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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNIS VIGIL,

Defendant and Appellant.

B289166

(Los Angeles County  
Super. Ct. No. BA438894)

APPEAL from a judgment of the Superior Court of Los Angeles County, Douglas Sortino, Judge. Affirmed.

David L. Polsky, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

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After he was convicted of the first degree murder (Pen. Code,<sup>1</sup> § 187, subd. (a)) of Hector Robles, appellant Dennis Vigil filed a non-statutory motion for new trial on several grounds, including that the absence of defense witness Guillermo Garcia, who was expected to testify at trial, rendered his trial unfair. The trial court denied the motion on all grounds, finding that Garcia lacked credibility and that his pre-trial recorded conversation with police, which would have been admissible as impeachment evidence had Garcia testified, was helpful to the prosecution and harmful to the defense.

We see no abuse of discretion in the trial court's denial of the motion. If we were to exercise our independent judgment and apply the law to the facts found by the trial court, we would reach the same conclusion as the trial court: appellant would not have received a more favorable result had Garcia testified. We affirm the judgment of conviction.

### BACKGROUND

At about 10:00 p.m. on September 14, 2014, Hector Robles returned to his home on South Bernal Avenue in Los Angeles. Robles, his mother Piedad Chavez, and his young son went into the house with groceries they had purchased. Robles went back outside, telling his mother he was going to lock the car.

Manuel Medina, who lived across the street from Robles, looked out his kitchen window and noticed Robles walking on the sidewalk. Medina also noticed a man walking briskly behind Robles. The man appeared to be Hispanic, and about the same height and weight as Robles.

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

Robles turned into his own driveway and walked along the passenger side of a van parked in the driveway. The other man also turned into the driveway but walked along the driver's side of the van. At the front of the van, the men faced each other and had a brief conversation in Spanish. Medina could not make out what they were saying. The man raised his arm and fired five or six shots at Robles. Robles fell to the ground; Medina called 911.

The shooter walked briskly away and got into the driver's seat of a square green vehicle parked on the street about one and a-half houses down from Robles's house. Medina described the vehicle as an older SUV or small mini-van with four doors and a window in the back; he described the color as somewhere between lime and avocado green. He believed it was a Chevrolet Blazer. The shooter drove away towards Sixth Street.

Robles's mother Chavez, who was inside the house, heard her son say, "Don't do it here because my mother is here and my son." She heard five gunshots and ran outside. Chavez saw Robles lying on the ground. He raised his head and said, "Mother, don't forget who did this to me." He repeated that twice. Chavez later told police that Robles then said it was "Little Boy's brother Daniel." She also told police that Robles said "it was Danny Boy."<sup>2</sup> A certified interpreter explained that some Spanish speakers aspirate an "s" at the end of a word. (They pronounce the "s" as an "h.") If appellant's true name, Dennis, were pronounced this way, it would sound like "Danny."

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<sup>2</sup> At trial, Chavez testified that Robles then said, "It was Danny's – Danny Boy, the brother of a little boy who's – who goes by the name of Tattoo." She testified at the preliminary hearing that Robles said that "it was Danny's Boy. It was Little Boy's brother."

Los Angeles Police Officer Razi Uddin was in the area, heard gunshots, and drove towards the scene. Along the way, he noticed a green Mitsubishi Montero with a tan bumper driving on Inez Street, going in the opposite direction from the officer. He noticed the vehicle because there were no other vehicles driving on the street and it was travelling very fast. Officer Uddin observed that the driver was a Hispanic man wearing a black tank top. The officer continued to Bernal Street, where he was the first officer on the scene. He later told investigators about seeing the Montero.

The primary investigating officer for Robles's homicide was Los Angeles Police Officer Jorge Alfaro. He interviewed Chavez in the early morning hours of September 15, 2014. She was "distraught, very sad, almost in shock." Chavez told Officer Alfaro that her son Robles was a member of the Crazy Riders gang. His nickname was Fantasma. Chavez also told the officer about Robles's identification of his killer as Little Boy's brother Daniel or Danny Boy.

