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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. ANDRES FRIAS, Defendant and Appellant,	B233209 (Los Angeles County Super. Ct. No. BA357016)
THE PEOPLE, Plaintiff and Respondent, v. DAVID QUINTANA, Defendant and Appellant.	B232987

CONSOLIDATED APPEALS from judgments of the Superior Court of Los Angeles County, Judith Champagne, Judge. Affirmed.

Mark Shapiro for Defendant and Appellant Andres Frias.

Law Offices of Michael R. Kilts, Michael R. Kilts and Joseph P. Farnan for Defendant and Appellant David Quintana.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

At the conclusion of a joint trial involving a bicycle ride-by shooting, a jury convicted Andres Frias of first degree murder, with findings the murder was committed to benefit a criminal street gang, that Frias personally discharged a firearm causing death, and that a principal personally discharged a firearm causing death. (Pen. Code, §§ 187, subd. (a); 186.22, subd. (b); 12022.53, subd. (d); 12022.53, subds. (d), (e)(1).)[1] The jury also convicted Frias of possession of a firearm by a felon, with a finding the offense was committed to benefit a criminal street gang. (§§ 12021, subd. (a)(1); 186.22, subd. (b)(1)(A).) The jury convicted David Quintana of second degree murder, with findings the murder was committed to benefit a criminal street gang, and that a principal discharged a firearm causing death. (§§ 187, subd. (a); 186.22, subd. (b)(5); 12022.53, subds. (d), (e)(1).)

The trial court sentenced Frias to a total state prison term of 55 years to life, and Quintana to a total state prison term of 40 years to life.

Frias and Quintana appeal. We affirm both judgments.

FACTS

The Murder

On April 14, 2008, a male rode a bicycle up to Brian Maciel as he waited at a bus stop on Brannick Avenue near Floral Drive with his girlfriend, I.M. The bicyclist said he was from "Gage Maravilla," and asked Maciel if he was a "South Sider" or "Sureno." When Maciel replied that he was a "South Sider," the bicyclist fired a handgun at him. The shooter then rode the bicycle to a nearby Ford extended-cab pickup truck, put the bicycle in the back of the truck, and got into the passenger seat. As the truck drove away,

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[1] All further section references are to the Penal Code except as otherwise noted.

the shooter flashed a gang hand sign at a witness to the shooting. Maciel died from a fatal gunshot wound to his chest.

The Investigation

Los Angeles Sheriff's Department (LASD) Detective Ralph Hernandez investigated Maciel's murder. The day after the murder, Detective Hernandez took photographs of graffiti on Floral Drive in the Gage Maravilla gang's "territory," a few blocks from the scene of the murder. The graffiti read: "L. Travieso;" "Green Eyes;" "Baby N.R." and "G.M.V.R." (which meant "Gage Maravilla Rifa"). At Frias and Quintana's trial, LASD Gang Detective Joel Flores testified that Frias was known by police to be a member of the Gage Maravilla gang with the moniker "Travieso," and that Quintana was known by police to be a member of the Gage Maravilla gang with the moniker "Baby," and that Alejandro Hernandez was known by police to be a member of the Gage Maravilla gang with the moniker "Green Eyes."

On April 17, 2008, Detective Hernandez interviewed E.S. as a possible eyewitness, and showed her a "six-pack" photograph line-up which included Frias's photo. E.S. did not identify anyone from that six-pack. Detective Hernandez showed E.S. nine photographs of active Gage Maravilla gang members. E.S. commented on features of two photographs, but did not make an identification. E.S. said a photograph of Quintana had a similar mouth as the shooter, but he was not the shooter. E.S. said a photograph of Gabriel Rodriguez (known to police by the moniker "Curly") had similar facial features as the shooter, but he was not the shooter. E.S. did not mention that she had seen either Frias or Quintana before.

On April 18, 2008, Detective Hernandez interviewed A.T. as a possible eyewitness. A.T. said she had seen Maciel and a woman speaking to another man. A.T. saw Maciel punch the man. A few minutes later, she had heard gunshots. She saw a man on a bicycle ride north on Brannick, towards Floral. A.T. refused to look at any photographs because she was afraid.

