

SUPREME COURT OF LOUISIANA

No. 2019-KK-00915

STATE OF LOUISIANA

vs.

PATRICK KINSEY ROBINSON

**ON WRIT OF CERTIORARI TO THE SECOND CIRCUIT
COURT OF APPEAL, PARISH OF WEBSTER**

Crichton, J., concurring:

Defendant, charged with second degree kidnapping, was found guilty of simple kidnapping. On appeal, the court of appeal correctly noted this non-responsive verdict as an error patent in light of *State v. Price*, 17-0520 (La. 6/27/18), 250 So.3d 230, and *State v. McGhee*, 17-1951 (La. 9/21/18), 252 So.3d 895. Accordingly, it correctly vacated the conviction and sentence for simple kidnapping and remanded to the trial court for further proceedings in light of *Price* and *McGhee*. *State v. Robinson*, 52, 308 (La. App. 2 Cir. 11/28/18), 259 So.3d 1244.

Thereafter, the State filed a new bill of information charging defendant with simple kidnapping. In an unpublished opinion, the court of appeal correctly ordered that bill quashed because double jeopardy protections now prohibit prosecuting defendant for simple kidnapping under the circumstances presented here. *See* La.C.Cr.P. art. 596(1) (providing that double jeopardy exists in a second trial when the charge in that trial is: "Identical with or a different grade of the same offense for which the defendant was in jeopardy in the first trial, whether or not a responsive verdict could have been rendered in the first trial as to the charge in the

second trial”).¹ Accordingly, I concur in the denial of the State’s application.

I write separately, however, to note that the allegations against defendant, as evidenced at his first trial, are quite serious, and his alleged conduct could constitute offenses other than kidnapping. After examining the record, my view is that double jeopardy protections do not prohibit the State, if it so chooses, from prosecuting defendant for other criminal conduct in which he may have engaged. For example, the State might seek to charge defendant with false imprisonment while armed with a dangerous weapon under La. R.S. 14:46.1(A), provided that the conditions established in *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed.2d 306 (1932), are met, *i.e.* “[e]ach of the offenses created requires proof of a different element.” *See generally State v. Frank*, 16-1160 (La. 10/18/17), 234 So.3d 27.

¹ *State v. Robinson*, 52,904 (La. App. 2 Cir. 5/16/19) (unpub’d).