Chavez had accompanied Robles to visit Little Boy in jail once or twice. Little Boy's real name was Juan Carlos Virgil or Vigil. Little Boy, who also went by the name Tattoo, sent Chavez a photograph of himself and asked her to pray for him. She gave the photo to Officer Alfaro.

At trial, Chavez identified appellant as Danny Boy, and stated that appellant was Little Boy's brother. Chavez had seen Danny Boy twice before -- once when she was with Robles when he "turned in the taxes" to Danny Boy and once when Robles gave him money for an attorney for his brother. She had last seen Danny Boy four or five years before the shooting.

Appellant's sister Roxana Vigil testified that she and appellant had a brother named Juan Carlos. She said Exhibit 19, a photograph, could be Juan Carlos.<sup>3</sup> She also testified that Juan Carlos had been incarcerated since at least May 2014. In August 2015, he was incarcerated at Calipatria State Prison.

During his investigation, Officer Alfaro learned that appellant had been dating Marlen Deanci. A green Mitsubishi Montero was registered in Deanci's name. The Montero had previously been owned by Luz Alcala.

Luz Alcala's daughter, Luz Gurrola, testified at trial that in May 2014, four months before the murder, she arranged to sell the Montero on her family's behalf. Gurrola told a friend, Carlos Amaya, that her mother wanted to sell the Montero. At the time, Amaya was incarcerated at Calipatria State Prison and had a cellmate known as "Little Boy." The same day Gurrola told Amaya the Montero was for sale, someone contacted Gurrola about buying the vehicle. Gurrola and the buyer arranged to meet later that same day at Gurrola's home. Appellant showed up for the meeting with two other people. He told Gurrola he had learned about the Montero's availability through Amaya. Appellant mentioned he had a brother incarcerated in state prison. Appellant inspected the Montero, left, and returned with \$700 in cash to pay for the truck. When appellant returned, he was accompanied by a teenage girl and another woman. One of the women with appellant drove the Montero away.

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<sup>3</sup> Exhibit 19 was a color version of the photograph Chavez gave to Officer Alfaro after Robles's murder. Chavez testified that the photograph had been sent to her by Juan Carlos.

In late September 2014, around the time of the murder, Manuel Deras purchased the Montero from a co-worker he knew only as Choco. About two weeks after he purchased the vehicle, it was impounded by police. Choco did not return to work after the vehicle was impounded.

Police attempted to locate appellant in Los Angeles but could not find him. In November 2014, they went to Deanci's residence in Bakersfield, discovered appellant was in the residence, and, after an almost 8-hour stand-off, took him into custody.

Oscar Orantes, a police informant, testified in the past he had paid "taxes" to both Robles, known as Fantasma, and Danny Boy when Orantes was selling cigarettes, DVDs and fake documents on Alvarado Street, near Wilshire and Seventh Street in Los Angeles. He paid taxes to Fantasma until about 2010. Thereafter he paid taxes to one "Broccoli" and then to Danny Boy. All three men were members of the Crazy Riders gang. Orantes identified appellant as Danny Boy.

Orantes testified he had heard appellant threaten Fantasma on two occasions: when Danny Boy took over the collection of taxes and again in April 2013. Both times, appellant threatened to kill Fantasma because he was a snitch. The second threat occurred when Orantes was in a car with appellant, speaking with Guillermo Garcia, also known as Memo. Appellant told Garcia to call him if he saw Fantasma because they were going to kill him for causing people to go to jail.

Los Angeles Police Officer Carlina Ortiz testified as the People's gang expert. Officer Ortiz explained that "taxing" is a form of extortion committed by gangs. People conducting criminal operations in gang territory must pay such a tax. If they

failed to pay, they would be assaulted or robbed. “Rats” or “snitches” may also be assaulted or even killed by a gang. Officer Ortiz did not find any field identification cards listing appellant as a member of the Crazy Riders gang, and she had not seen any photographs of him or Robles with Crazy Rider gang members.

