

3/16/01

SUPREME COURT OF LOUISIANA

No. 00-KK-2472

STATE OF LOUISIANA

Versus

PAUL STEPHENS

LEMMON, J., Dissenting

While I agree with the reasoning of the majority on the issues discussed, I would not reach those issues which presuppose that defendant will be reindicted. In my view, a second indictment is precluded under the circumstances of this case.

When the trial judge refused the prosecutor's motion for a continuance on the day of trial, the prosecutor had two valid choices: (1) to proceed to trial or (2) to seek supervisory review of the denial.¹ Instead, the prosecutor decided to "grant himself a continuance" by dismissing the charges which was not a valid choice, at least if the prosecutor intended to seek a second indictment. I believe the prosecutor's dismissal of the charges (instead of going to trial or seeking supervisory review) precluded any further prosecution. I therefore would not reach the issues decided by the majority.

¹If the defendant had sought and been denied a continuance, his only two choices would have been seeking supervisory review of the denial or going to trial. He could not have flaunted the trial judge's decision or taken over the judge's control of his docket, as the prosecutor did.