NO. 100147-9

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ERICK NATHAN CHAPMON,

Petitioner.

Appeal from the Superior Court of Pierce County
The Honorable Philip K. Sorensen

No. 17-1-01431-3

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Following a trial, a jury found Erick Nathan Chapmon guilty of three counts of second-degree assault. It also found that Chapmon was armed with a firearm during the commission of his crimes. Relying on the jury's special findings, the trial court properly imposed firearm enhancements on each of the convictions. Chapmon's assertion that the trial court exceeded its sentencing authority is without merit.

The trial court's actions tightly adhered to long-standing precedent from this Court and Chapmon's complaint that the Court of Appeals' decision conflicts with existing case law is without merit. This Court should deny review.

II. RESTATEMENT OF THE ISSUES

> Should this Court deny review where this Court previously held that sentence enhancements must be authorized by the jury in the form of a special verdict and the trial court properly relied on the jury's special findings that Chapmon was armed with a firearm in imposing firearm enhancements?

III. STATEMENT OF THE CASE

A. Chapmon Fired a Gun at a Car Full of People, Causing Serious Injury

On December 31, 2016, Jessica Newman, Sasha Green, and Tonya Carroll attended a New Year's Eve party in Tacoma. 2-8-18 (morning session) RP 230, 232-34; 2-8-18 (afternoon session) RP 9, 11[1]. After they arrived, Green recognized Erick Chapmon from a previous relationship in 2016. 2-8-18 (afternoon session) RP 65. At some point during the party, Newman realized that she lost a special bracelet. 2-8-18 (afternoon session) RP 13-14. After unsuccessfully searching for the bracelet, she went to the bathroom and wept. 2-8-18 (afternoon session) RP 14-15.

Newman eventually stumbled out of the bathroom and went to the car with Green. 2-8-18 (afternoon session) RP 15-16. As Newman exited the bathroom, the door hit Sydney Stovall,

[1] For consistency, the State adopts the citation system used in its briefing submitted to the Court of Appeals. There, all citations to the trial transcripts were referred to by date and page number.

Chapmon's wife, in the face, causing her to bleed from her mouth. 2-20-18 RP 802, 805-07. After being hit with the door, Stovall entered the bathroom and spat blood into the sink. 2-20-18 RP 806-07. A woman named Danielle went into the bathroom to help Stovall. *Id*. When Stovall left the bathroom, she spoke to Chapmon, stating that "some girl hit me with the door." 2-20-18 RP 807-08. Chapmon told Stovall to go outside and get some air. 2-20-18 RP 922.

Outside, Stovall and Danielle confronted Green and Newman. 2-8-18 (afternoon session) RP 17, 2-20-18 RP 808, 812. Green gave Newman her keys and told her to wait in the car with the doors locked while she spoke with Stovall and Danielle. *Id*. Green went back into the house while Newman stayed in the car. 2-8-18 (afternoon session) RP 18, 20. Shortly after, Carroll arrived, and she and Green went to the car with Newman to leave. 2-8-18 (afternoon session) RP 20. As they were trying to get in Green's car, Stovall, along with a "bunch of people," approached

the car, and Chapmon joined them. 2-8-18 (afternoon session) RP 20, 2-12-18 RP 301-02, 2-20-18 RP 923-26.

As Green began driving away, the group started "yelling," "kicking and banging on [the] car[.]" 2-8-18 (afternoon session) RP 20-21, 2-12-18 RP 367. Chapmon observed Green back the car up and scrape the curb. 2-20-19 RP 934. Everyone surrounding the car quickly backed away. 2-20-18 RP 935. At that point, Chapmon drew a firearm and yelled, "Hey, stop." *Id*. The car continued to back up, and Chapmon fired his gun at the car approximately 12 times. 2-20-18 RP 937-39.

After the shots from the gun starting going off, Carroll turned around and saw Chapmon pointing the gun toward the car. 2-12-18 RP 373-74. Chapmon was still shooting. 2-12-18 RP 374. Carroll "was scared for [her] life[.]" *Id*. The driver, Green, saw Chapmon shooting at them and she drove away. 2-12-18 RP 269. Green was "afraid" of "[a]nyone getting hurt[,]" including herself. *Id*. Newman suffered a fragmented fibula fracture from Chapmon firing at the vehicle. 2-15-18 RP 689-91.

Twelve empty shell casings were found at the scene. 2-15-18 RP 717, 723; 2-20-18 RP 939. Chapmon admitted to shooting his firearm at the vehicle. 2-20-18 RP 937-40.

