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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURTY

Certiorari to the Court of Appeals
Appeal from Horry County
The Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

vs.

JAMES ELBERT DANIELS, JR,

PETITIONER.

RETURN TO PETITION FOR WRIT OF CERTIORARI
Appellate Case No. 2018-001630

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PETITIONER'S QUESTION PRESENTED

The Court of Appeals erred in holding that petitioner's pre-Miranda and post-Miranda statements were properly admitted into evidence at trial because the statements were given in violation of Miranda[1] and the question first tactic?

RESPONDENT'S COUNTER-STATEMENT OF QUESTION PRESENTED

Should certiorari be granted where the Court of Appeals correctly affirmed the circuit court on the only issue raised to it, whether police engaged in the improper banned practice of "question first" outlawed in Missouri v. Seibert[2] and State v. Navy,[3] where the circuit court did not abuse its discretion and its determination is supported by the record?

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[1] 384 U.S. 436 (1966)
[2] 542 U.S. 600 (2004)
[3] 386 S.C. 294, 688 S.E.2d 838 (2010)

STATEMENT OF THE CASE

On January 2, 2015, petitioner James E. Daniels ("Daniels"), McKinley Daniels, and Jerome Jenkins robbed a convenience store on Hwy. 905 in Horry County and murdered Bala Paruchuri. (R. 243-44-361-63). On January 25, 2015, the same 3 men robbed a convenience store in Myrtle Beach and another store in Conway and murdered Trish Stull. On February 5, 2015, Daniels was arrested for the crimes. On April 23, 2015, he was indicted for 2 counts of armed robbery [*the Myrtle Beach and Conway stores*] and 1 count of murder [Trish Stull] (2015-GS-26-1752, -66, -64). Jimmy Richardson and Scott Hixson prosecuted the case. Barbara Pratt represented Daniels. Daniels was tried by a jury before the Honorable Robert Hood on August 27-30, 2018, and found guilty as charged. (R. 124, 550-51).[4] He was sentenced to LWOP due to a prior kidnapping conviction. (R. 557; 562, 565, 568). Daniels appealed raising 1 issue. The Court of Appeals affirmed. State v. Daniels, 439 S.C. 500, 888 S.E.2d 9 (Ct. App. 2023).[5] A petition for rehearing was denied. Daniels filed this petition raising 2 issues.[6] This is the Return to the Petition.

RESPONDENT'S STATEMENT OF FACTS

On January 2, 2015, *the Sunhouse* convenience store at Red Bluff Rd. and Highway 905 in Horry County was armed robbed. Daniels was the "scout" and "wheel man." He entered the store about 22 minutes before the robbery, pretended to be a customer, purchased an item, and scouted out the store. After he left the store and returned to the car he was driving, Jerome Jenkins

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[4] The indictments were joined for trial because they occurred on the same day and the same perpetrators were involved. The murder of Mr. Paruchuri on January 2nd was admitted as prior bad act and *res gestae* of the crime evidence because the same perpetrators were involved in that murder and armed robbery and that crime made it foreseeable Ms. Stull would be murdered in the last armed robbery on January 25th. (R. Aug. 22, 73-122; R. 3-5; 107-15).

[5] Judge McDonald wrote the Opinion; Judge Konduros concurred, and Judge Geathers concurred in result. Id. The issue raised to the Court of Appeals was whether there was a Seibert/Navy violation. (BOA p. 1). All 3 judges agreed there was no Seibert/Navy violation; Judge Geathers found a Miranda violation and the pre-Miranda statement only should have been suppressed.

[6] Daniels now argues both a Miranda violation and a Seibert/Navy violation. (Pet. for Cert., p. 2)

("Jenkins") and Daniel's brother McKinley Daniels ("McKinley") entered the store wearing masks and carrying guns. Both men shot and killed the clerk, Bala Parachuri. The cash drawer was stolen. Both men fled on foot. Daniels picked up McKinley and Jenkins in Daniels' girlfriend's car and drove away. The armed robbery and murder were captured on security video. (R. 243-44; 343-45, 350-67; 121-44; St. Ex. 15, 17, 116-20; 134-44; St. Ex. 2 & 3 Aug. 22).

On January 25, 2015, *the Scotchman* at Lake Arrowhead Rd. and Kings Rd. was robbed by the same 3 men. Daniels, who worked nearby, did not enter this store. He parked at a nearby apartment complex and let Jenkins and McKinley out so they could commit the crime. Those 2 masked men entered the store, and 1 man went behind the counter and 1 man approached the clerk with a gun. The registers were emptied of $50 and Newport cigarettes were stolen. The men fled. Daniels drove the men away. This crime was captured on video. (R. 206-11; 215-16, 310).

Later that evening, the 3 men robbed *the Sunhouse* convenience store at Cultra Rd. and Oak St. in Conway. Daniels was again the scout and wheelman. He entered the store about 30 minutes before the crimes and spoke with the clerk, Trisha Stull. He then left and returned to the car. Jenkins and McKinley entered the store wearing masks and went behind the counter. Jenkins shot and killed Stull and cash and a purse was stolen. The men fled. Daniels picked them up in the same car and drove the men away. These crimes were also captured on video. (R. 221-22; 321-22; 366-73, 379-87; St. Ex. 19, 83-88, 89-101; St. Ex. 2 & 3 Aug. 22; St. Ex. 167, 168).

After the murder of Ms. Stull on January 25th, an investigator who watched the surveillance videos from the crimes at *the Sunhouse* in Conway and at *the Scotchman*, noticed a clothing pattern - red pants and gray sweatshirt. This led the investigator to believe the same persons robbed both stores. This investigator also had seen video of Paruchuri's murder and believed he'd seen the same clothing there, not during the crimes, but earlier on. (R. 323, 434, 323, ln. 25 - 324, ln. 3.)

