

Children's Law Center of Indiana



Delinquency

09/23/2008

In **G.R. v. State**, 893 N.E.2d 774 (Ind. Ct. App. 2008), the Court reversed the Juvenile's juvenile delinquency adjudication for criminal gang activity, a Class D felony if committed by an adult. The Juvenile did not appeal the juvenile court's adjudging him a delinquent for committing the following acts: criminal trespass, a Class A misdemeanor if committed by an adult, criminal mischief, a Class D felony if committed by an adult, and criminal mischief, a Class B misdemeanor if committed by an adult. On March 8, 2007, Juvenile was observed spray painting letters on the roof of a Kroger Store. A van in a nearby alleyway had also been spray painted with the letters "VL." When he was arrested, Juvenile had two cans of green spray paint and told the officers he was a member of the gang "Vatos Locos." A member of the gang task force concluded that the green VL on the van had been painted by a member of the Vatos Locos gang. On July 24, 2007, Juvenile was charged and on October 10, 2007, the juvenile court entered true findings as set forth above. The trial court ordered a suspended commitment to the Department of Correction and imposed special conditions of probation. On appeal, Juvenile argued that the evidence was insufficient to support the delinquency adjudication for criminal gang activity.

The Court concluded that the evidence was insufficient to establish that Juvenile was an active member of a gang with five or more members and therefore reversed the delinquency adjudication for criminal gang activity, a Class D felony if committed by an adult. *Id.* at 776. At the time of Juvenile's offense, a "criminal gang" was defined as a group of at least five members that either "[] promotes, sponsors, or assists in; [] or participates in; [] or requires as a condition of membership or continued membership; the commission of a felony or act that would be a felony if committed by an adult or the offense of battery." IC 35-45-9-1. The State failed to present evidence showing that Juvenile was an active member of a gang with five or more members, although it could easily have inquired into the testifying officer's knowledge of the "Vatos Locos" membership, but did not. *G.R.* at 776.