B. Trial Proceedings, Jury Instructions, Guilty Verdicts, and Sentencing

On February 7, 2018, the case proceeded to a jury trial on three counts of first-degree assault, each with a firearm enhancement. 2-7-18 VRP at 3; CP 34-35. In addition to instructing the jury on first-degree assault, the trial court instructed the jury on the lesser included offense of second-degree assault. CP 34-35, 69-106. The trial court also instructed the jury that

> For the purposes of a special verdict for a particular count, the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime charged in that particular count, or of that crime's lesser included offense.
> …
> A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

CP 69-106 (Instruction No. 34). Thus, the court instructed the jury that a "firearm" is "a weapon or device from which a

projectile may be fired by an explosive such as gunpowder." CP 69-106 (Instruction No. 12). And the jury was instructed that "[a] firearm, whether loaded or unloaded, is a deadly weapon." CP 69-106 (Instruction No. 18).

The jury found Chapmon guilty of three counts of the lesser included offenses of second-degree assault. CP 107, 109-11, 113-14. The jury also found by special verdict that Chapmon was "armed with a firearm" during the commission of the assaults. CP 108, 112, 115.

The trial court sentenced Chapmon to 15 months for the assault convictions, run concurrently. CP 130-52. In addition, the court imposed an additional 36 months consecutive for each firearm enhancement. *Id*. The Court of Appeals affirmed Chapmon's convictions and sentences.

IV. ARGUMENT

A. Washington Courts Have Consistently Held That Sentencing Enhancements Must Be Authorized by Special Jury Findings

It is well-settled that sentencing enhancements imposed by a trial court must be authorized by the jury via special finding. *E.g., State v. Recuenco*, 163 Wn.2d 428, 180 P.3d 1276 (2008); *see also State v. Williams-Walker*, 167 Wn.2d 889, 225 P.3d 913 (2010). Both the trial court and Court of Appeals complied with this long-standing principle in reaching their decisions. In addition, other Washington courts have long relied on this principle. As this rule is clear and unequivocal, no clarification is necessary from this Court. Because this Court has spoken on this issue, the lower courts have consistently applied the rule, and sound constitutional considerations underlie this rule, there is no basis for review under RAP 13.4(b).

This Court has repeatedly held that sentencing enhancements imposed by a trial court must be authorized by a special jury finding. *Recuenco*, 163 Wn.2d at 440 ("[defendant]

had a right to have a jury determine beyond a reasonable doubt if he was guilty of the crime and *the sentencing enhancement charged*") (emphasis added). Two years later, this Court expressly reaffirmed that a trial court may impose a sentencing enhancement only with a corresponding jury determination. *Williams-Walker*, 167 Wn.2d at 896-902. The Court of Appeals applied this long-standing principle in concluding that the trial court properly imposed firearm enhancements in Chapmon's case when the State charged Chapmon with firearm enhancements, the jury was provided with the definition of "firearm," and the jury specifically made special findings that Chapmon was armed with a firearm during the commission of his crimes. *State v. Chapmon*, No. 51774-4-II, 2021 WL 3057087, at *1-7 (Wash. Ct. App. July 20, 2021) (unpublished).

Chapmon incorrectly claims that the trial court exceeded its sentencing authority, relying on *Williams-Walker* and *Recuenco*. Pet. 3-5. His reliance on these cases is misplaced. In *Williams-Walker*, this Court consolidated three separate cases in

which the defendants were charged with firearm enhancements, but the juries were instructed on whether the defendants were armed with deadly weapons, and the juries were asked and made findings that the defendants were armed only with deadly weapons, not firearms. *Williams-Walker*, 167 Wn.2d at 893-895. There, this Court held that the trial courts "relied not on the juries' special verdicts but rather on the underlying guilty verdicts. This results in sentences unsupported by the juries' findings." *Id*. at 918. Because the juries returned answers to the deadly weapon special verdict forms, the Court reasoned that the jury "authorized only a deadly weapon enhancement, not the more severe firearm enhancement." *Id*. at 898. The Court held that "[f]or purposes of sentence enhancement, the sentencing court is bound by special verdict findings," and that a firearm enhancement "must be authorized by the jury in the form of a special verdict." *Id*. at 900. In contrast here, Chapmon was charged with firearm enhancements, the jury was instructed on the definition of a "firearm," and the jury expressly made special

findings that Chapmon was armed with a firearm during the commission of the assaults. CP 34-35, 69-106, 108, 112, 115.