Officer Ortiz opined that if one gang member took over a tax collection activity from another member of the same gang, accused him of being a snitch and subsequently killed him, that killing would be for benefit of the gang. It would instill fear within the community and facilitate the gang’s continued criminal operations.

Appellant offered numerous witnesses in his defense, presenting a hybrid defense of mistaken identification and alibi.

First, appellant testified on his own behalf. He denied he had killed Robles; he denied ever having met Robles or Chavez or been to their home. Appellant denied he had ever been a gang member or gone by the name Danny Boy. He denied knowing Orantes.

Appellant and others stated that in late 2013, he broke three bones in his right ankle, had surgery, and then wore a leg brace or cast. He needed to either use crutches or receive support from another person to walk. He could not drive. He gained weight and “got really big.” Appellant testified his incapacity continued through his arrest in November 2014.

As to the alibi, Ana Fortis testified appellant was present when she went to Roxana Vigil’s home on September 14, 2014 at about 9:45 or 9:50 p.m. Fortis and Roxana were planning to go to a party. Fortis thought appellant looked about 100 pounds heavier than his usual weight of 165 to 170 pounds. Fortis

stayed at the house with appellant for about 25 to 30 minutes. She and Roxana then left for the party.

Appellant also presented the testimony of two gang experts. Robert Freeman, an investigator as well as a gang expert, testified he could find no evidence connecting appellant to the Crazy Riders gang. Freeman opined a gang tax collector would be a “seasoned” gang member. He also opined that a gang would not wait several years to seek retribution for snitching.

The second defense gang expert, Dagoberto Ramirez, was a former Crazy Riders gang member and current coordinator for an anti-gang program. Ramirez believed any tax collector for the Crazy Riders would have been affiliated with the gang for at least 10 years. When Ramirez was active with Crazy Riders through 2008, he knew the gang’s tax collectors. He believed Robles was a tax collector. Ramirez had never heard the gang nickname Danny Boy; if there had been a tax collector with that name when Ramirez was active, he would have known the name. Ramirez still associated with Crazy Riders gang members as part of his job, but had never seen appellant before this case. Ramirez opined that a gang would retaliate against a member who was a snitch immediately upon learning the information.

## DISCUSSION

Appellant initially brought a motion for new trial pursuant to section 1181 on the statutory ground of newly discovered evidence, specifically the testimony of Guillermo Garcia. Appellant believed Garcia would testify that appellant was not Danny Boy and that Garcia had never been at a meeting where appellant had threatened to kill Robles. Appellant subsequently filed a supplemental brief raising the nonstatutory ground that Garcia’s absence denied him a fair trial. The trial court found



Garcia's testimony was not newly discovered evidence because counsel became aware of it during trial. The trial court denied the nonstatutory motion on the ground Garcia was not a credible witness and his appearance at trial would have hurt the defense rather than have helped it. The court also found appellant would not have received a different result had Garcia testified. Appellant contends the trial court erred in denying the nonstatutory motion. We do not agree.

1. *A Trial Court Has Broad Discretion in Ruling on a New Trial Motion.*

Section 1181 provides a number of specified grounds for a new trial, including discovery of new evidence favorable to the defendant. California also permits a nonstatutory motion for a new trial "when necessary to protect a defendant's constitutional right to a fair trial." (*People v. Knoller* (2007) 41 Cal.4th 139, 158 (*Knoller*).) A motion for new trial based on the absence of a witness who was expected to testify at trial is a recognized ground for a nonstatutory new trial motion. (See *People v. Dunn* (2012) 205 Cal.App.4th 1086, 1095 (*Dunn*).)

"In determining whether to grant a motion for new trial based on the absence of a witness who was expected to testify at trial, relevant factors include: (1) the defendant's diligence in securing the attendance of the witness [citations]; (2) the defendant's use of available alternative means to obtain the desired evidence [citations]; (3) the defendant's fault for the witness's nonappearance [citations]; and (4) the nature of the testimony expected from the witness and its probable effect on the outcome of the trial [citations]." (*Dunn, supra*, 205 Cal.App.4th at p. 1095.)

