

SUPREME COURT OF LOUISIANA

No. 2003-KK-1118

STATE OF LOUISIANA

VERSUS

STEPHRET HARVEY

*Applying for Writ of Certiorari to the Court of Appeal
Fourth Circuit, Parish of Orleans*

WEIMER, J., dissenting from the denial of the writ application:

When this matter was originally set for trial, the State made an oral motion for continuance, which the trial court denied. The State then entered a *nolle prosequi* of the first bill of information. Subsequently, the State filed a second bill of information for the same offenses. Thereafter, the trial court set the matter for trial. On the day of trial, the State orally moved for a continuance that was denied. The State then entered another *nolle prosequi* of the second bill of information. Thereafter, the State filed a third bill of information. When this matter was set for trial a third time, the defense filed a motion to quash the third bill based on a violation of the defendant's right to a speedy trial.

In the trial transcript, the trial judge states that the State never gave a reason for its delay in bringing the defendant to trial. The trial judge indicated "the delays were based on just the negligence of [the prosecutor's] predecessors in not knowing what was on the docket on any given day and for some reason not being able to put this case in a position to go to trial." The trial judge also concluded that in his opinion there were lengthy delays in this case.

Not once, but twice, the State entered *nolle prosequi* after being denied oral motions for continuances on the day of trial. For the reasons assigned in my dissent

in **State v. Love**, 2000-3347, (La. (5/23/03), ___ So.2d ___, I would grant this writ for the purpose of further evaluation of the facts and applicable law.