

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2013 KW 1694

VERSUS

JUAN HUMBERTO UMANZOR-
MARTINEZ

NOV 21 2013

In Re: State of Louisiana, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 11-11-0703.

BEFORE: PETTIGREW, McDONALD AND McCLENDON, JJ.

WRIT GRANTED IN PART AND DENIED IN PART. To the extent it seeks relief from the exclusion of the defendant's statements which were made prior to Trooper Jefferson's deficient **Miranda** warnings, the writ application is granted. Neither **Miranda** nor La. Code Crim. P. art. 215.1 prevents an officer from engaging a motorist in conversation while he is investigating a routine traffic violation. See **State v. Cowan**, 99-2888 (La. 6/16/00), 763 So.2d 583, 584 (per curiam). At the time he initially admitted to Trooper Jefferson that he had consumed three beers, the defendant was not "in custody" for the purposes of **Miranda**. See **Berkemer v. McCarty**, 468 U.S. 420, 440, 104 S.Ct. 3138, 3150, 82 L.Ed.2d 317 (1984). Therefore, we reverse the trial court's ruling with respect to this statement, and we find it admissible. However, on the two occasions he did inform the defendant of his **Miranda** rights, Trooper Jefferson failed to state that any statements the defendant made could be used against him in a court of law. Accordingly, any non-cumulative statements that the defendant made after these deficient warnings were properly excluded.

To the extent it seeks relief from the trial court's exclusion of the Breathalyzer test results, the writ application is also granted. The transcript of the motion to suppress hearing indicates that the trial court based its exclusion of these test results on Trooper Jefferson's deficient **Miranda** warnings at the scene of the traffic stop. We vacate the trial court's exclusion of these results based on that reasoning. Those on-scene warnings were irrelevant for the purposes of the admissibility of the Breathalyzer test results. See La. R.S. 32:661. Recognizing that the State concedes the inadmissibility of the test results as presumptive evidence of the defendant's intoxication due to the lack of a Spanish-language waiver of rights form, we remand this matter for the trial court to hold an evidentiary hearing on the admissibility of these results. At this hearing, the trial court should determine whether the Breathalyzer results are otherwise reliable. If so, the

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

NO. 2013 KW 1694

PAGE 2

trial court should allow these results to be admissible at trial as circumstantial evidence of the defendant's alleged intoxication. See **State v. Shirley**, 2008-2106 (La. 5/5/09), 10 So.3d 224, 233. If not, the results should be excluded.

PMc

JTP

JMM

COURT OF APPEAL, FIRST CIRCUIT



DEPUTY CLERK OF COURT
FOR THE COURT