On May 14, 2008, LASD Sergeant Jorge Valdez went to Frias' residence in Hesperia to look for Frias for the purpose of conducting a probation search. Sergeant Valdez searched Frias's room, and found several pieces of paper bearing gang writing. After searching Frias's residence, Sergeant Valdez went to the home of Amber Medina, Frias's girlfriend, in Los Angeles. Sergeant Valdez recovered several other pieces of paper with gang writings from a room that Frias shared with Medina.

Sergeant Valdez next went to Quintana's residence on Hammell Street in Los Angeles, where he found Frias. Sergeant Valdez also saw a white extended-cab pickup truck which was registered to Frias's mother parked at Quintana's residence. Sergeant Valdez advised Frias of his *Miranda*[2] rights, and began to question him. When Sergeant Valdez asked Frias whether he was a gang member, Frias initially denied that he was a gang member. When Sergeant Valdez said that he had recovered gang writings from Frias' room in Hesperia and his girlfriend's house, Frias admitted he was a Gage Maravilla gang member, and that he was known as "Travieso," which meant "trouble" in Spanish. Frias also said he was a member of a tagging crew called "N.R.," which stood for "No respect." Sergeant Valdez asked Frias whether there was anything inside the pickup truck, and Frias said that a ".45 in the driver's seat" was his. Meanwhile, Gang Detective Joel Flores and his partner had driven to Quintana's residence. They recovered a .45-caliber handgun from under the driver's seat of the pickup truck.[3] Frias was arrested.

On May 14, 2008, Detective Hernandez and Detective Kevin Lowe interviewed Frias about Maciel's murder. The detectives told Frias that they had a videotape showing a truck which they believed belonged to him. Frias stated that he was on Floral Drive on the day of shooting, but about one mile away, visiting two women. Frias said he had a

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[2] *Miranda v. Arizona* (1966) 384 U.S. 436.

[3] Maciel died from a .380-caliber bullet. At trial, a firearms expert offered his opinion that, based on the way it was "bulged," the bullet from Maciel's body had been fired from a "slightly oversized chamber." The expert further opined that the "most common, typical oversized chamber that [he saw] .380 auto cartridges fired [from was] the nine-millimeter Makarov caliber."

white Ford F150 truck, but had lent to a friend. When asked about the shooting, Frias identified "Curly" as the shooter. Police knew Gabriel Rodriguez to be a member of the Gage Maravilla gang who went by the moniker "Curly." Frias identified a photograph of Rodriguez as Curly. Frias said that the gun used was a nine-millimeter handgun that also shot .380-caliber ammunition. Rodriguez had given Frias the following information about the murder: Rodriguez was in territory claimed by Lott 13 and rode a bicycle up to a couple. Rodriguez asked the man for his gang affiliation, and the man replied that was from the Cuatro Flats gang. Rodriguez shot the man, and was going to shoot the woman, but the gun jammed. Rodriguez left the area on the bicycle. Frias denied being in his truck at the time of the shooting.

On May 31, 2008, authorities intercepted and recorded a phone call between Frias, who remained in County Jail, and Quintana. A recording of the conversation was played at trial. Frias told Quintana that detectives had asked Frias about the Maciel murder, and had shown him a stack of photographs. Quintana's photograph had been on top. Frias said he had thought, "Wow" and "Fuck, homie," when he saw Quintana's photo. Quintana replied "Fuck," when told his photograph was on the top. Frias said the police were looking to "throw" the Maciel murder on somebody, but they could not find "Casper . . . the ghost that nobody sees." Quintana asked if the police had asked Frias about who he had been with at the time of the murder. Frias said he had told the police that he was with a girl. Quintana warned Frias to be "looking out."

On March 4, 2009, Detective Hernandez showed seven photographs to eyewitness E.S. None of the photographs depicted Frias or Quintana. E.S. said a photo of Rodriguez looked similar to the shooter. E.S. was also shown a "filler" photograph of another male who was not involved in the case. E.S. said the man in that photograph looked like the driver.