While watching the video of Paruchuri's murder, the officer saw a car of interest and a person of interest. Specifically, about 22 minutes prior to the robbery, a subject was in the store, wearing red pants and "a dark color gray or something hooded sweatshirt," which appeared to be similar to that worn by 1 of the men in *the Scotchman* and at *the Sunhouse* in Conway. (R. 345, ll. 13-23). The investigator also saw a similar car arrive at the store where Paruchuri was killed and driving near *the Sunhouse* in Conway prior to the crimes. The investigation determined this was a 2008 to 2012 silver or grey Chevrolet Malibu. SLED generated a list of registered owners in the area. (R. 344-45; 351-52, 366, 412-13).

On February 5th, Daniels was developed as a *possible* suspect or person of interest when an investigator viewed surveillance videos from the different stores and another investigator walked in and recognized Daniels as the person who entered the first store 22 minutes before that crime and purchased a soda. This investigator also knew Daniels' girlfriend drove a silver or grey car. As a result, investigators went to the girlfriend's home, where they believed Daniels resided, to talk with him. Upon arrival, investigators saw a silver Chevy Malibu parked in the yard of the girlfriend's mother's home. The car was eventually seized by police. Daniels was not there. The girlfriend's mother called Daniels at work and informed him investigators were there and wished to talk to him. Daniels voluntarily drove home and met with investigators in the front yard. He was asked if he would come to the police substation and answer questions. He agreed. His girlfriend also agreed to the same. (R. 435-440; 458; 460).

Daniels and his girlfriend accompanied investigators to the substation where they were formally interviewed. After being read his Miranda rights and waiving them, Daniels eventually admitted he drove the car in each of the armed robberies including the 2 in which the murders

occurred. Daniels identified McKinley and Jenkins as the trigger-men in each armed robbery and the 2 murders. (St. Ex. 2 Aug. 22/ St. Ex. 167; R. Aug. 22, 1-77; R. 445-517).

The following day, Daniels was interviewed a second time at the Detention Center. After again being read his Miranda warnings, Daniels again implicated himself in the armed robberies and murders and gave further evidence against McKinley and Jenkins. (St. Ex. 3, Aug. 22 / Trial Ex. St. Ex. 168; R. Aug. 22, 1-77; R. 443, 449-58).

On February 6th, a search warrant was obtained and a search of the silver car revealed a red, white, and black hat and a blue bandana just like what the perpetrators wore in the crimes. A search of Jenkins' home revealed the shoes worn in each crime by Jenkins, unique Nike's with a silver emblem visible in the videos at each store. A black hooded sweatshirt with a unique tear under 1 shoulder worn by McKinley in 2 robberies seen on 2 videos of the crimes was recovered during a search of Daniels' and McKinley's home, along with High top Nike tennis shoes with neon green soles, seen in the Stull murder. (R. 385-86; 262-73; 318-20; 333-37; 362-63).[7]

While detained pre-trial, Daniels and McKinley wrote letters to each other incriminating themselves. Daniels' letters were introduced along with jail video showing Daniels and McKinley exchanging letters and expert testimony Daniels' letters were written by him. In the letters, he explains to McKinley what he did and did not tell police about McKinley's and Jenkins' involvement in the crimes. Daniels also asks McKinley if he is going to testify against him at trial. Daniels did not present any evidence at trial. (R. 469-88; 490-91, State's Ex. 2, 3, 5, 6, 146).[8]

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[7] The 3 fired shell casings from the Paruchuri crime scene and the 2 fired shell casings from the Stull crime scene were fired by the same gun. Although SLED had no gun for comparison, it determined the casings were "most likely" fired by a Hi-Point. (R. 256-57; 239-41; 298-302).

[8] Jenkins was convicted of murder and armed robbery and sentenced to death. State v. Jenkins, 436 S.C. 362, 872 S.E.2d 620 (2023). McKinley pled guilty to murder and armed robbery and was sentenced to 43 years. He is intellectually disabled.

ARGUMENT

Certiorari should be denied because the Court of Appeals correctly affirmed on the only issue raised to it where the circuit court did not abuse its discretion in admitting Daniels' statements because it correctly determined police did not engage in the improper banned practice of "question first" outlawed in Seibert and Navy.

Pre-trial, Daniels moved to suppress his confessions alleging police engaged in the improper banned practice of "question first/Miranda later" outlawed in Seibert and Navy. A pre-trial hearing was held on the motion. At its conclusion, Judge Hood found police did not engage in the banned improper practice of "question first" outlawed in Seibert and Navy, and Daniels knowingly, intelligently, and voluntarily waived his Miranda rights before making any confession or admission of guilt, and the statements were admissible during the trial. (R. Aug. 22, 1-73).[9]

At the pre-trial *in camera* hearing, HCPD Investigator Greg Lent testified. The State also introduced the audio-recording of the entire interview of Daniels on February 5th and provided the court with a transcript. (St. Ex. 2, Aug. 22 / St. Ex. 167). The State also introduced the audio-recording of the entire interview of the following day, February 6th, along with providing Judge Hood with the transcript. (St. Ex. 3/ St. Ex. 168). Both recordings were played for Judge Hood, and he followed along with the transcripts. As a result, there was no question what occurred during the interviews of Daniels. Daniels did not testify at the pre-trial hearing and dispute Lent's testimony or the recordings or transcripts. (R. Aug. 22,1-73; Aug. 22, St. Ex. 2 & Ex. 3).

Inv. Lent testified during the *in-camera* hearing that in January of 2015 there were several armed robberies and murders in Horry County. The first occurred on January 2nd at *the Sunhouse* on Highway 905. During this armed robbery, Bala Paruchuri was shot and killed. There was video surveillance of this robbery and murder. The second robbery occurred on the afternoon of January

[9]Many of the record citations in Daniels' pleadings before the Court of Appeals and this Court regarding the pre-trial hearing are not testimony but arguments of defense counsel to Judge Hood.

