



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

**NOS. 02-13-00247-CR
02-13-00248-CR
02-13-00249-CR
02-13-00250-CR**

CHARLES CAMP

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 297TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NOS. 1324667R, 1324668R, 1324671R, 1324677R

MEMORANDUM OPINION¹

Appellant Charles Camp appeals from his four convictions of aggravated robbery. See Tex. Penal Code Ann. § 29.03 (West 2011). In one issue, Camp argues that the State's additional count in each indictment for felon in possession of a firearm violated double jeopardy, due process, and constituted prosecutorial misconduct.

¹See Tex. R. App. P. 47.4.

I. BACKGROUND

Because Camp does not attack the sufficiency of the evidence to support his convictions, his recitation of the underlying factual background in his appellate brief is sufficient:

[Camp] was charged with a string of store robberies in April of 2012 wherein his girlfriend would go in and ‘case’ the store and he would enter after she left, approach the cashier, point a small .38 special revolver and ask for the money. . . . The robberies were all on video and [Camp] confessed to the police as well as to the jury during the trial explaining he needed the money for survival. . . . He and his girlfriend were arrested in the vehicle linked to the robberies and the functioning and loaded gun was located in the car.

This “string” of robberies included ten separate robberies. A grand jury indicted Camp in four separate indictments for four of the robberies, occurring on three dates in April 2012. The first count of each indictment charged Camp with a separate aggravated robbery. The second count of each indictment charged Camp with being a felon in possession of a firearm during each charged aggravated robbery. See *id.* § 46.04 (West 2011). In each indictment, the prior felony authorizing the felon-in-possession charge was Camp’s July 16, 2004 conviction for aggravated burglary in Kansas. The indictments also contained identical habitual-offender notices, alleging that Camp had previously been convicted of aggravated burglary,² burglary, aggravated robbery, and theft of property in Kansas. See *id.* § 12.42 (West Supp. 2014).

²This was the same aggravated burglary conviction alleged in each indictment as part of the felon-in-possession count.

At trial,³ the State introduced Camp’s stipulation that he had been convicted of the 2004 aggravated burglary in Kansas. Camp testified and admitted that he committed each armed robbery. Before he testified, Camp verified that his attorney had informed him of the dangers of testifying but that he wanted to testify to “get [his] side of the story out.” During cross-examination, the State questioned Camp about his stipulation to the 2004 aggravated burglary and about the three prior convictions also alleged in the habitual-offender notice. After each side rested and closed the evidence but before the charge was read to the jury, the State waived the second count—the felon-in-possession count—in each indictment. Camp’s counsel affirmed that he was “aware” of the waiver and that he had “heard that already.” The jury found Camp guilty of each aggravated robbery. Camp then pleaded true to the habitual-offender notices. The jury found the habitual-offender notice true and assessed Camp’s sentence at life confinement for each aggravated robbery. The trial court sentenced Camp accordingly.

II. DISCUSSION

Camp asserts that the State’s waivers of the second counts, where the second counts were double-jeopardy barred, constituted prosecutorial misconduct and violated his right to due process. See *generally* U.S. Const. amend. V; Tex. Const. art. I, §§ 14, 19; Tex. Code Crim. Proc. Ann. arts. 1.04, 1.10 (West 2005).

³Camp agreed to try the four robberies in one trial. See *id.* § 3.02 (West 2011).

A. ADEQUACY OF BRIEFING

The State argues that Camp's point is multifarious and should be overruled summarily as such. Although Camp does include several arguments in one issue, he separately addresses both his double-jeopardy and prosecutorial-misconduct claims in his brief such that we may reliably determine what his separate complaints are. Therefore, we will address these arguments. See Tex. R. App. P. 38.9; *Chimney v. State*, 6 S.W.3d 681, 687–88 (Tex. App.—Waco 1999, pet. ref'd) (positing that rule 38.9 implicitly overruled former article 40.09 and former rule 74(d), which prohibited multifarious points on appeal). We do note, however, that Camp wholly failed to brief his due-process argument or address how the federal prohibition of double jeopardy differs from the Texas prohibition. We will not address Camp's due-process argument and will address his double-jeopardy claim solely under the federal constitution, assuming that he is claiming no greater protection under the Texas Constitution and the code of criminal procedure than that provided by the United States Constitution. See *Muniz v. State*, 851 S.W.2d 238, 251–52 (Tex. Crim. App. 1993); *Reckart v. State*, 323 S.W.3d 588, 596 (Tex. App.—Corpus Christi 2010, pet. ref'd); *Hutchins v. State*, 992 S.W.2d 629, 630 (Tex. App.—Austin 1999, pet. ref'd, untimely filed).