On March 26, 2009, deputies arrested Gabriel ("Curly") Rodriguez. During an interview, Detective Hernandez told Rodriguez that he had been identified as the shooter in the Maciel murder by Frias and other witnesses. Later, deputies put Rodriguez and Frias in a recorded area of County Jail. A recording of their conversation was played at

trial. During the conversation, Frias asked, "So, what you busted for then?" and Rodriguez answered, "Homicide, fool." When Frias asked Rodriguez, "What homicide are they charging [you] with?" Rodriguez responded, "For that shit you did." Frias asked, "Which one? Right there on Brannick?" Rodriguez replied he was being charged with a homicide on Floral, and the detectives had told him "up and down that [Frias] was saying it's [Rodriguez]." Rodriguez said he did not believe the detectives' statement that Frias identified him. ("I'll never believe a jura [slang for police] over a homey, fool.") Rodriguez also said the detectives told him a girl had identified Rodriguez as the shooter, and asked, "How the fuck can she I.D. me if I'm not even [there], you know." Frias stated, "Yeah, you're not even right there." Then Rodriguez said that he "didn't want to say dick" to the police, and Frias interrupted him, saying, "Just don't tell 'em it was me, though." When Rodriguez asked Frias, "But didn't you pull that jale [slang for a job or a mission] on a bike? Frias answered, "Yeah, I was on a bike."

On June 11, 2009, Frias and Quintana were placed together in a recorded area of County Jail. A recording of their conversation was played at trial. Frias said that the detectives wanted to know who had committed the Maciel murder, and said that he was being charged for that murder. Quintana said the detectives had asked him about the murder. Quintana said he had told the detectives that he drove the truck. Frias said, "You don't even say that fool." Quintana said that the detectives told him that they had him on camera driving the truck. Quintana said that he told the detectives that he was alone in the truck, and that he was looking for Frias, who was on a bicycle. Frias said that he was going to be charged for that murder. Quintana said that the detectives told him that Frias tried to "pin" the murder on "Curly" and was now trying to "pin" it on Quintana. Frias told Quintana that he would be released, just as "Curly" had been released. Later, Frias asked Quintana why he told the detectives that Frias was on a bike. Quintana said that the detectives knew that two days after the murder, Quintana had been stopped by the cops when Quintana was on the bike. Frias told Quintana that he had "fucked up" by telling the detectives that he was driving the truck at the time of the Maciel murder. Frias also said, "Hey remember fool, for when we were in the truck fool

and I told you, imagine when I get life, are you going to see me dick?" Quintana told Frias, "I know I'm not going to get out, fool." Quintana said, "Should've gone to Mexico, huh? Right, dude?" Frias responded that the detectives had played it right by waiting for him to have been sentenced on the robbery before charging him with the murder, so he could not get bail and flee.

The Criminal Case

In January 2010, the People filed an information charging Frias and Quintana in count 1 with murder. (§ 187, subd. (a).) As to count 1, the information alleged that Frias personally and intentionally discharged a firearm, proximately causing great bodily injury and death (§ 12022.53, subd. (b)) and that a principal personally and intentionally discharged a firearm causing great bodily injury and death. (§ 12022.53, subds. (b), (e)(1).) In count 2 the information charged Frias with possession of a firearm by a felon. (§ 12021, subd. (a)(1).) As to both counts, the information alleged that the crimes were committed for the benefit of a criminal street gang. (§ 186.22, subd. (b)(5).)

The charges were tried to a jury in February 2011. Eyewitness A.T. identified Quintana as the man "on the bike, with the gun in his hand."[4] Eyewitness E.S. identified Quintana as the shooter riding the bicycle, and Frias as the driver of the truck that drove away from the scene of the shooting.[5] I.M.'s testimony from the preliminary hearing was

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[4] A significant part of A.T.'s testimony at trial, both on the prosecution's direct examination and on the defense's cross-examination, concerned her failure to identify the assailants earlier. A.T.'s trial testimony showed that, at the preliminary hearing in December 2009, she had testified that she could not remember the person who was on the bicycle. Frias and Quintana were both present in the courtroom. In the hallway during the preliminary hearing, A.T. told Detective Flores that she recognized Frias as the shooter, but was afraid to identify him in court. Detective Flores drove A.T. home and surreptitiously recorded a conversation with her. A recording of that conversation was played at trial. A.T. said that Frias was the person on the bicycle. A.T. said that she was certain at the preliminary hearing that Frias was the shooter, but she was afraid to identify him in court, because he had stared at her.

[5] Like A.T., E.S. also did not identify Frias or Quintana at the preliminary hearing in December 12009. At trial, E.S. explained that she did not previously identify any suspects because she had been threatened by another gang. No one from Gage Maravilla

read to the jury; her testimony described the general factual setting of the murder — a man on a bicycle rode up, announced he was from the Gage Maravilla gang, and shot Maciel.