25th at *the Scotchman* on Kings Rd. The clerk was not murdered in this robbery. Then, a short time later the same day, *the Sunhouse* in Conway was robbed and Trish Stull was murdered. There was also video of these last 2 armed robberies and the murder. (R. Aug. 22, 6-42, 57-64).

Lent testified the investigation into these crimes was extensive and exhausting. Approximately 30 witnesses had been interviewed with no real leads developed in the cases before February 5, 2015. On February 5th, Lent was reviewing video from the Paruchuri murder when he noticed a customer in the store about 22 minutes before the crime who bought a soft drink. Another investigator saw Lent reviewing the video and identified Daniels, who the investigator knew, as the person buying the soft drink. This investigator also told Lent that Daniel's girlfriend was known to drive a silver Chevrolet Malibu, which was similar to a car seen in surveillance footage in the area of the store around the time of the crimes. The investigator also told Lent that Daniels and his brother had recently been released from prison for robberies. (R. Aug. 22, 6-42, 57-64).

Lent testified that the same afternoon, February 5th, investigators decided to attempt to speak with Daniels, determined his most current address, and drove to that location in Nichols. The home belonged to Daniels' girlfriend's mother. The investigators were in *unmarked cars* and in *plain clothes*. Daniels was not there, but his girlfriend and her mother were. Police noticed a silver Malibu parked in the driveway. Daniels had driven his own car to work. It was determined the Malibu belonged to the girlfriend but was registered to her aunt. The girlfriend confirmed Daniels had been allowed to use the car in the past. Her mother contacted Daniels at work and informed him investigators were there to speak with him. Daniels voluntarily left his job and drove home and met the investigators in the front yard. They asked Daniels and his girlfriend if they would voluntarily accompany investigators to a police substation and answer questions about a

matter. Both agreed and each rode in a separate unmarked car with an investigator to the police substation. Neither were handcuffed or arrested. (R. Aug. 22, 6-42, 57-64).

The substation in question is not the Horry County Police Department or a jail or detention center. It does not contain jail cells. The substation shares space with the Magistrate's Office and contains desks and chairs where officers or investigators can write reports or interview victims or witnesses. Once they arrived at the substation, Daniels was interviewed by Lent and another investigator in an office with computer desks and chairs. Daniels' girlfriend was also interviewed in a separate office with computer desks and chairs. Daniels' girlfriend was interviewed first briefly, then Daniels was interviewed. Lent testified neither Daniels nor his girlfriend was under arrest, and either was free to leave. They had voluntarily accompanied the investigators to the substation. If they had asked to terminate the interview, it would have been terminated, and they would have been transported back home. (R. Aug. 22, 6-42, 57-64).

Lent testified the entire interview of the 5th with Daniels was audio-recorded, and he identified State's Ex. 2 as the interview. Lent interviewed Daniels for about 30 minutes obtaining background information such as his employment and work schedule. Daniels was also asked about his girlfriend's car and whether he had access to it. Daniels admitted he did drive the car from time to time and when his car was in the shop. Daniels also admitted he was in 1 of the convenience stores about 20 minutes before it was robbed but only bought a soft drink. He denied being involved in any of the crimes. Prior to his making any confession or admission of guilt about any of the armed robberies or murders, Lent read Daniels his Miranda rights. Daniels acknowledged non-verbally that he understood his Miranda rights, and that he waived those rights and was willing to continue to talk with the investigators. (R. Aug. 22, 6-42, 57-64).

Daniels was then questioned about whether he was involved in 1 of the armed robberies and murders. At first, he denied involvement in the crime. Eventually, Daniels admitted he had driven the car in 1 of the armed robberies, but denied knowing the 2 perpetrators, Jenkins and McKinley, were going to commit and had actually committed an armed robbery or murder. Eventually, after much questioning, Daniels admitted his involvement in 2 other armed robberies. As to *the Scotchman*, Daniels admitted he drove the car and let Jenkins and McKinley out at an apartment complex nearby. He claimed they told him they were going to meet someone. They got out with a gun and returned about 15 minutes later with Newport cigarettes. Daniels also admitted he drove the men to Conway where they committed the armed robbery and murder of Trish Stull. Daniels admitted he first went in the store and bought a soft drink and spoke to the clerk, Ms. Stull. He left the store and returned to his car. Jenkins and McKinley then robbed the store with a gun and shot and killed the clerk. They ran back to the car, and he drove them away. Lent testified Daniels was arrested at the end of the interview based on his admissions of guilt and participation in the armed robberies and murders. During the interview of Daniels or at its conclusion, the girlfriend left the substation. She was not arrested. (R. Aug. 22, 6-42, 57-64).

Lent testified that the following day, February 6th, he interviewed Daniels again at the Detention Center. This entire interview was also audio-recorded. Prior to interviewing Daniels, Lent read him his Miranda rights again. Daniels again indicated he understood those rights and waived them and spoke with Lent. Daniels again admitted his complicity in the armed robberies as the wheel man and provided further details of the crimes and the participants' identities. (R. Aug. 22, 6-42, 57-64; St, Ex. 3, Aug. 22).[10]

[10] Lent's trial testimony is consistent with his *in-camera* testimony and is contained at R. 429-68.

Daniels did not testify at the *in-camera* hearing. The parties stipulated to the authenticity of the interview recordings of February 5th and 6th and a transcript provided to Judge Hood of both interviews so he could read along as he listened to the recordings. (R. Aug. 22, 1-73; St. Ex. 2 & 3, Aug. 22). At the conclusion of the hearing, and after reviewing the testimony and audio-recordings, Judge Hood found the investigators did not engage in the improper banned practice of "question first" outlawed in Seibert and Navy. Judge Hood noted on the record he had carefully reviewed both the Supreme Court's opinion in Seibert and this Court's opinion in Navy several times before reaching his decision, and he was applying the holding in both of those decisions to the facts developed and presented in the *in- camera* hearing in this case. (R. Aug. 22, 64-73).

