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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JACOB EUGENE ROBERTSON,

Defendant and Appellant.

B277420

(Los Angeles County

Super. Ct. No. VA140822-01)

APPEAL from an order of the Superior Court of Los Angeles County. Michael A. Cowell, Judge. Affirmed.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

In the underlying action, appellant was convicted of second degree robbery. After his court-appointed counsel filed an opening brief raising no issues, appellant submitted supplemental briefs. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude that no arguable issues exist. Accordingly, we affirm.

### **RELEVANT PROCEDURAL BACKGROUND**

On January 19, 2016, an information was filed charging appellant Jacob Eugene Robertson in count 1 with the robbery of Cynthia Cornejo (Pen. Code, § 211), and in count 2 with the petty theft of property belonging to Juan Ruiz (Pen. Code, §§ 484, subd. (a), 490.2).<sup>1</sup> In connection with count 1, the information alleged that appellant personally used a firearm in the offense (§ 12022.53, subd. (b)). Also accompanying count 1 were allegations that appellant had suffered a conviction constituting a serious felony conviction (§ 667, subd. (a)(1)) and a “strike” conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and that he had suffered three convictions for which he served a prior prison term (§ 667.5, subd. (b)). Appellant pleaded not guilty and denied the special allegations.

At appellant’s request, the trial court bifurcated trial on the prior conviction allegations. Prior to the presentation

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<sup>1</sup> All further statutory citations are to the Penal Code unless otherwise indicated.

of evidence at trial, at the prosecutor's request, count 1 was amended to charge second degree robbery (§ 212.5, subd. (c)), and count 2 was dismissed. A jury found appellant guilty as charged, and found the gun use allegation to be true. After finding the prior conviction allegations to be true, the trial court denied appellant's motions for a new trial and to strike the strike (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497), and imposed a sentence totaling 11 years in prison.

## **FACTS**

### *A. Prosecution Evidence*

Los Angeles County Sheriff's Department Deputy Frank Quintana testified that on December 12, 2015, at approximately 2:00 p.m., he responded to a call regarding an incident at a barber shop. There, he talked to Cynthia Cornejo, who told him that a black male adult entered the shop, pointed a gun at her head, took her cell phone, and immediately left the shop. According to Quintana, Cornejo said that when the man pointed the gun at her head, she thought she was going to die.

Los Angeles County Sheriff's Department Detective Antonio Garcia testified that on December 15, 2015, he interviewed Cornejo at the barber shop. She told Garcia that during the incident, the man pointed a gun at her. The following day, after appellant was arrested, Cornejo identified him as "the man who robbed her with the gun."

Cornejo testified that in December 2015, she owned a barber shop. On December 12, 2015, at approximately noon, she was alone in the shop, standing at her work station where she had placed her cell phone. Appellant entered the shop, walked to her work station, took her phone, and left the shop. According to Cornejo, he had “something black” in his hand that she thought was a gun. Shocked by appellant’s conduct and frightened by his physical size and his apparent possession of a gun, Cornejo did nothing to stop him from taking the phone, and waited for a period before making a 911 call. An audio recording of the 911 call was played for the jury. During the call, Cornejo stated, “This guy came in. He had a gun. And stole [my] phone.”

Cornejo testified that at the time of trial, she was “not 100 percent sure” that appellant held a gun, and that what she saw in his hand “could have been something else.” When asked whether she saw a gun at all, she replied, “I don’t remember at this point. I don’t want to say yes. I don’t want to say no.” Although Cornejo initially testified that she told the deputies responding to the 911 call that appellant used a gun, she later denied making such statements to Deputy Quintana and Detective Antonio Garcia.<sup>2</sup> She also testified that she first expressed uncertainty regarding appellant’s

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<sup>2</sup> Cornejo also initially testified that appellant said nothing to her, but later acknowledged telling Quintana that appellant asked her where he was permitted to park before he took her phone.

possession of gun at the preliminary hearing. Cornejo acknowledged that she was frightened about testifying at trial and feared retaliation, but stated that appellant had made no threats to her.

*B. Defense Evidence*

Appellant offered no evidence.

**DISCUSSION**

After an examination of the record, appellant's court-appointed counsel filed an opening brief raising no issues, and requested this court to review the record independently pursuant to *Wende*. In addition, counsel advised appellant of his right to submit by supplemental brief any contentions or argument he wished the court to consider. In response, appellant submitted two supplemental briefs identifying several potential issues. As explained below, our independent review of the record discloses "no arguable errors that would result in a disposition more favorable to [appellant]." (*People v. Alford* (2010) 180 Cal.App.4th 1463, 1467.)

