

firearm with a defaced serial or ID number as alleged in Count II violates constitutional prohibitions against double punishment. Appellant's conviction in either Count I or Count II must be reversed.

3. Appellant's two convictions for possession of a firearm after former conviction of a felony in Counts III and V violate the multiple punishment provisions of Oklahoma law as well as the United States Constitution. The evidence was insufficient to support two convictions for possession of a firearm after former conviction of a felony, and Count V must be reversed with instructions to dismiss.
4. Under the facts of the case, Appellant's convictions for robbery with firearm and for possession of a firearm after former commission of a felony violate constitutional and statutory prohibitions against double punishment. Appellant's convictions for possession of a firearm after former conviction of a felony must be reversed with instructions to dismiss.
5. Appellant received ineffective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm Appellant's Judgment and Sentence in part and reverse in part. With regard to error raised in Proposition I, we find that the trial court cannot be found to have abused its discretion in ruling that these robberies should be joined and tried together in a single trial. *Smith v. State*, 2007 OK CR 16, ¶ 21, 157 P.3d 1155, 1164.

We find in Proposition II that Appellant's convictions for both robbery with a firearm and committing a felony while in possession of a firearm with a defaced serial number do not violate Oklahoma's statutory prohibition against double punishment or the Double Jeopardy Clause of the United States Constitution. *Wright v. State*, Case No. F-2005-557 (December 5, 2006); *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed.

306 (1932).

In Proposition III, we find that the evidence presented at trial was insufficient to support Appellant's conviction for two counts of possession of a firearm after former conviction of a felony. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. The evidence supports the conclusion that the firearm found in Appellant's bedroom was the same one he used in both robberies as it matched the description of the gun given by the victims of both robberies. Continuous possession can be inferred since the State presented no evidence of disrupted possession of the firearm. Accordingly, one of Appellant's counts of felonious possession must be reversed with instructions to dismiss. *Hancock v. State*, 2007 OK CR 9, 155 P.2d 796.

Appellant's argument in Proposition IV must fail as the possession of a firearm after former conviction of a felony conviction did not punish Petitioner for robbery with a firearm at all, but rather for possessing the firearm after having a former felony conviction. These were two very separate and distinct acts. As these crimes were based upon separate and distinct acts, with dissimilar elements, there was no double punishment in violation of Section 11. *Davis v State*, 1999 OK CR 48, ¶¶ 7-14, 993 P.2d 124, 126-27; *Hale v. State*, 1995 OK CR 7, ¶¶ 3-5, 888 P.2d 1027, 1029-30. We also find that Appellant's convictions do not violate the constitutional protection against double jeopardy. *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306 (1932); *Thomas v. State*, 1984 OK CR 19, ¶ 16, 675 P.2d 1016, 1021.

Finally, Appellant was not denied his constitutional right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674, 698 (1984).

DECISION

The Judgment and Sentence of the district court is **AFFIRMED** as to Counts I-IV. Judgment and Sentence on Count V is **REVERSED** with instructions to **DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE DAMAN CANTRELL, DISTRICT JUDGE

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OPINION BY C. JOHNSON, P.J.
A. JOHNSON, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR
CHAPEL, J.: DISSENT
LEWIS, J.: CONCUR

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CHAPEL, J., DISSENTING:

I respectfully dissent as the two counts of robbery were improperly joined in a single trial which resulted in prejudice to the defendant. See *Smith v. State*, 157 P.3d 1166 (2007) and *Johnson v. State*, Case No. F-2008-1171 (unpublished opinion, filed Jan.6, 2010).