In addition to the evidence of the charged offenses, the prosecution presented evidence showing that Frias and Quintana committed a robbery together on May 13, 2008, about one month after the Maciel murder. The prosecution also offered a gang expert's testimony which included his opinion that the Maciel murder was committed for the benefit of the Gage Maravilla criminal street gang. The jury was instructed on first degree murder, second degree murder, and aiding and abetting principles. The jury returned verdicts finding Frias guilty of first degree murder, with the gang enhancement and firearm enhancements as noted above. The jury found Quintana not guilty of first degree murder, and guilty of second degree murder, with the gang enhancement and firearm enhancements as noted above.

DISCUSSION

I. Other Crime Evidence

Frias contends his convictions must be reversed because the trial court erred under Evidence Code section 1101, subdivision (b), when it allowed the prosecutor to introduce evidence showing that Frias and Quintana committed a robbery together one month after Maciel's murder. Quintana joins Frias' contention and argument. We find no error.

Before trial, the prosecutor filed a motion to admit evidence of other crimes under Evidence Code section 1101, subdivision (b), including evidence showing that Frias and Quintana committed a robbery together on May 13, 2008, about one month after the murder of Maciel. The motion argued that the evidence of the uncharged robbery crime was admissible, in the language of the statute, to prove "motive, opportunity, intent,

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talked to E.S. about the instant trial. On January 31, 2011, after the trial started, E.S. told Detective Hernandez that she had lied at the preliminary hearing when she testified she could not identify anyone. E.S. said that Frias was the driver and that Quintana was the shooter. E.S. said that she recognized Frias and Quintana from seeing them in the neighborhood. At trial, E.S. looked at photos of both Rodriguez and Quintana and said they were the same person.

preparation, plan, knowledge, identity, [and] absence of mistake or accident," and, as specific to Frias and Quintana's case, that the evidence was relevant to prove motive and intent.

The trial court ruled that evidence of the May 13, 2008 robbery could be admitted: "On the issue of whether one of these defendants or both acted with malice as opposed to mistake, inadvertence and accident, it is very probative." In making its ruling, the court noted similarities between the robbery and murder, including that there was evidence the same truck was used in both crimes; that Quintana drove the truck in both incidents; and that Frias exited the truck and directly committed the crimes in both incidents. Further, the court found the evidence of the robbery was not unduly prejudicial and would not unduly confuse the jurors. The court indicated it would give a limiting instruction to the jurors regarding the use of the other crimes evidence.

At trial, A.S. testified that he and four other Hispanic males were outside a business on First Street on May 13, 2008 when Frias exited the front passenger side of a white Ford F150 truck and demanded their property at gunpoint. Later during trial, it was stipulated that Quintana "was convicted of [being an] accessory after the fact in violation of Penal Code section 32, for his participation in the events that occurred on First Street on May 13th, 2008 . . . ."

Evidence Code section 1101, subdivision (b), permits the admission of evidence that a defendant committed an uncharged crime when the evidence is relevant to prove a fact other than the defendant's disposition to commit a crime, such as motive, intent, plan, identity or absence of mistake or accident. In addressing whether evidence of an uncharged crime is admissible, three principal factors are evaluated: (1) the materiality of the fact sought to be proved or disproved; (2) the tendency of the evidence of the other crime to prove or disprove the material fact; and (3) the existence of any rule or policy requiring relevant evidence to be excluded. (*People v. Thompson* (1980) 27 Cal.3d 303, 315.) Evidence of an uncharged crime is relevant at trial of a charged offense when the evidence tends logically, naturally, and by reasonable inference to prove the fact for which it is offered. (*Id.* at p. 316.)