Judge Hood found Daniels was not in custody or under arrest at the time of the beginning of the interview on February 5th, and a reasonable person would not have believed he was under arrest or not free to leave. Judge Hood noted Daniels was not at home when investigators first came to his home to interview him on February 5th. And, when investigators arrived at Daniels' [girlfriend's] home, all they knew was Daniels had been in 1 store about 20 minutes prior to an armed robbery and his girlfriend also owned a car similar to one seen near the store around the time of the crime. Judge Hood found Daniels voluntarily left work and came to the home to speak with investigators when he did not have to do so but chose to do so. Once he arrived, Daniels was asked by investigators if he would voluntarily come to the police substation and answer questions about a matter and he agreed to do so. He voluntarily rode to the substation in an unmarked car with 1 of the investigators and was not handcuffed or placed in the back of a marked police car. Daniels was not under arrest. Once at the substation, Daniels was interviewed in an office at the substation that contained computer desks, not at the detention center or even the police department. The substation does not contain a jail and is part of the Magistrate's Office and contains areas

where police officers can interview witnesses or victims and fill out police reports. Daniels was not handcuffed or restrained in any way while he was questioned. Daniels sat in a desk chair as did the 2 investigators. Daniels was free to stop the interview at any time, and if he had asked to leave, the investigators would have transported him back home. Daniels was not surrounded by uniformed police officers during the interview. The interview was conversational, and he was offered "creature comforts" such as food and drink. There was no yelling at Daniels whatsoever. It was basically an interview in which prior to any Miranda warnings investigators obtained background information from Daniels. Basically, the only thing Daniels admitted to before Miranda was that he had been in 1 of the store's 20 to 30 minutes before the crime and purchased a soda, which was not illegal, and he had access to a car similar to one seen near the crime scene around the time of the crime, but police already knew this. (R. Aug. 22, 64-73).

Importantly, Judge Hood also found Daniels did not confess or make any admission of his guilt in any of the armed robberies or murders prior to being read his Miranda rights. It was only after being read his Miranda rights, and voluntarily waiving them, and after further questioning, that Daniels confessed or made admissions of guilt of involvement in any of the crimes. Therefore, Judge Hood found the investigators did not engage in the improper banned practice of "question first" outlawed in Seibert and Navy. Further, Judge Hood found Daniels was questioned again the following day, after his arrest, at the detention center. Prior to any questioning, Lent again read Daniels his Miranda rights, and he again voluntarily, knowingly, and intelligently, waived those rights and spoke with Lent. During this interview, Daniels affirmed his involvement in the crimes and his statements of the previous day. Judge Hood found it was clear from both interviews Daniels understood his Miranda rights, waived them, and voluntarily spoke with police. As a result, Daniels' statements were admissible at trial over Daniels' objections. (R. Aug. 22, 64-73).

After his convictions, Daniels appealed raising a Seibert/Navy violation. (FBOA, p. 1). In a well-reasoned Opinion authored by Judge McDonald and concurred in by Judge Konduros, the Court of Appeals' majority found the record supported Judge Hood's determination Daniels was not in custody at the time of his pre-Miranda questioning; and, therefore Miranda rights were not required, and in any event, Daniels did not give a confession or admission of guilt during this initial questioning and was properly read his Miranda rights and knowingly, voluntarily, and intelligently waived those rights and only confessed or made admissions of guilt after the waiver; therefore, no Seibert/Navy violation occurred. Daniels, *supra*. Judge Geathers concurred in result, finding there was clearly no Seibert/Navy violation but a Miranda violation because he believed Daniels was in custody when initially questioned; therefore, the pre-Miranda statement had to be suppressed. Daniels now challenges the Court of Appeals' affirmance of Judge Hood's determination police did not commit a Seibert/Navy violation. Daniels now raises *an additional issue*, even if there was no Seibert/Navy violation, there was a Miranda violation, and all 3 statements should have been excluded. (Compare **FBOA, Issue on App., p. 1** to **PWC, Ques. Pres., p. 2**). There is no merit to the issue raised to the Court of Appeals. The second issue is not preserved as it was not properly raised to the Court of Appeals. Rule 226(d)(2), SCACR; Kleckley v. Northwestern Nat. Cas. Co., 338 S.C. 131, 526 S.E.2d 218 (2000). It is also without merit. Regardless the 2nd and 3rd statements were admissible as found by the entire Court of Appeals.[11]

[11] Below, Daniels argued a Seibert/Navy violation. (FBOA). Whether Daniels was in custody and whether Miranda rights had to be given was part of the analysis of whether there was a Seibert/Navy violation. Daniels has now changed the issue on appeal. His current position shows weakness by the fact he has re-worded his question presented and emphasizes an alleged Miranda violation and the alleged Seibert/Navy violation is secondary after the entire Court of Appeals found there was no Seibert/Navy violation. Daniels, *supra*. (PWC, p. 2). Daniels petition indicates he got his new argument of a Miranda violation from Judge Geather's concurrence; however, he ignores Judge Geathers did not find the last 2 statements [the confessions] should be excluded.

Standard of Review

An appellate court is bound by the trial court's factual findings unless clearly erroneous. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). A trial court's ruling regarding the admission of evidence will not be reversed "in the absence of a manifest abuse of discretion accompanied by probable prejudice." State v Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id., "On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion." State v. Rochester, 301 S.C. 196, 200, 391 S.E2d 244 (1990). In criminal cases, appellate courts are bound by fact finding in response to preliminary motions where the findings are supported by the evidence and not clearly wrong or controlled by an error of law. State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997). "Appellate review of whether a person is in custody is confined to a determination of whether the ruling by the trial judge is supported by the record." State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 409 (2003).