A trial court has broad discretion to grant or deny a motion for a new trial. (*People v. Seaton* (2001) 26 Cal.4th 598, 693.) Generally, a ruling on a motion for new trial “ “will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears.” ’ ” (*People v. Delgado* (1993) 5 Cal.4th 312, 328.)

Appellant contends there is a different standard of review for nonstatutory motions for a new trial, and we should apply the mixed standard of review found in *People v. Taylor* (1984) 162 Cal.App.3d 720 (*Taylor*).<sup>4</sup> That case, however, involves a nonstatutory motion for new trial based on ineffective assistance of counsel. (*Id.* at pp. 723–724.) Appellant has not cited any authority applying this mixed standard of review to nonstatutory motions for new trial generally or to such motions based on the absence of a witness particularly.

Our Supreme Court has recognized California law permits nonstatutory motions for a new trial “when necessary to protect a defendant’s constitutional right to a fair trial,” but it then applied an abuse of discretion standard to the particular nonstatutory motion before it. (*Knoller, supra*, 41 Cal.4th at p. 158 [motion based on disparate treatment of defendants].) In what appears to be the earliest case recognizing a nonstatutory motion for new

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<sup>4</sup> Under this standard, “all presumptions favor the trial court’s exercise of its power to judge the credibility of witnesses, resolve any conflicts in testimony, weigh the evidence, and draw factual inferences. The trial court’s factual findings, express or implied, will be upheld if they are supported by substantial evidence.” (*Taylor, supra*, 162 Cal.App.3d at p. 724.) An appellate court has the responsibility “ “to measure the facts, as found by the trier, against the constitutional standard . . . .” [Citation.] On that issue, in short, the appellate court exercises its independent judgment.’ [Citations.]” (*Id.* at p. 725.)

trial based on the absence of a material witness, the First District Court of Appeal applied an abuse of discretion standard. (*People v. Davis* (1973) 31 Cal.App.3d 106, 111.) The Fourth District Court of Appeal applied a deferential abuse of discretion standard to a motion for mistrial based on the absence of a material witness, which motion it analogized to a new trial motion based on the absence of a material witness. (*Dunn, supra*, 205 Cal.App.4th at pp. 1094–1095.)

We find the abuse of discretion standard to be the appropriate standard of review for a nonstatutory motion for new trial based on the absence of a material witness.<sup>5</sup> We see no abuse of discretion. Assuming for the sake of argument that the *Taylor* mixed standard of review applied, we see substantial evidence to support the trial court’s factual findings; exercising our independent judgment, we would uphold the trial court’s ruling.

## 2. *The Trial Court’s Ruling*

The trial court held an evidentiary hearing at which several witnesses, including Garcia, testified. The court denied the motion based essentially on the last factor from *Dunn*: “the nature of the testimony expected from the witness and its probable effect on the outcome of the trial.” (*Dunn, supra*, 205 Cal.App.4th at p. 1095.) The court found Garcia’s absence did not impact the fairness of the trial and expressly denied the

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<sup>5</sup> The line between the two standards of review is not necessarily a sharp one. An abuse of discretion may occur “if the trial court based its decision on impermissible factors [citation] or on an incorrect legal standard [citations].” (*Knoller, supra*, 41 Cal.4th at p. 156.)

motion on that ground. It also found Garcia's testimony would not have led to a different result.

The trial court explained, "I frankly don't believe he's a very credible witness. I think that [his] phone conversation [with police] is devastating to his credibility." The court pointed out that if Garcia testified at trial "as he did at this new trial motion and denied that he was ever present at a meeting with Mr. Orantes and the defendant," the taped phone call with police "impeaches that testimony."