In determining whether evidence of an uncharged crime is admissible, a trial court must consider the fact to be proved. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 401-404.) Where the evidence is offered to prove a common plan, the evidence of the uncharged conduct and the charged offense must be sufficiently similar to support the inference that they were both manifestations of a common plan. (*Id*. at p. 402.) The greatest degree of similarity is required for evidence of uncharged conduct to be relevant to prove identity; for the identity of the defendant to be established, the evidence of the uncharged conduct and the charged offense must share common features that are sufficiently distinctive so as to support an inference that the same person committed both acts. (*Id*. at p. 403.) "The least degree of similarity (between the uncharged act and the charged offense) is required in order to prove intent" because the recurrence of similar acts "'tends (increasingly with each instance) to negative accident or inadvertence or . . . good faith or other innocent mental state,'" and "'tends to establish (provisionally, at least, though not certainly) the presence of the normal, i.e., criminal, intent accompanying such an act . . . .'" (*Id*. at p. 402, quoting 2 Wigmore, [Evidence] (Chadbourn rev. ed. 1979) § 302, p. 241.)

Evidence of an uncharged crime is not admissible when, under Evidence Code section 352, its probative value is substantially outweighed by the probability that its admission would unfairly prejudice the defendant, mislead the jury, or confuse the issues. (*People v. Balcom* (1994) 7 Cal.4th 414, 426-427.) A trial court's ruling to admit evidence of an uncharged crime under Evidence Code sections 1101, subdivision (b), and 352, is reviewed on appeal under the abuse of discretion standard. (*People v. Memro* (1995) 11 Cal.4th 786, 864.)

Frias argues the evidence of the May 2008, robbery should have been excluded because it was "very different" from the murder of Maciel. We disagree. We find no abuse of discretion in the trial court's determination that the evidence of the murder and robbery was sufficiently similar so as to prove Frias and Quintana's intent by negating the likelihood of innocent involvement and raising the likelihood of criminally intended involvement. (See *People v. Carpenter* (1997) 15 Cal.4th 312, 379; *People v. Balcom, supra*, 7 Cal.4th at pp. 422-423; *People v. Ewoldt*, *supra*, 7 Cal.4th at p. 402; *People v.*

Spector (2011) 194 Cal.App.4th 1335, 1395.) While the evidence of the post-murder robbery may have been needed less to prove the intent of the shooter, we find the evidence of the post-murder robbery was probative to prove the intent of the person who drove the shooter away from the scene in the escape truck. Recurrent involvement in criminal activity negates that the driver was caught off-guard by the shooting. And intent at the time of the shooting was a significant issue at trial. Quintana's trial counsel argued at length to the jury that the evidence did not show Quintana had the intent required to convict him of murder as an aider and abettor. Because intent was a strongly contested issue, and because the other crime evidence was relevant on the issue of intent, the evidence was properly admitted. In addition, the murder and the robbery were similar in their commission demonstrating that as between Frias and Quintana, they had defined rolls in committing crimes – who was to drive and who was to be the principal player using the gun.

Moreover, apart from the charged murder offense, the prosecution had the burden of proving that Frias and Quintana committed the Maciel murder with the intent to assist, further, or promote criminal conduct by gang members. (§ 186.22, subd. (b).) Evidence of the post-murder robbery was relevant to prove intent to commit gang-related criminal activity. Given the nature of the charges, and the issues contested at trial, we are satisfied that the trial court properly admitted the evidence of the post-murder robbery to prove intent.

This brings us to the further question whether the evidence of the robbery, being as it was probative on the issue of intent, should nevertheless have been excluded on the basis that its probative values was substantially outweighed by the risk of prejudice or confusion of issues. (See Evid. Code, § 352.) The prejudice to be avoided by Evidence Code section 352 refers to evidence that "uniquely tends to evoke an emotional bias" against a party as an individual, while having only slight probative value with regard to the issues. (*People v. Scheid* (1997) 16 Cal.4th 1, 19.) Here, evidence of the post-murder robbery did not tend to evoke such a visceral emotional bias against Frias and Quintana. The evidence of the robbery was no more inflammatory than the evidence of the charged

murder offense. As a general rule, the potential for prejudice is less when the evidence of another crime is less serious than a charged offense. (*People v. Ewoldt, supra*, 7 Cal.4th at p. 405; *People v. Spector, supra*, 194 Cal.App.4th at p. 1389.)

Given the probative value of evidence of the post-murder robbery to prove intent, and the lack of undue prejudice, the trial court's ruling that such evidence was admissible pursuant to Evidence Code sections 352 and 1101, subdivision (b), did not constitute an abuse of discretion.

