

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2013 KW 1671

VERSUS

KENNETH COURTNEY

NOV 21 2013

In Re: Kenneth Courtney, applying for supervisory writs, 20th
Judicial District Court, Parish of East Feliciana, No.
13-CR-140.

BEFORE: PETTIGREW, McDONALD AND WELCH, JJ.

WRIT DENIED ON THE SHOWING MADE. Six exhibits were introduced into evidence at the motion to suppress hearing. None of those exhibits were made part of relator's writ application. Accordingly, the incomplete record precludes us from determining the correctness *vel non* of the trial court's denial of the motion to suppress. See **City of Baton Rouge v. Plain**, 433 So.2d 710 (La.), cert. denied, 464 U.S. 896, 104 S.Ct. 246, 78 L.Ed.2d 235 (1983).

JTP
JMM

Welch, J., concurs in part, dissents in part. While I agree with the trial court's ruling insofar as **Miranda** warnings not being required because relator had not been in custody when questioned about his alcohol use, I dissent and would have granted the motion to suppress based on the improper certification of the Intoxilyzer 5000. The State had the burden of proving the Intoxilyzer 5000 was properly certified. The testimony at the motion to suppress hearing established the Intoxilyzer 5000 had been certified more than a year ago. Pursuant to La. Administrative Code, Title 55, part I, § 507, the Intoxilyzer is to be recertified every four months.

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FOR THE COURT