IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DAVVEN M. HOLMS DAVENPORT, Appellant.	No. 40070-7-II UNPUBLISHED OPINION

Hunt, J. — Davven M. Holms Davenport appeals his sentence for the following jury convictions: two counts of first degree robbery (Counts I and II), three counts of first degree assault while armed with a firearm (Counts IV, V and VI), one count of drive-by shooting (Count VII), one count of intimidating a witness while armed with a firearm (Count VIII), and one count of second degree unlawful possession of a firearm (Count IX). He argues that (1) the trial court erred in imposing a 60-month firearm sentencing enhancement for Count IV and a 36-month firearm enhancement for Count VIII, to run consecutively, because the trial court found those counts to be parts of the "same criminal conduct" under RCW 9.94A.589(1)(a), Clerk's Papers (CP) at 272-73; (2) RCW 9.94A.533(3)(e) is ambiguous in situations such as his; and (3) the consecutive firearm enhancements constitute double jeopardy[1] because they punish him twice for using the same firearm at the same time. We affirm.

[1] U.S. Const. amend. IV; WA Const. art. 1, § 9.

All three of Davenport's arguments fail. First, our Supreme Court recently affirmed that RCW 9.94A.533(3)(e) *requires* the trial court to impose consecutive firearm enhancements, even where the enhancements relate to crimes found to be the "same criminal conduct" under RCW 9.94A.589(1)(a). *State v. Mandanas*, 168 Wn.2d 84, 88-89, 228 P.3d 13 (2010). Second, in this same case, our Supreme Court held that RCW 9.94A.533(3)(e) is not ambiguous in situations such as Davenport's. *Mandanas,* 168 Wn.2d at 90. Finally, we rejected Davenport's double jeopardy argument in *State v. Huested*, 118 Wn. App. 92, 95-96, 74 P.3d 672 (2003), *review denied*, 151 Wn.2d 1014 (2004). And his analogy to later decisions defining "unit of prosecution," *State v. Tvedt*, 153 Wn.2d 705, 711, 107 P.3d 728 (2005), and *State v. Varnell*, 162 Wn.2d 165, 171, 107 P.3d 24 (2007), does not persuade us to re-examine *Huested*.

Holding that the trial court did not err in sentencing Davenport, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Penoyar, CJ.

Quinn-Brintnall, J.