Assuming the trial court should have excluded the evidence of the post-murder robbery, we would not reverse because we would see a harmless error in any event. The standard of review for the erroneous admission of evidence under Evidence Code sections 1101 and 352 is under *People v. Watson* (1956) 46 Cal.2d 818. (*People v. Welch* (1999) 20 Cal.4th 701, 749; see also *People v. Cudjo* (1993) 6 Cal.4th 585, 611.) Any error in the admission of evidence concerning the robbery committed a month after the murder of Maciel was harmless. The trial court instructed the jurors with CALCRIM No. 375 that they were to consider the evidence of the robbery for the limited purpose of establishing motive, intent, preparation, plan, modus operandi, and lack of mistake or accident. The court further instructed: "Do not conclude from this evidence that the defendant has a bad character or is disposed to commit crime." We presume the jurors understood and followed the court's instructions. (*People v. Holt* (1997) 15 Cal.4th 619, 662; *People v. Danielson* (1992) 3 Cal.4th 691, 722.) Absent some indication in the record that the jurors did otherwise, we will not presume that the jurors decided to convict Frias and Quintana based on evidence that they were "bad" persons with a disposition to commit crimes. (*People v. Scheer* (1998) 68 Cal.App.4th 1009, 1023 [cautionary instructions negate potential prejudice from other crimes evidence].)

Finally, we find the evidence of Frias and Quintana's guilt was strong. There is the eyewitness testimony placing Frias and Quintana at the scene, and, although there were inconsistencies as to which of them did which act, and there were prior failures to make identifications, those factors were explored at trial. In addition, the evidence of Frias's and Quintana's own words in recorded jail conversations was, in our view, very

incriminating. Quintana said he drove the truck, and Frias said he committed the murder on a bicycle. During his May 18, 2008, interview with detectives, Frias had highly detailed information about the Maciel murder, even though he attributed his knowledge to information given to him by another gang member, "Curly" Rodriguez. During a recorded jailhouse conversation with Rodriguez, Frias did not deny it when Rodriguez asked if Frias had committed the Maciel murder. Indeed, Frias said he was on a bicycle, and told Rodriguez not to tell the detectives that Frias did the murder.[6]

To the extent Frias (joined by Quintana) argues the admission of the evidence of the post-murder robbery created an error of constitutional magnitude, we are more than amply satisfied beyond a reasonable doubt that the outcome of Frias's trial would have been the same with or without the evidence of the post-murder robbery. (See *Chapman v. California* (1967) 386 U.S. 18, 24.) The evidence did not result in a fundamentally unfair trial.

II. Severance

Frias contends his convictions must be reversed because the trial court erred in denying his and Quintana's joint motion for separate trials. Quintana joins Frias' claim on appeal. We find no error.

Section 1098 provides: "When two or more defendants are jointly charged with any public offense . . . they must be tried jointly, unless the court orders separate trials." Section 1098 reflects a legislative preference for joinder in the interests of justice and judicial economy. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 149-150 (*Letner*); *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 40.) A trial court may order separate trials only as an exception to the preference for a joint trial. (*People v. Cleveland* (2004) 32 Cal.4th 704, 726.) A defendant seeking severance must clearly demonstrate a substantial danger of prejudice should the defendants be tried together. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1315.) A trial court's ruling on a motion for separate

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[6] Quintana's arguments that the jailhouse statements were ambiguous is explored more thoroughly below in addressing this claim that his conviction is not supported by substantial evidence.

trials is reviewed for an abuse of discretion. (*People v. Cleveland, supra*, 32 Cal.4th at p. 726; *People v. Taylor* (2001) 26 Cal.4th 1155, 1174.) An abuse of judicial discretion means a decision that is arbitrary, capricious or irrational. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

Frias and Quintana moved for separate trials arguing they had antagonistic or conflicting defenses. In short, the motion argued Quintana had incentive to point a finger at Frias, and vice-versa. On appeal, Frias and Quintana argue the same ground in support of reversal.

The potential that defendants might attempt to fix blame on each other does not by itself require separate trials. (*Letner, supra*, 50 Cal.4th at p. 150.) "'If the fact of conflicting or antagonistic defenses *alone* required separate trials, it would negate the legislative preference for joint trials and separate trials 'would appear to mandatory in almost every case.'" [Citation.] Accordingly, we have concluded that a trial court, in denying severance, abuses its discretion only when the conflict between the defendants *alone* will demonstrate to the jury that they are guilty. If, instead, 'there exists sufficient independent evidence against the moving defendant, it is not the conflict alone that demonstrates his or her guilt, and antagonistic defenses do not compel severance.' [Citation.] (*Ibid*.)

