IN THE COURT OF APPEALS OF THE STATE OF ALASKA

BRANDON BARRON, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13448 Trial Court No. 4FA-18-00801 CR SUMMARY DISPOSITION No. 0334 — July 26, 2023

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Michael A. MacDonald, Judge.

Appearances: Barbara Dunham, Attorney at Law, Anchorage, under contract with the Office of Public Advocacy, for the Appellant. RuthAnne Beach, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Terrell, Judges.

Brandon Barron was convicted, following a jury trial, of one count of second-degree assault and two counts of violating conditions of release after he punched Troy Jackovich multiple times and broke his jaw.[1] He raises two issues on appeal, both related to the superior court's denial of his motion for a new trial based on the weight of the evidence.

[1] AS 11.41.210(a)(2) and AS 11.56.757(a), respectively.

First, Barron argues that the superior court applied the wrong standard in evaluating Barron's motion for a new trial, and he asks us to remand for reconsideration of that ruling under the correct standard. Barron's argument is based on this Court's decision in *Phornsavanh v. State*, which clarified the proper standard for evaluating motions for a new trial based on the weight of the evidence.[2] As Barron points out, the superior court in his case applied the test articulated in *White v. State*, one of the cases we disavowed in *Phornsavanh*.[3]

But the superior court's application of the incorrect test does not mean that Barron is automatically entitled to a remand for clarification or reconsideration. As we explained in *Whisenhunt v. State*, our clarification of the law in *Phornsavanh* is only relevant in "those extremely rare cases . . . where the trial judge has affirmatively expressed significant concern about the fairness of the verdict but has potentially resolved those concerns solely based on the fact that the jury's verdict is not 'plainly unreasonable.'"[4] That is not the case here. In ruling on Barron's motion for a new trial, the superior court stated that it "[came] to the same conclusion about the weight of the evidence as the jury did." We therefore conclude that a remand for clarification or reconsideration is not necessary.

We note that Barron relies heavily on comments the court made at his sentencing hearing, which he asserts indicate that the court agreed with his version of events and disagreed with the jury's verdict. We disagree with Barron's characterization of the court's comments at sentencing. They reflect that the court, for purposes of sentencing, did not accept every factual claim made by the victim, not that it ultimately disagreed with the jury's verdict.

---

[2] *Phornsavanh v. State*, 481 P.3d 1145 (Alaska App. 2021).

[3] *Id.* at 1160 & n.45 (disavowing, *inter alia*, *White v. State*, 298 P.3d 884 (Alaska App. 2013)).

[4] *Whisenhunt v. State*, 504 P.3d 268, 276 (Alaska App. 2022).

Second, Barron argues that, on the merits, the superior court erred in denying his motion for a new trial. We have reviewed the record and we find no abuse of discretion in the superior court's denial of the motion.

The judgment of the superior court is AFFIRMED.