*A. Cornejo's Inconsistent Statements*

Appellant contends there is insufficient evidence to support his conviction for robbery, arguing that Cornejo's inconsistent statements regarding appellant's use of a gun and other matters "impeached" her testimony. That argument misapprehends our role in reviewing the record

for the sufficiency of the evidence. We do not engage in independent fact finding, but instead affirm the jury's determinations if they are supported by any logical inferences grounded in the evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11-14.) Furthermore, we are guided by the principle that "[t]he testimony of a single witness is sufficient to uphold a judgment even if it is contradicted by other evidence, inconsistent or false as to other portions. [Citations.]" (*In re Frederick G.* (1979) 96 Cal.App.3d 353, 366.) Here, the record supports the reasonable inference that Cornejo accurately told the investigating officers that appellant used a gun when he took her phone, and that fear motivated her later inconsistent statements. Accordingly, there is sufficient evidence to support appellant's conviction for robbery.<sup>3</sup>

#### B. *Appellant's Unsworn Courtroom Statements*

Appellant contends the trial court erred in declining to declare a mistrial after appellant made unsworn statements in the presence of the jury. That contention fails, as "a

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<sup>3</sup> In a related contention, appellant maintains that the trial court erred in denying his new trial motion, which was predicated solely on Cornejo's inconsistent statements. In the context of a new trial motion, the trial court is authorized to weigh the evidence and make an independent determination whether it is sufficient to support the verdict. (*People v. Davis* (1995) 10 Cal.4th 463, 523-524.) For the reasons discussed above, we see no error in the ruling on the new trial motion.

defendant is not allowed to profit from his own misconduct,” and thus “may not complain on appeal about the possible effect on jurors of his own misbehavior after the jury has been sworn.” (*People v. Elliott* (2012) 53 Cal.4th 535, 583 (*Elliott*), quoting *People v. Huggins* (2006) 38 Cal.4th 175, 201.)

After the jury was instructed and closing arguments were completed, the trial court asked the jury to begin its deliberations. As the jury was leaving the courtroom, appellant asserted, “Excuse me. I did not do this. I’m innocent.” Although the trial court repeatedly directed appellant to “[s]it down,” appellant stated: “I hate guns. My mom was shot in the head when I was eleven. [¶] . . . [¶] I never done nothing. I didn’t do this. I hate guns.”

After instructing the jury to disregard those statements, the court immediately conducted a conference with counsel outside the jury’s presence. Observing that “you can’t unring the bell,” the court stated that it was inclined to permit the prosecution to admit evidence to impeach the statements. In order to permit counsel an opportunity to investigate the appropriate response to appellant’s outburst, the court ordered the jury not to conduct any deliberations.

Following further discussion with counsel, the trial court determined that the appropriate remedy was to give the jury an instruction requested by the prosecution. The court directed the jury to disregard appellant’s “dramatic outburst proclaiming his factual innocence” because he was

not subject to the oath of examination, the rules of evidence, or cross-examination. The court further instructed the jurors if any of them found themselves unable to make a decision without considering the outburst, they should advise the court immediately.

In view of appellant's misconduct, we see no error in the trial court's choice of remedy. Generally, "[a] mistrial motion must be granted only when the risk of prejudice is incurable by admonition or instruction." (*Elliott, supra*, 53 Cal.4th at pp. 583, 584.) Here, nothing in the record credibly suggests that appellant's misconduct was prejudicial to him; furthermore, the instruction given by the court in lieu of declaring a mistrial was reasonable and appropriate. In sum, the court did not err in declining to declare a mistrial. (See *ibid.*)<sup>4</sup>

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<sup>4</sup> Appellant suggests that in discussing the appropriate remedy for his misconduct, the trial court and counsel made remarks establishing the necessity of a mistrial. Our review discloses only that the court and counsel reasonably evaluated potential remedies. At the beginning of the discussion outside the jury's presence, the prosecutor requested that the jury be instructed to disregard appellant's unsworn statements. Defense counsel stated she did not object to the proposed instruction. The court initially expressed concern that the proposed instruction might be "inadequate" to prevent appellant from benefiting from his improper unsworn statements. As an alternative remedy, the court considered whether the prosecution and appellant should be permitted to present additional evidence regarding appellant's prior crimes. The court also considered the possibility of declaring a mistrial, to which the prosecutor objected. Following  
(*Fn. continued on the next page.*)



### C. *Purported Juror Misconduct*

Appellant contends there was juror misconduct, asserting that during the trial, a juror told appellant that he was guilty. That contention has been forfeited, however, as nothing in the record suggests that appellant called the alleged misconduct to the attention of his counsel or the court. (*People v. Holloway* (2004) 33 Cal.4th 96, 124.)

### D. *Summary*

Our examination of the entire record establishes that appellant's counsel has fully complied with her responsibilities and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d at p. 441.)

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the discussion, the trial court ruled that the appropriate remedy under all the circumstances was to give the instruction proposed by the prosecutor. We see nothing in the discussion mandating a mistrial.

In a related contention, appellant asserts that his counsel was ineffective in failing to seek a mistrial and raising no objection to the instruction. However, defense counsel does not render ineffective assistance by declining to assert meritless motions and objections. (*People v. Price* (1991) 1 Cal.4th 324, 387.) That is the case here.

**DISPOSITION**

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.