The Lack of Merit of Petitioner's Issue on Certiorari

In Missouri v. Seibert, 542 U.S. 600 (2004)(*plurality opinion*),[12] the defendant was formally arrested for arson and murder. Police intentionally decided to not read the defendant her Miranda rights. At the police station, the investigating officer questioned the defendant until he obtained an un-Mirandized confession from her that she had planned to set the fire with the deceased victim still in the home, i.e. a confession to murder. After obtaining the un-Mirandized confession, the officer gave the defendant a 20-minute break, returned to give the defendant her Miranda warnings, and obtained a signed waiver of her Miranda rights. The officer then resumed

[12] Justice Kennedy filed an opinion concurring in judgment. It is on the narrowest grounds and is controlling. Marks v. United States, 430 U.S. 188, 193 (1977).

his questioning of the defendant, confronting her with her-pre-Miranda warning confession and getting her to repeat the information in a post-Miranda confession. At trial, the defendant moved to suppress both her pre-Miranda warning statement and her post-Miranda warning statement. The United States Supreme Court held the two-step interrogation technique distorted the meaning and purpose of Miranda, and served only to obscure the practical and legal significance of the Miranda warnings when finally given. A plurality of the Court stated:

> This case tests a police protocol for custodial interrogation that calls for giving no warnings of the rights to silence and counsel until interrogation has produced a confession. Although such a statement is generally inadmissible, since taken in violation of Miranda v. Arizona [citation omitted], the interrogating officer follows it with Miranda warnings and then leads the suspect to cover the same ground a second time. The question here is the admissibility of the repeated statement. Because this midstream recitation of warnings after interrogation and unwarned confession could not effectively comply with Miranda's constitutional requirement, we hold that a statement repeated after a warning in such circumstances is inadmissible.

Missouri v. Seibert, 542 U.S. at 604. The Court explained:

> By any objective measure, applied to circumstances exemplified here, it is likely that if the interrogations employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content. After all, the reason that question-first is catching on is as obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset; the sensible underlying assumption is that with one confession in hand before warnings, the interrogator can count on getting its duplicate, with trifling additional trouble. Upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again.

Missouri v. Seibert, 542 U.S. at 612-14.

In Bobby v. Dixon, 565 U.S. 23 (2011)(*per curiam*), the United States Supreme Court explained its' holding in Missouri v. Seibert:

> In Seibert, police employed a two-step strategy to reduce the effect of Miranda warnings: A detective exhaustively questioned Seibert until she confessed to murder and then, after 15-20 minute break, gave Seibert Miranda warnings and led

> her to repeat her prior confession. 542 U.S., at 604-606, 616, 124 S.Ct. 2601 (plurality opinion). The Court held that Seibert's second confession was inadmissible as evidence against her even though it was preceded by a Miranda warning. A plurality of the Court reasoned that "[u]pon hearing warnings only in the aftermath of a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again." 542 U.S.__, at 613, 124 S.Ct. 2601.

Bobby, 565 U.S. at 31. The Court in Bobby went on to note that "[i]n Seibert, the suspect's first, unwarned interrogation left "little, if anything, of incriminating potential left unsaid," making it "unnatural" for the defendant not to "repeat at the second stage [of the interrogation] what had been said before." Bobby, 565 U.S. at 31, *quoting* Seibert, 542 U.S. at 616-617.

Similarly, in State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), the police intentionally obtained incriminating admissions of guilt from the defendant without giving Miranda warnings and then confronted the defendant with the incriminating pre-Miranda admissions after Miranda warnings in order to obtain a post-Miranda admission or confession. Id. This Court held this was akin to what police did in Seibert and suppressed the statements. Id.

Again, in State v. Hill, 425 S.C. 324, 822 S.E.2d 344 (Ct. App. 2018), the Court found officers violated Seibert and Navy by questioning a defendant in custody without Miranda warnings until they obtained an admission of guilt from the defendant that he hit the victim with a cane after catching the victim, a friend, in his home stealing his T.V. Officers then Mirandized the defendant, promised him they just wanted him to repeat what he had already told them, and obtained further admissions. As a result, this Court held both the pre-Miranda admission and the post-Miranda admissions should have been suppressed. Id.[13]

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[13] In Hill, 425 S.C. 324, 822 S.E.2d 344, decided after this trial, the critical issue was whether the defendant was in custody or not when he made the first admission he "tapped" [struck] the victim with his cane. Here, petitioner was not in custody, **and** as will be discussed, police did not employ the improper question first tactic outlawed in Seibert and Navy, i.e. question petitioner until they obtained a confession or admission of guilt and then read him his Miranda rights and go back over the same confession or admission of guilt and get him to restate it. Bobby, 565 U.S. at 31.

As Judge Hood correctly found below, what occurred in Seibert and Navy [and subsequently in Hill] did not occur here. Police did not interrogate Daniels without Miranda warnings until they obtained a confession or admission of guilt, then give Miranda warnings and then go back over or re-elicit the pre-Miranda confession or admission of guilt. Daniels, like the defendant in Bobby v. Dixon, maintained his innocence prior to any Miranda warnings.

> But in this case Dixon steadfastly maintained during his first, unwarned interrogation that he had '[n]othing whatsoever" to do with Hammer's disappearance. App. to Pet. for Cert. 186a. Thus, unlike in Seibert, there is no concern here that police gave Dixon Miranda warnings and **then led him to repeat an earlier murder confession,** because there was no earlier confession to repeat. Indeed, Dixon contradicted his prior unwarned statements when he confessed to Hammer's murder [post-Miranda].