Here, there was evidence against Frias and Quintana, independent of any conflicting defenses, that demonstrated their guilt. There is the eyewitness testimony and the evidence of their recorded jailhouse statements as discussed above. It was not a conflict in their defenses alone which showed their guilt. We find the trial court did not abuse its discretion in denying severance because its decision was rational — Frias and Quintana were charged with having committed the same crime, and a joint trial was reasonable under the circumstances.

III. Substantial Evidence

Quintana contends his conviction for second degree murder must be reversed because the record does not disclose substantial evidence supporting the jury's finding that he was the driver of the truck that carried Frias away from the scene of the murder. We disagree.

In determining whether substantial evidence supports a conviction, a reviewing court examines the evidence in a light most favorable to the jury's verdict, and presumes the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139.) A reviewing court may not undo a jury's verdict based upon the defendant's claim that it not supported by substantial evidence unless the court determines that under no hypothesis is there sufficient evidence to support the conviction. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) A reviewing court may not make such a determination based upon a reweighing of the evidence or a re-assessment of the credibility of the witnesses. (*People v. D'Arcy* (2010) 48 Cal.4th 257, 293.)

Here, the prosecution evidence supports Quintana's conviction. During a jailhouse conversation between Frias and Quintana on June 11, 2009, Frias said that he had been brought to jail for a murder, and mentioned "Curly" (Rodriguez) in connection with that murder. Quintana also referred to "Curly," stating that the detectives had told him that Frias was blaming "Curly" for that murder. Quintana said the detectives had asked him about that "shit" (the murder), and Quintana said that he told the detectives that he drove the truck because they said that they had him on camera driving it. Quintana told the detectives he was alone in the truck, and that he was looking for Frias, who was on a bicycle.

The jury could reasonably infer that Frias and Quintana, during their June 11, 2009, jailhouse conversation, were referring to the Maciel murder, that Quintana admitted that he was the driver of the truck used in that murder, and that Quintana expressed consciousness of guilt for the Maciel murder. These inferences were

reasonable, based on the fact that Frias and Quintana had earlier discussed the Maciel murder during their May 31, 2008, recorded conversation.

Apart from Quintana's statements incriminating himself, other evidence in the form of the eyewitness testimony by I.M., E.S. and A.T., which consistently showed there were two suspects involved in the crime, the shooter on a bicycle and a get-away driver. Frias and Quintana were members of the same gang I.M. testified the shooter said he was from Gage Maravilla, which was Frias and Quintana's gang. A.T. and E.S. identified Quintana as being at the scene, though they identified him as the shooter.

Quintana argues that he never made a direct admission that he participated in the Maciel murder, but rather made ambiguous responses during that conversation. The argument is not persuasive. Even in the event Quintana's statements were not a direct admission of guilt, and were ambiguous, the overall state of the evidence is sufficient to support the jury's verdict. (*Jackson v. Virginia* (1979) 443 U.S. 307, 326 [If the evidence presented at trial is subject to differing inferences, an appellate court must assume that the trial court resolved all conflicting inferences in favor of the prosecution.].) That the evidence could support an alternate conclusion does not demonstrate that it was insufficient to support the jury's conclusion that appellant Quintana was guilty of the charged crimes. (*People v. Earp* (1999) 20 Cal.4th 826, 887-888; *In re Gustavo M.* (1989) 214 Cal.App.3d 1485, 1497 [when substantial evidence is present, no matter how it may appear in comparison with contradictory evidence, the judgment will be affirmed].) Or view is the same regarding Quintana's argument that Frias was not credible and that his statements were ambiguous. Again, we find the overall evidence to be sufficient to support Quintana's conviction. It was for the jury to decide whether Frias and Quintana were discussing their involvement in the Maciel murder. That a different jury may have interpreted Frias and Quintana's words differently does not mean that substantial evidence is lacking to support Quintana's conviction. We must view the evidence in a light supporting the jury's verdict, and we cannot say the jury's interpretation is unsustainable as an irrational inference based on all of the circumstances.

DISPOSITION

The judgments are affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.