The trial court also found Garcia's testimony was "devastating to the defense" and, given Garcia's certain impeachment with the taped phone call, "would have only helped the prosecution." The court explained the phone call would "reinforce[] almost every stereotype about gang cases" such as "witnesses being coerced or forced by the gangs to testify in a certain manner." The court opined that if Garcia had testified at trial "it would have made the defense case even more problematic. I don't think it would have led to a different result."

### 3. *Garcia Was Not a Credible Witness.*

The trial court did not abuse its discretion in finding Garcia would not be a credible witness. Alternatively, if we applied the *Taylor* mixed standard of review, we would find substantial evidence to support the trial court's finding.

At the new trial hearing, the People introduced a recording of a pre-trial phone call about Danny Boy between Garcia and Los Angeles Police Department Detective Carlos Camacho. As the trial court pointed out, the recorded call negatively impacted Garcia's credibility. In the call, Garcia is quite clear that "they" want him to falsely say that he does not know Danny Boy and has never even seen him. Garcia unequivocally indicates he

knows Danny Boy and has paid “rent” to him in the past. Garcia also states “they want me to say that Oscar [Orantes] was never in my car listening to anything.” Garcia indicates his desire to lie, suggesting “Why don’t we just do what they say so we can all be at ease, that’s the best way about it.” At a minimum, this establishes Garcia is willing to lie, which certainly affects his credibility on any topic.

At the new trial hearing, Garcia testified he did not pay rent to Danny Boy and the recorded conversation to the contrary was based on a “misunderstanding” because he “did not know Mr. Camacho.” Camacho is a fluent Spanish speaker and the recorded conversation is in Spanish. The conversation itself is clear, and does not depend on the identity of the speaker.<sup>6</sup> Thus, either Garcia was lying to Camacho in the recorded conversation or he was lying in court. Again, this certainly reflects negatively on his credibility.

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<sup>6</sup> When Garcia returned to the phone after a brief absence, Camacho asked, “[D]o they want you to contradict what Oscar has said?” Garcia replied, “Not against Oscar. The only thing they want me to say is that I don’t know Danny.” Camacho confirmed, “But you do know Danny Boy, right?” Garcia replied, “Yes, yes, of course I know him.” Camacho asked, “Did he call you?” Garcia replied, “No, he hasn’t called me, Danny Boy hasn’t called me.” Camacho stated, “And one time you talked about how you used to pay Danny Boy, right? You paid him rent?” Garcia replied, “Aha, yes, yes.” Camacho continued, “And then when Danny Boy left, the payments went to Wino, right?” Garcia replied, “Aha, that’s the fool we paid.” Camacho clarified, “But, he wants you to say you do not know Danny Boy.” Garcia replied, “Exactly, that’s the only thing he wants me to say.”

Garcia also contradicted himself during the hearing. At one point, in apparent reference to appellant, Garcia volunteered, “But that’s not Danny Boy. He’s not Danny Boy.” Defense counsel quickly clarified, “You pointed to my client, and you said that’s not Danny Boy; is that correct?” Garcia replied, “Yes, I don’t know what they call him.” Shortly thereafter, defense counsel continued, “ You said this – my client is not Danny Boy. Do you know of a Danny Boy?” Garcia replied, “Yes.” He added that there was a Danny Boy around Seventh and Alvarado when he worked there. When defense counsel asked if Garcia would know Danny Boy if he saw him on the street, Garcia replied, “No. What you’re not understanding is something different. They’re not going to say, hey, I’m Danny Boy.” Defense counsel asked, “You would know who he is if you saw him?” Garcia replied, “So if I saw the guy that they say is Danny Boy, I just know him as the guy that they pay rent to. But if you say, hey, there’s Danny Boy, I wouldn’t know who that is.” When defense counsel said, “But without a doubt, it’s not my client,” Garcia responded, “Friend, I don’t know if that’s him or not. He never said, hey, it’s me. So the only thing I want to say is when supposedly Oscar had heard that I wasn’t there.” These contradictions also impact Garcia’s credibility negatively.

