

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

December 17, 2015

Melanie C. Withers, Esquire
Department of Justice
114 E. Market Street
Georgetown, DE 19947

VIA US MAIL AND EMAIL

John F. Brady, Esquire
The Brady Law Firm
240 N. James Street, Suite 106
Wilmington, DE 19804

RE: *State of Delaware v. Rondaiges A. Harper*, Def. ID# 1508015352

Dear Counsel:

Pending before the Court is the motion of defendant Rondaiges A. Harper (“defendant”) to dismiss this criminal case on the ground that double jeopardy bars its prosecution. This is my decision granting the motion.

Defendant previously was tried before a jury on charges of carjacking in the first degree, kidnapping in the first degree, and two counts of conspiracy in the second degree. In its charge to the jury, the Court instructed the jury that if it did not find the defendant guilty of kidnapping in the first degree or second degree, it could consider the lesser included offenses of unlawful imprisonment in the first degree and in the second degree. The jury found defendant guilty as

charged.

On appeal, the Delaware Supreme Court reversed these convictions.¹ That Court determined that defendant, who joined the co-defendants after the theft of the vehicle, could not be convicted of carjacking. It further ruled that defendant, who did not facilitate the carjacking or the flight therefrom, could not be convicted of first degree kidnapping. Specifically with regards to the kidnapping charge, the Supreme Court stated:

The evidence was insufficient to establish that Harper restrained Smith for the purpose of facilitating the commission of ... [the co-defendants'] carjacking or their flight thereafter. We therefore reverse Harper's conviction for kidnapping in the first degree.²

Finally, the Court ruled that the evidence was insufficient to support convictions for the conspiracy counts.

Thereafter, the State of Delaware ("the State") indicted defendant in this case on the charges of unlawful imprisonment in the first degree and conspiracy in the second degree. These charges stemmed from the same facts as the previous prosecution. Defendant then filed the pending motion to dismiss.

As the Supreme Court explained in *Monroe v. Delaware*,³ the Double Jeopardy Clauses of the United States and Delaware Constitutions as well as 11 *Del. C.* § 207(1)⁴ bar retrial of a

¹*Harper v. State*, 121 A.3d 24 (Del. 2015).

²*Id.* at 35.

³652 A.2d 560 (Del. 1995).

⁴In 11 *Del. C.* § 207(1), it is provided in pertinent part as follows:

When a prosecution is for a violation of the same statutory provisions and is based upon the same facts as a former prosecution, it is barred by the former

defendant when an appellate court overturns a jury's guilty verdict on insufficiency of evidence grounds. Double jeopardy attaches both to the greater offense and any lesser offense.⁵ Thus, the State is precluded from prosecuting defendant on the lesser included offense of unlawful imprisonment. Finally, double jeopardy precludes prosecution of the conspiracy in the second degree charge.

For the foregoing reasons, defendant's motion to dismiss is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

cc: Prothonotary's Office

prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal which has not subsequently been set aside. There is an acquittal if the prosecution resulted ... in a determination by the court that there was insufficient evidence to warrant a conviction.

⁵*Brown v. Ohio*, 432 U.S. 161, 53 L.Ed.2d 187, 97 S.Ct. 2221 (1977); 1 Wharton's Criminal Law § 66 (15th ed. 2015).