Id., 565 U.S. at 31 (emph. added). And, like the defendant in Bobby, Daniels post-Miranda contradicted his prior unwarned statements and made admissions of guilt. (R. Aug. 22, 1-73; St. Ex. 2 & 3, Aug. 22).[14]

Similarly, in Mitchell v. MacLaren, 933 F.3d 526 (6th Cir. 2019), the defendant was questioned without Miranda warnings and provided a statement placing himself at the crime scene on the night of the murder but denying any involvement in the murder. After Miranda warnings, upon further questioning the defendant subsequently confessed to killing the victim. The Court held the Michigan Supreme Court did not err in finding no Seibert violation since the facts of the case were closer akin to the United States Supreme Court's decisions in Bobby v. Dixon, *supra* and Oregon v. Elstad, 470 U.S. 298 (1985). Mitchell, 933 F.3d at 536-39. *See also* People v. Mitchell, 822 N.W.2d 224 (Mich. 2012)(*mem. opinion*), *quoting* Bobby, 565 U.S. at 31. Other courts have similarly recognized the Supreme Court distinguished Seibert in Bobby and limited Seibert to the situation where police elicit an illegal pre-Miranda confession or admission of guilt

[14] Even though the United States Supreme Court clarified what it meant in Seibert in Bobby v. Dixon, there is no mention of Bobby v. Dixon or its holding in the Petition for Writ of Certiorari.

and then post-Miranda go back over the same confession or admission of guilt. Sorto v. Stephens, 2015 W.L. 5734464 (S.D. Tex 2015)(*not reported in F.Supp.3d*)(confession was not taken in violation of Seibert where defendant did not confess prior to Miranda), *vacated in part on other grounds*, 716 Fed. Appx. 366 (5th Cir. 2018); United States v Street, 472 F.3d 1298 (11th Cir. 2006)(similar); United States v. Gonzalez-Lauzon, 437 F.2d 1128, 1130-37 (11th Cir. 2006)(similar); United States v. Iles, 753 Fed. Appx. 107, 110, n. 18 (3rd Cir. 2018).[15]

Thus, the "improper question first tactic" outlawed in Seibert and Navy was custodial interrogation of a suspect without Miranda warnings until a confession or admission of guilt is obtained and then Mirandizing the suspect and having them go back over the pre-Miranda confession or admission of guilt post-Miranda. Id. What occurred in Seibert and Navy and Hill did not occur here. Daniels maintained his innocence pre-Miranda. It was only after Miranda warnings that Daniels made any confession or admission of guilt of involvement in the crimes. As a result, Judge Hood did not abuse his discretion in finding the State did not commit a Seibert/Navy violation and the Court of Appeals correctly affirmed. Bobby, *supra*; Mitchell, *supra* (numerous other citations above omitted).[16] Certiorari should be denied.

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[15] *See also* Jenkins v. Lee, 2014 W.L. 5861987 (S.D.N.Y. 2014)(*not reported in F.Supp.3rd*)(same); State v. Clifton, 892 N.W.2d 112 (Neb. 2017)(similar); State v. Jarnigan, 277 P.3d 535 (Ore. 2012)(similar)[also purged the taint]; United States v. Breal, 2012 W.L. 12862662 (S.D. Fla. 2012)(*not reported in F.Supp.3rd*); State v. Martinez, 2012 W.L. 5949116 (Ariz. Ct. App. 2012)(*not published in P.3d*); Milbourne v. Hastings, 2017 W.L. 3208345 (D.N.J. 2017)(*not reported in F.Supp.3rd*). *See* United States v. Montalvo-Rangel, 437 Fed. App'x 316, 319 (5th Cir. 2011)(Seibert condemned a "question first" police tactic "a strategy by which officials interrogate an individual without administering a Miranda warning, obtain an admission, administer a Miranda warning, and then obtain the same admission again").

[16] Further, Inv. Lent did not intentionally set out to circumvent Miranda and lessen the import of the Miranda warnings by questioning Daniels until a confession or admission of guilt was obtained and only then reading Miranda warnings. When it became apparent to Lent that Daniels could be a perpetrator and might make an admission of guilt, Lent stopped questioning Daniels and read him his Miranda rights. (R. Aug. 22, 6-42, 57-64, State's Ex. 2).

Furthermore, as recognized in Seibert, here there was a complete break in the questioning of Daniels of 12 hours. The following day, February 6th, Daniels was Mirandized again [the 2nd time], at the Detention Center, a completely different location, and he again waived his Miranda rights and implicated himself in the armed robberies and murders as the "wheel man" and again named Jenkins and McKinley as the 2 persons who entered the stores and committed the armed robberies and murders. (Aug. 22, R. 6-42, 57-64, St. Ex. 3). Under the totality of the circumstances, Judge Hood did not err in finding the statements were voluntarily made and the post-Miranda statements were properly admitted in evidence.

The majority of the Court of Appeals and Judge Hood correctly determined Daniels was not in custody at the time of his initial questioning. Daniels; Stansbury v. California, 511 U.S. 318 (1994); Oregon v. Mathiason, 429 U.S. 492 (1977); State v. Williams, 405 S.C. 263, 747 S.E.2d 194 (Ct. App. 2013). Judge Hood's determination is supported by the record. Id. Before Miranda warnings were given, Daniels voluntarily accompanied police to a shared substation in an unmarked car, was not under arrest, could terminate the interview at any time, was free to leave as his girlfriend, and would have been taken home if he had asked to terminate the interview.

However, even if this Court were to find he was in custody when initially questioned, the improper "question first" technique was not used. Therefore, at most, what occurred here, if any violation, was a Miranda violation. Daniels did not *confess* or make any *admission of guilt* before he was given Miranda warnings. Further, police already knew Daniels had been in the convenience store where Paruchuri was murdered 22 minutes before the crimes buying a soda and he had access to a silver or grey Malibu.[17] *See* Bobby, 565 U.S. at 32 (admission of Dixon's confession was

[17] Investigators had already interviewed Daniels' girlfriend at her mother's home and she told them verbally Daniels had access to and used her car from time to time. Police also pulled Daniels' driving record and he received a traffic ticket driving his girlfriend's car.

consistent with this Court's precedents: Dixon received Miranda warnings before confessing to Hammer's murder; the effectiveness of those warnings was not impaired by the sort of two-step interrogation technique condemned in Seibert; and there is no evidence any of Dixon's statements was the product of coercion. That does not excuse the decision not to give Miranda warnings before Dixon's first interrogation. But the Ohio courts recognized that failure and imposed the appropriate remedy: exclusion of the statements given without Miranda warnings. No precedent of this Court required the Ohio courts to do more); *See also* State v. Medley, 417 S.C. 18, 787 S.E.2d 847 (Ct. App. 2016)(while the court erred in admitting pre-Miranda statements because they were result of custodial interrogation, court did not err in admitting post-Miranda statements because they were not the product of improper Seibert or Navy technique and were voluntary).

