

SUPREME COURT OF LOUISIANA

No. 2019-KK-497

STATE OF LOUISIANA

VS.

KENDRICK KIRK

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

Hughes, J., dissents and would grant the writ.

While the police officers had reasonable suspicion to approach defendant after he was identified by his cousin as likely possessing drugs, the state fails in its burden to show defendant was properly Mirandized.

After defendant was separated from other bus customers and handcuffed, the police specifically asked defendant if he had any drugs on him, to which defendant responded affirmatively. These were not preliminary questions, but were inculpatory, as defendant had already specifically been pointed out as likely to have drugs on him.

When asked if defendant was Mirandized before or after the inculpatory question was asked, the officer who gave the warning replied, "I'm not sure." As noted by the trial court, "That's kind of a biggy."

Because the state has failed to carry its burden under *Miranda*, the trial court's ruling suppressing defendant's statement and evidence derived therefrom should be reinstated.