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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEVONTE CUNNINGHAM,

Defendant and Appellant.

A142084

(Contra Costa County
Super. Ct. No. 51316421)

A jury convicted Devonte Cunningham of second-degree robbery (Pen. Code, § 211, 212.5, subd. (c)) after he grabbed a phone out of the hands of a teenaged boy sitting in front of an Antioch grocery store on the afternoon of July 22, 2013. The trial court suspended imposition of sentence and placed Cunningham on probation for three years, with the condition he serve 60 days in jail. His counsel has asked this court for an independent review of the record to determine whether there are any arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) We find no arguable issues and affirm.

During jury selection, Cunningham objected that the prosecutor had improperly used three out of four peremptory challenges against Hispanic prospective jurors, in violation of *Batson v. Kentucky* (1986) 476 U.S. 79, 89 and *People v. Wheeler* (1978) 22 Cal.3d 258. The trial court concluded Cunningham had made a prima facie case that the peremptory challenges were based on race, but it denied the *Batson/Wheeler* motion because the prosecutor provided race-neutral reasons for the challenges, and we accord the lower court's conclusion deference. (*People v. Lenix* (2008) 44 Cal.4th 602, 612-614.)

Because Cunningham acknowledged that he took the victim's phone but denied there was a struggle for it as the victim testified, the main issue at trial was whether Cunningham acted with the requisite force or fear to support a robbery conviction. Over Cunningham's objection, the trial court admitted certain evidence, including a recording of a 911 call the victim made to report the robbery (along with a transcript of the recording to assist the jury). The evidentiary rulings do not present any arguable issues. Cunningham also objected to portions of the prosecutor's closing argument, and neither the prosecutor's statements nor the trial court's rulings on the objections render the trial fundamentally unfair or disturb our confidence in the verdict. (*People v. Hill* (1998) 17 Cal.4th 800, 819.) A jury convicted Cunningham as charged.

There are no meritorious issues to be argued on appeal. Although the question of whether Cunningham committed robbery was a close one, substantial evidence supports the jury's verdict. The judgment is affirmed.

Humes, P.J.

We concur:

Margulies, J.

Banke, J.