Garcia’s testimony at the hearing was also contradicted by the testimony of witnesses friendly to the defense: trial counsel Eric Hanson, defense investigator Robert Masucci, and defendant’s sister Roxana Vigil.

Hanson testified he asked Garcia “if he had ever heard of Dennis Vigil. He said no. I then showed him a picture of Dennis Vigil and asked if he knew this person or had seen this person. He said, ‘No.’” Roxana stated in her declaration in support of the

motion that Garcia said, “he had never met Mr. Vigil, he had never seen Mr. Vigil.”

At the hearing, the prosecutor asked Garcia, “My question is did you tell Mr. Hanson that you did not know the defendant?” Garcia replied, “I told him the same thing that I have told you. I told him I have seen him a few times but I don’t know him . . . .” This directly contradicts Roxana’s statement. It also contradicts Hanson’s testimony, which indicates that Garcia’s response was a one-word denial.

At the hearing, Hanson testified when he met with Garcia, Garcia denied he “knew of anybody by the name of Danny or Danny Boy.” This contradicts both Garcia’s statement in the recorded call that he knew Danny Boy and Garcia’s testimony at the hearing that, “if I saw the guy that they say is Danny Boy, I just know him as the guy that they pay rent to.”

Hanson also testified Garcia told him he knew victim Robles and knew Robles was in the Crazy Riders gang. Garcia testified at the hearing he did not know an individual by the name of Hector Robles and had never heard that name.

Defense Investigator Masucci testified he met with Garcia on January 19, 2016 and Garcia told him that he did not come to court as promised because he was threatened by police the day before court.

When asked if he met with an investigator for defense counsel after trial, Garcia replied, “I did not meet with anyone afterwards. I know they were looking for me because there were notes left at the house.” He added, “They tried many times, but . . . we didn’t talk. I have not talked with anyone.” Garcia denied telling a defense investigator (or anyone) that the reason

he did not come to the trial was because two police officers threatened to arrest him if he testified at trial.

While it is possible that Hanson, Masucci and Roxana all lied about their meetings with Garcia, they had far less reason to be untruthful on these topics than Garcia. These contradictions are further evidence supporting the trial court's finding that Garcia was not a credible witness.

Appellant offers possible explanations for what he calls "discrepancies," suggesting, for example, that Garcia did not recognize appellant in the photograph because appellant's appearance was different. Garcia did state, somewhat gratuitously, that appellant had shorter hair in Hanson's photograph, but moments later he testified that he told Hanson "I have seen him a few times, but I don't know him . . . ." The latter statement is not consistent with a failure to recognize appellant in Hanson's photo.

Appellant also suggests the "discrepancies" in Garcia's testimony are minor and do not destroy his credibility. While there are certainly some minor discrepancies in his testimony as a whole, we do not view the contradictions listed above as minor inconsistencies or conflicts. For example, Garcia's denial at the hearing that he was threatened by police and his denial that he told anyone he was so threatened included a detailed and elaborate denial that he ever spoke to Masucci at all on any topic. Garcia may, as appellant suggests, have fabricated the threats out of a desire to stay out of the proceedings, but his fabrication shows a willingness to lie repeatedly and elaborately to advance his own interests, a factor certainly relevant to his credibility.



4. *Garcia's Testimony Hurt the Defense More Than Helped It.*

The trial court also concluded Garcia's testimony would have hurt rather than help the defense because his testimony demonstrated stereotypical gang behavior. We see no abuse of discretion in this conclusion. To the extent the *Taylor* mixed standard of review applies, we see substantial evidence to support the court's finding that the testimony showed gang involvement in the case. To the extent the issue of whether the proposed testimony would have hurt the defense requires an application of the law to the facts, we have exercised our independent judgment and reach the same conclusion as the trial court.

As appellant correctly points out, there is no use of the name Dennis Vigil in the phone call between Garcia and Officer Camacho. Nevertheless, the recorded call suggests that appellant was Danny Boy. Garcia initially states that they want him "to say I don't know that dude." Camacho asks, "Oscar?" Garcia responds, "No, no, the other one, the one that's locked up." Camacho asks, "Danny Boy?" Garcia replies, "Yup." Camacho asks, "Do they think you're going to testify in court or what?" Garcia answered "Yes, they, they, just want me to talk to his lawyer now." It is undisputed that Garcia talked to Hanson, appellant's trial attorney.