The legal analysis is different when there has been a Miranda violation, if any, but not a Seibert/Navy violation. The general rule is in those cases where a statement has been taken in violation of Miranda, and a second statement has been taken in compliance with Miranda, the court must determine if the second statement has been irrevocably tainted by the initial Miranda violation. State v. Callahan, 263 S.C. 35, 208 S.E.2d 284 (1974). Generally, an initial failure to administer Miranda warnings before a statement is given does not automatically taint any subsequent statement made after a suspect has been fully advised of and has waived his Miranda rights, when both pre-Miranda and post-Miranda statements are voluntary. State v. Campbell, 287 S.C. 377, 339 S.E.2d 109 (1985); Verigan v. People, 420 P.3d 247 (Col. 2018).

In Oregon v. Elstad, 470 U.S. 298 (1985), a suspect who had not received his Miranda warnings confessed to burglary when briefly questioned as he was being taken into custody at his residence. An hour later, after he had received Miranda warnings, the suspect again confessed to the same burglary. The Court held the later warned confession was admissible because "there is

no warrant for presuming coercive effect where the suspect's initial inculpatory statement, though technically in violation of Miranda, was voluntary. The relevant inquiry is whether in fact, the second [warned] statement was also voluntarily made." 470 U.S. at 318(footnote omitted), *quoted in* Bobby, 565 U.S. at 29-30. In Bobby v. Dixon, the Court likewise clarified that where there is a Miranda violation but not a Seibert violation, the relevant inquiry is still that set forth in Elstad, *supra*, i.e. whether in fact, the second [warned] statement was voluntarily made. Bobby, 565 U.S. at 29-30.[18] *See also* Seibert, 542 U.S. at 620-22 (Kennedy, concurring in judgment)(Elstad applies unless police intentionally employed improper 2-step interrogation technique); United States v. Williams, 435 F.3d 1148 (9th Cir. 2006)(Kennedy concurrence is controlling).

As Judge Hood and the Court of Appeals correctly found, based on the testimony and evidence presented at the *in-camera* hearing, the totality of the circumstances surrounding Daniels' questioning demonstrates his statements were voluntary. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980)(When analyzing the voluntariness, the trial judge should examine the totality of the circumstances, including the characteristics of the accused, and the details of the interrogation).[19] Factors to be considered include: (1) the accused's age; (2) his education and

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[18] In his brief below, Daniels mistakenly discussed the Seibert factors for determining when a later warned statement is admissible; however, those are not apposite here. Bobby, 565 U.S. at 29-30. Those Seibert factors, correctly relied upon in Hill and Medley, are used for determining whether a later warned statement is admissible **when police first obtain an unwarned confession or admission of guilt.** Seibert, 542 U.S. at 620-22 (Kennedy, concurring)(admissibility should be governed by Elstad, unless the outlawed 2-step technique is intentionally employed). Those factors are not applicable here where police did not obtain an unwarned confession or admission of guilt. *If* petitioner was in custody, a Miranda violation, if any, occurred. Id.; Bobby, 565 U.S. at 29-30.

[19] Supporting the voluntariness finding, Daniels did not testify and did not present any testimony suggesting his post-warning statements were the involuntary product of the initial questioning. *See* State v. Breeze, 379 S.C. 538, 545, 665 S.E.2d 247, 251 (Ct. App. 20008)("Conversely, Breeze did not contradict [the officer]'s testimony with respect to the issue of whether the statement was voluntary. . . . Faced with [the officer]'s undisputed testimony the trial court concluded the State had showed that Breeze voluntarily made the statement. Based on [the officer]'s testimony, we cannot conclude the trial court's ruling is unsupported by any evidence").

intelligence; (3) his knowledge of his constitutional rights; (4) the length of detention; (5) the nature and details of the questioning, whether it was repeated and prolonged, and its' effect on the subject; and (6) the presence or absence of the use of punishment, including deprivation of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). Ultimately, voluntariness hinges upon whether the confession was the product of an essentially free and unconstrained choice by its maker or was the product of an overborne will and critically impaired capacity for self-determination. Id. at 225-26; *see* State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996).[20] Daniels was an adult. He already had 1 child and another child on the way. He was employed at 2 different jobs. This was not his first involvement with police, had previously been in prison, and would have been familiar with his Miranda rights before any questioning. Prior to making any admission of guilt or confession, he was read his Miranda rights and he knowingly, intelligently, and voluntarily waived those rights and agreed to speak with the investigators.[21] During questioning, he was offered something to drink, and was not threatened or physically abused. He did not ask to speak with an attorney or invoke his right to remain silent. This entire interview was also audio recorded so there can be no question what occurred. (St. Ex. 2 & 3, Aug. 22). The interview was conversational. The length of the interview was minimal and was not repeated or prolonged, about 1 ½ hours on February 5th and briefly on the 6th. (St. Ex. 2; R. Aug. 22, 6-42, 57-64). The length was not coercive. *See* State v. Saltz, 346 S.C. 114, 551 S.E.2d 240

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[20] *See also* Miller v. Fenton, 796 F.2d 598, 604 (3rd Cir. 1986)("We emphasize that the test for voluntariness is not a but-for test; we do not ask whether the confession would have been made in the absence of the interrogation. Few criminals feel impelled to confess to the police purely of their own accord, without any questioning at all.").

