, 414-415.) "The extrajudicial statements at issue . . . [were] defendant's own false written entries on . . . convicted sex offender registration forms; i.e., the crime itself." (*Id.* at pp. 420-421.) Relying on this same exception to the corpus delicti rule, the court in *In re I.M.* (2005) 125 Cal.App.4th 1195 found the defendant's misleading statement to the police was intended to aid the principal to the crime and thus was part of the crime of being an accessory after the fact of murder: "It is true that the evidence of defendant's attempt to mislead police is in the form of a statement made by him to the investigating officers. Defendant's statement, however, was not a description of the corpus delicti. As an attempt to mislead, the statement *itself* was a part of the corpus delicti. Statements that, although extrajudicial, are themselves a part of the conduct of the crime, are not subject to the corpus delicti rule. [Citation.] Defendant's attempt to mislead police, therefore, can be used to establish the corpus delicti of his crime." (*Id.* at pp. 1203-1204.)

Applying *Chapman* and its progeny to the facts before us, the recorded conversations between Hammond and Garlin constituted the criminal agreement central to the charge of conspiracy. As such, those statements were not barred by the

corpus delicti rule (or, more accurately, were themselves part of the corpus delicti) and could be relied upon in evaluating the video of the alleged robbery. Their post-robbery conversation again provided the corpus delicti for the crime of conspiracy and was evidence of the overt acts they each took in furtherance of the conspiracy.

In short, the jury's refusal to convict Hammond and Garlin on the charge of robbery reflects the poor quality of the video as evidence of the robbery; the conviction for conspiracy manifests the jury's assessment of the defendants' own statements, which were properly considered by it for that purpose.

2. *The Trial Court Did Not Abuse Its Discretion in Denying the Motion To Bifurcate Trial on the Gang Allegation*

Bifurcation of the trial of a gang enhancement allegation is permitted, but the decision whether to bifurcate lies within the discretion of the trial court. (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1049-1050 (*Hernandez*).) As the Supreme Court observed in *Hernandez,* "evidence of gang membership is often relevant to, and admissible regarding, the charged offense. Evidence of the defendant's gang affiliation—including evidence of the gang's territory, membership, signs, symbols, beliefs and practices, criminal enterprises, rivalries, and the like—can help prove identity, motive, modus operandi, specific intent, means of applying force or fear, or other issues pertinent to guilt of the charged crime." (*Id.* at p. 1049, citations omitted.) Bifurcation is required only when evidence of the predicate acts required to establish the gang enhancement, which need not be related to the charged crime or even the defendant, is unduly prejudicial or when gang evidence relating to the defendant is "so extraordinarily prejudicial, and of so little relevance to guilt, that

it threatens to sway the jury to convict regardless of the defendant's actual guilt." (*Ibid.*) Given the public policy preference for the efficiency of a unitary trial, a court's discretion to deny bifurcation of a gang allegation is broader than its discretion to admit gang evidence in a case with no gang allegation. (*Id.* at p. 1050.) Thus, "[e]ven if some of the evidence offered to prove the gang enhancement would be inadmissible at a trial of the substantive crime itself[,] . . . a court may still deny bifurcation." (*Ibid.*; accord, *People v. Franklin* (2016) 248 Cal.App.4th 938, 952.) We review the trial court's denial of the motion to bifurcate for abuse of discretion based on the record as it stood at the time of the ruling. (*Hernandez,* at p. 1048; *Franklin,* at p. 952.)

"It is undeniable that the introduction of gang-related evidence presents a danger of undue prejudice. '. . . [A]dmission of evidence of a criminal defendant's gang membership creates a risk the jury will improperly infer the defendant has a criminal disposition and is therefore guilty of the offense charged.'" (*People v. Pettie* (2017) 16 Cal.App.5th 23, 44; accord, *Hernandez, supra,* 33 Cal.4th at p. 1049.) On the facts presented to the court before trial, however, we cannot conclude the trial court abused its discretion by denying the bifurcation motion. The prosecutor advised the court the evidence would show that Garlin was a member of the Mona Park Compton Crips and Hammond a member of the Carver Park Crips, gangs that are allied and often commit crimes together. The evidence of the charges was acquired during a wiretap of the Carver Park Crips, and one of the defendants could be heard saying on the audio recording "On Carver" when discussing the proposed crime, which would provide monetary incentive for both gangs and both gang members. The

gang identifications were based on self-admission, as well as visible tattoos and police surveillance. The prosecutor described the gang evidence as inextricably intertwined with the evidence of the conspiracy and robbery. Garlin's counsel disputed that characterization and questioned the accuracy of the "On Carver" statement, especially since the alleged crime did not occur in a territory claimed by either gang. After allowing counsel ample opportunity to address the issue, the court decided the gang evidence was adequate to allow the jury to decide its weight and denied the motion.

Although the jury found the gang allegation not true, that finding does not mean the trial court abused its discretion by denying the defense motion and allowing introduction of the gang evidence. The People proceeded on the theory one gang member was calling in a favor from another gang member to assist in robbing a drug dealer, a plot uncovered in a wiretap of telephones associated with members of the Carver Park Crips gang. The evidence was susceptible to an inference of gang motivation and alliance and was certainly admissible. (See *People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1167 ["evidence related to gang membership is not insulated from the general rule that all relevant evidence is admissible if it is relevant to a material issue in the case other than character, is not more prejudicial than probative, and is not cumulative"].) The court's ruling did not fall outside the bounds of reason (*People v. Franklin, supra,* 248 Cal.4th at p. 952) and did not "actually result[ ] in gross unfairness amounting to a denial of due process" (*id.* at p. 953, internal quotation marks omitted).

DISPOSITION

The judgments are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

BENSINGER, J.*

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* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.