B. DOUBLE JEOPARDY

Camp concedes that he did not object to the State's waiver or otherwise bring his double-jeopardy complaints to the trial court's attention. If a double-jeopardy violation "is clearly apparent on the face of the record and when enforcement of usual rules of procedural default serves no legitimate state interests," however, a

double-jeopardy claim may be raised for the first time on appeal. *Gonzalez v. State*, 8 S.W.3d 640, 643 (Tex. Crim. App. 2000); see *Garfias v. State*, 424 S.W.3d 54, 57–58 (Tex. Crim. App.), *cert. denied*, 135 S. Ct. 359 (2014).

Here, the offenses charged were distinct from each other. To prove aggravated robbery, the State had to show that Camp, in the course of committing theft, intentionally or knowingly threatened or placed another in fear of imminent bodily injury or death and used or exhibited a deadly weapon. See Tex. Penal Code Ann. § 29.02(a)(2) (West 2011), § 29.03(a)(2). To prove that Camp was unlawfully in possession of a firearm, the State had to show that Camp had actual care, custody, control, or management of a firearm more than five years after he had been convicted of a felony and while he was away from his home. See *id.* § 1.07(a)(39) (West Supp. 2014), § 46.04(a)(2). These offenses require proof of different elements and different culpable mental states and are not lesser-included offenses. See Tex. Code Crim. Proc. Ann. art. 37.09 (West 2006); *Bessire v. Quarterman*, No. 4:07-CV-597-Y, 2009 WL 54257, at *3 (N.D. Tex. Jan. 8, 2009) (citing *Hawkins v. State*, 535 S.W.2d 359, 362 (Tex. Crim. App. 1976)); *Martinez v. State*, No. 03-98-00415-CR, 1999 WL 603444, at *2 (Tex. App.—Austin Aug. 12, 1999, pet. ref'd) (not designated for publication). Further, there is no indication that the legislature intended these offenses to constitute one offense for purposes of double jeopardy. See *Bean v. State*, Nos. 05-06-01487-01489-CR, 2007 WL 3293633, at *2–3 (Tex. App.—Dallas Nov. 8, 2007, pet. ref'd) (mem. op., not designated for publication). Thus, any double-jeopardy violation was not apparent from the face of the record. *Cf. Garfias*, 424 S.W.3d at 60–64 (holding convictions for aggravated robbery by

threat and aggravated assault causing bodily injury stemming from single encounter with single victim did not violate double jeopardy); *Billings v. State*, 399 S.W.3d 581, 592–93 (Tex. App.—Eastland 2013, no pet.) (holding convictions for aggravated kidnapping and aggravated sexual assault of a child did not violate double jeopardy because they are distinct offenses, they are not lesser-included offenses, and no clear legislative intent to punish the offenses as one offense existed). Finally, we cannot conclude that the usual rules of preservation would serve no legitimate interest in this appeal. Accordingly, the rules of error preservation should not be suspended, and we conclude Camp forfeited his double-jeopardy complaint by failing to object to the violation in the trial court. See *Garfias*, 424 S.W.3d at 64; *Billings*, 399 S.W.3d at 593. See generally Tex. R. App. P. 33.1.

C. PROSECUTORIAL MISCONDUCT

Camp next argues that the State’s waiver of the second counts after the close of evidence constituted prosecutorial misconduct because it was a “deliberate manipulation of the law to make highly prejudicial evidence admissible in blatant violation of Double Jeopardy.” Once again, Camp failed to object to the State’s waiver at the time it occurred and, thus, forfeited this complaint. See *Clark v. State*, 365 S.W.3d 333, 340 (Tex. Crim. App. 2012). The State’s action in waiving the second counts was not so serious that the reliability of the trial was undermined; thus, the preservation requirements are applicable. See *Bautista v. State*, 363 S.W.3d 259, 262–63 (Tex. App.—San Antonio 2012, no pet.). Further, the State’s waiver was permissible and does not indicate prosecutorial misconduct. See *Jackson v. State*, 50 S.W.3d 579, 596–97 (Tex. App.—Fort Worth 2001, pets. ref’d).

III. CONCLUSION

Because Camp forfeited his double-jeopardy and prosecutorial-misconduct claims, we overrule his sole issue and affirm the trial court's judgments. See Tex. R. App. P. 43.2(a).

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: GARDNER, WALKER, and GABRIEL, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: December 11, 2014