Similarly in *Recuenco*, the defendant was never charged with a firearm enhancement, the jury was never given the facts to support the firearm enhancement, and the jury found only that Recuenco was armed with a deadly weapon, not a firearm. *Recuenco*, 163 Wn.2d at 431, 435-36, 439. Here, the jury found that Chapmon used a firearm, not a deadly weapon. CP 108, 112, 115. *Williams-Walker* and *Recuenco* are unhelpful to Chapmon as those cases involved illegal sentences unsupported by jury special findings. In contrast, Chapmon's trial court properly imposed firearm enhancements when the jury made special findings that he was armed with a firearm and the Court of Appeals properly affirmed.

Washington courts have long relied on *Recuenco* and *Williams-Walker* to ensure that only the sentencing enhancements authorized by jury special findings are imposed. For example, in *State v. Vazquez*, 200 Wn. App. 220, 402 P.3d

276 (2017), the defendant was charged with a firearm enhancement and the jury returned a special verdict finding that Vazquez was armed with a firearm. Although charged with firearm enhancements, the jury there was provided with a deadly weapon instruction. *Vazquez*, 200 Wn. App. at 222-23. Despite this instructional error, Division Three of the Court of Appeals applied a harmless error analysis to conclude that the jury properly found that Vazquez was armed with a firearm because the evidence "left no doubt" that Vazquez had used a firearm. *Id*. at 225. Here, the State charged Chapmon with a firearm enhancement, Chapmon admitted to firing his gun, there was no other weapon involved, and the jury found that Chapmon was armed with a firearm. CP 34-35, 69-106, 108, 112, 115; 2-20-18 RP 937-40. As in *Vazquez*, the evidence at Chapmon's trial "left no doubt" that he had used a firearm. *Vazquez*, 200 Wn. App. at 222-23; CP 34-35, 69-196, 108, 112, 115; 2-20-18 RP 937-40.

Each Division of the Court of Appeals has consistently followed *Recuenco* and *Williams-Walker*, foreclosing

Chapmon's complaint of a conflict for this Court to address. For example, Division One considered a nearly identical argument to Chapmon's in *State v. Dunya*, No. 68915-1-I, 2015 WL 248708 (Wash. Ct. App. Jan. 20, 2015) (unpublished). There, the defendant was charged with first-degree murder with a firearm enhancement, the jury was provided deadly weapon instructions, but the jury returned a special finding that the defendant was armed with a firearm. *Id.* at *1, 13-14. As Chapmon does here, Dunya relied on *Williams-Walker* to allege that the court did not have the authority to impose the firearm enhancement because the jury was instructed on deadly weapons. *Id*. at *13-14. The *Dunya* Court rejected this argument, stating

> Although [the jury instruction] states that "[f]or purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a *deadly weapon*" rather than a "*firearm*," the instructions told the jury that a "deadly weapon" includes a "firearm" and further defined "firearm" in a separate instruction. The instructions properly informed the jury of the applicable law and that in order to return this special verdict, it had to find beyond a reasonable doubt that

> Dunya committed his offense while armed with a "firearm." We affirm.

Id. at *14 (emphasis in original).

Similarly, Division Three of the Court of Appeals also considered a virtually identical argument to Chapmon's in *State v. Powers*, No. 34006-6-III, 2017 WL 3485450. (Wash. Ct. App. Aug. 15, 2017) (unpublished). There, the defendant was charged with firearm enhancements, but the trial court instructed the jury on deadly weapons, and the jury returned special verdicts that Powers was armed with a firearm. *Id.* at *1, 5. Although the Court declined to reach this argument because Powers failed to preserve the issue for appeal, the Court noted that *Williams-Walker* "actually undercuts any argument" that Powers made because it held that sentence enhancements "must be authorized by the jury in the form of a special verdict" and "the jury's special verdict answer that Mr. Powers was armed with a firearm was clear." *Powers*, 2017 WL 3485450, at *5, n.2 (citing *Williams-Walker*, 167 Wn.2d at 900-02).

This Court has repeatedly held that sentencing enhancements may only be imposed if authorized by a jury's special findings. Here, the State charged Chapmon with firearm enhancements, the evidence overwhelmingly supported a finding that Chapmon was armed with a firearm, the jury was instructed on the definition of a firearm, and the jury found beyond a reasonable doubt that Chapmon was armed with a firearm during the commission of his crimes. The trial court's imposition of the firearm enhancements tightly adhered to long-standing precedent and there is no conflict for this Court to review. This Court should decline to revisit this well-settled rule.

V. CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court deny the petition for review.

RESPECTFULLY SUBMITTED this 16th day of September, 2021.

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09-16-21 *s/ Andrew Yi*
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9-16-21 *s/Therese Kahn*
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PIERCE COUNTY PROSECUTING ATTORNEY

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