Further, if, as appellant posits, he was not the "real" Danny Boy or even a Crazy Riders gang member, it would make no sense for the gang to intervene to prevent appellant's conviction. Even assuming for the sake of argument that Garcia was confused about who was locked up, the gang would know that appellant was not the "real" Danny Boy, and presumably would

also know that the “real” Danny Boy had not been charged with Robles murder. Helping appellant had no apparent benefit to the gang and had the potential to hurt the “real” Danny Boy: if appellant were acquitted, police would re-open the murder investigation. Thus, Garcia’s testimony that the gang threatened him to provide favorable testimony in appellant’s case supports the inference that appellant was a valued gang member, and almost certainly was known as Danny Boy or some similar nickname.

Against these negatives, there is no real positive. At the hearing on the motion, Garcia failed to unequivocally testify that appellant was not Danny Boy. As set forth above, although Garcia did testify that appellant was not Danny Boy, he changed his testimony under questioning by defense counsel and said he did not know if appellant was Danny Boy or not. Garcia’s broad denial that “when supposedly Oscar had heard that I wasn’t there” is essentially meaningless.

*5. Garcia’s Testimony Was Not Critical to the Defense.*

Appellant argues the prosecution’s case was weak, Orantes’s testimony was crucial, and Garcia’s testimony had the ability to undermine Orantes’s testimony.

Orantes’s testimony was the only direct evidence that appellant was a member of the Crazy Riders gang known as Danny Boy who acted as a “tax” or “rent” collector for them. However, his testimony was corroborated by Chavez’s testimony, which was circumstantial but compelling. Chavez had no reason to lie about her son’s last words. Her statements and actions show she understood his references to Little Boy’s brother Daniel or Danny referred to two men she had previously met. She immediately produced a photograph of Little Boy for police, and

Roxana's testimony confirmed that the photo depicted appellant's brother Juan Carlos Vigil. Chavez was also certain that she had met Little Boy's brother on two occasions. On one of those occasions, she accompanied her son when he delivered "taxes" to Little Boy's brother.

Assuming for the sake of argument that Garcia's testimony established appellant was not the person known within the Crazy Riders gang as Danny Boy, it did nothing to undermine Chavez's testimony that Robles referred to his killer as Little Boy's brother, or the evidence that appellant was the brother of the man Chavez knew as Little Boy and whose true name was Juan Carlos Williams. There is no evidence in the record on appeal that Little Boy had a different brother named Daniel.

Further, assuming Garcia's testimony undermined Orantes's testimony about appellant's possible snitch-related motive for killing Robles, this motive has already been considerably weakened by defense expert testimony that gangs would not wait years to kill a known snitch. Garcia's testimony had minimal additional probative value as to motive because it did not establish that the "real" Danny Boy had a motive to kill Robles, or that appellant lacked a motive to kill Robles. Garcia testified only that he was not present at the meeting Orantes described.

6. *Under Any Standard of Review, Garcia's Testimony Would Not Have Resulted in a More Favorable Outcome for Appellant.*

Given Garcia's patent lack of credibility, the small amount of potentially helpful content in his testimony, and the potentially damaging content of his testimony, we see no abuse of discretion in the trial court's conclusions that Garcia's absence

did not impact the fairness of the trial and that his testimony would not have led to a different result. Exercising our independent judgment, we find Garcia's testimony had little exculpatory potential and was not crucial to appellant's defense. Appellant did not receive an unfair trial; there is no reasonable probability or possibility appellant would have received a more favorable outcome had Garcia testified at trial.

**DISPOSITION**

The judgment is affirmed.

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STRATTON, J.

We concur:

GRIMES, Acting P. J.

WILEY, J.