

No. 37,043-KA

ON REHEARING

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

CLIFTON R. ROBINSON

Appellant

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Per Curiam on Rehearing

Originally appealed from the
Fourth Judicial District Court for the
Parish of Ouachita, Louisiana
Trial Court No. 01-F1361

Honorable D. Milton Moore, III, Judge

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LOUISIANA APPELLATE PROJECT
By: Paula Corley Marx

Counsel for
Appellant

JERRY L. JONES
District Attorney

Counsel for
Appellee

SHIRLEY M. WILSON
Assistant District Attorney

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Before BROWN, WILLIAMS, STEWART,
PEATROSS & DREW, JJ.

PER CURIAM.

On rehearing, Defendant, for the first time, argues that his convictions on two counts of second degree battery violate the prohibition against double jeopardy. While noted as a possible issue by the concurring opinion, the majority opinion did not address any possible double jeopardy issue because it had not been raised by Defendant and because we concluded that, in the case *sub judice*, any such issue was not subject to error patent review as there is no double jeopardy violation “discoverable by the mere inspection of the pleadings and proceedings and without inspection of the evidence.” La. C.Cr. P. art. 920. Now, on rehearing, we further find that the claim of double jeopardy was not properly raised in the trial court, or on appeal, and cannot properly be raised for the first time in an application for rehearing. See *Mosing v. Domas*, 02-0012 (La. 10/15/02), 830 So. 2d 967; *Churchhill Farms, Inc. v. Louisiana Tax Commission*, 249 So. 2d 594 (La. App. 4th Cir. 1971), *writ refused*, 249 So. 2d 923 (La. 1971).

The appellant will have two years, after the finality of his conviction, to raise this issue. See La. C.Cr. P. art. 930.3(3) and La. C.Cr. P. art. 930.8. The application for rehearing is DENIED.