

11/28/01 "See News Release93 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

No. 01-KK-1080

IN RE: LIONEL "LON" BURNS

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FOURTH
CIRCUIT, PARISH OF ORLEANS

JOHNSON, J., concurring

I agree that a contempt hearing pursuant to LSA-C.Cr.P. art. 24 was the correct procedure to address what the trial court determined to be prosecutorial misconduct. I believe that tampering with evidence is a serious violation which the trial court has the authority to address. In this case, the suddenly discovered paper napkins in the back pockets of the defendant's police uniform pants was inculpatory evidence. Far too often, the court is faced with a *Brady* violation because of a prosecutor's failure to turn over exculpatory evidence to the defense. In my view, if a prosecutor may be charged with constructive contempt of court for failing to disclose the discovery of *inculpatory* evidence to a defendant, the same should be true when a prosecutor fails to disclose *exculpatory* evidence.