[21] *See* Elstad, 470 U.S. at 318 ("[T]he finder of fact must examine the surrounding circumstances and the entire course of police conduct with respect to the suspect in evaluating the voluntariness of his statements. The fact that a suspect chooses to speak after being informed of his rights is, of course, highly probative.")(footnote omitted)).

(2001)(statement voluntary after 6 ½ hour interview). As additional evidence of the voluntariness, Daniels was questioned again the day after his arrest on February 6th and after being read his Miranda rights again, a 2nd time, he again voluntarily waived his rights and admitted his involvement in the crimes. This statement was also audio-recorded. (State's Ex. 3, R. August 22, 6-42, 57-64). Also, during the questioning on the 5th, Daniels indicated he had been wanting to come forward and speak with investigators for some time but did not because he was afraid of his brother. Judge Hood found Daniels' statements in this regard and his statements on the following day indicated a person who voluntarily wanted to talk, not someone whose will was overborne or who was coerced into confessing. (R. Aug. 22, 64-73). Von Dohlen, 322 S.C. at 243, 471 S.E.2d at 695. Daniels was not deprived of food, drink, or sleep. (R. Aug. 22, St. Ex. 2 & 3). *See* Bobby, 565 U.S. at 29 (finding a defendant's statements were voluntarily made, in part, because he "was given water and offered food, and was not abused or threatened."). As a result, based on the totality of the circumstances, Judge Hood did not abuse his discretion in finding Daniels' statements were voluntary. Saltz, 346 S.C. at 136, 551 S.E.2d at 252 (court's ruling on the voluntariness of a statement will be affirmed on appeal if supported by any evidence); State v. Arrowood, 375 S.C. 359, 369 652 S.E.2d 4348, 443 (Ct. App. 2007)(court's determination is not in error if there is any evidence to support it). The Court of Appeals properly affirmed. Certiorari should be denied.

Harmless Error

When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors, including constitutional ones, not affecting the result. State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989; United States v. Hastings, 461 U.S. 499, 509 (1983). It is undisputed, on January 2, 2015, Daniels entered *the Sunhouse* on Hwy. 905, 22 minutes before the

crimes and purchased a soda; Daniels was wearing clothing similar to that a co-defendant wore in the later robberies at *the Scotchman* and *the Sunhouse* in Conway, red pants and a gray hooded sweatshirt. Twenty (20) minutes after Daniels left *the Sunhouse* on 905, Jenkins and McKinley entered the store wearing masks, armed robbed the store, and murdered Paruchuri. A silver Malibu was seen on video in the area of the store around the time of the crime. Daniels worked near *the Scotchman* robbed on January 25th; he did not enter this store, but the same 2 men, who murdered Parachuri, did and armed rob this store, and again wore masks and 1 wore clothing similar to that worn by Daniels in *the Sunhouse* on 905. About, 1 hour later, on January 25th, at *the Sunhouse* in Conway, a 30-minute drive from *the Scotchman*, Daniels entered this store and spoke with Stull. As in the Parachuri murder, Daniels enters this *Sunhouse* about 30 minutes before the crimes, as a customer, and purchased an item and spoke with the clerk. He exits the store and enters a silver Malibu and leaves the parking lot. About 30 minutes later, the same 2 men, Jenkins and McKinley, who entered the *Sunhouse* on 905 and *the Scotchman*, enter *the Sunhouse* in Conway wearing masks and armed rob the store and murder Stull. During the time this crime is being committed and shortly thereafter, a silver Malibu can be seen driving around the store and leaving the area and running a red light after the crimes are committed. The State proved independent of Daniels' statements he had access to and did drive a silver Malibu. When police searched this car, they found a ski mask matching that worn by 1 perpetrator and a blue bandana matching that worn by the other perpetrator of the same crimes. In Daniels' home shared with McKinley, police found a black sweatshirt with a distinctive hole under the left armpit seen in videos of the murders and armed robberies and distinctive tennis shoes with neon soles worn by 1 of the perpetrators. In Jenkins' home, police found the distinctive tennis shoes worn by another perpetrator, with a shiny silver button on the shoestrings seen in videos. All the fired shell casings from both murders came

from the same gun. As a result, it was clear to the jury the same 2 "trigger-men" committed all 3 robberies and the 2 murders and Daniels was involved. Finally, Daniels wrote incriminating letters in jail that he drove the car in the crimes. As a result, for Daniels not to have been involved in the crimes, a juror would have to believe the 2 triggermen followed Daniels around Horry County, without his knowledge, on January 2nd and January 25th, to different convenience stores at least a 30 minute drive apart, and coincidentally entered each store 20 to 30 minutes after he left each store, without his knowledge, and were able to commit the crimes and escape from each crime scene without any assistance of Daniels. That makes absolutely no sense. And, the jury would have to believe Daniels did not write the letters he wrote to McKinley in jail. As a result, the evidence of Daniels' guilt was overwhelming and the admission of his statements, if erroneous, was harmless. *See* State v. White, 410 S.C. 56, 60, 762 S.E.2d 726, 728 (Ct. App. 2014)(based on entire record, any error in admitting statement placing White at the murder scene as a product of impermissible "question first and warn later" was harmless beyond a reasonable doubt and did not contribute to verdict because other evidence clearly placed victim and White together at the time and place of the murder and witness testimony linking White to the murder); Medley, 417 S.C. at 30, 787 S.E.2d at 853 (regardless of erroneous admission of defendant's statements, the record contained ample evidence a jury could have concluded guilt beyond a reasonable doubt. the error, if any, was harmless.); *see also* State v. Easler, 327 S.C. 121, 129, 489 S.E.2d 617, 621-22 (1997)(Any error in failing to suppress statements because of Miranda violation was harmless beyond a reasonable doubt because of the overwhelming evidence of guilt.);[22] State v. Lynch, 375 S.C. 628, 654 S.E.2d 292 (Ct. App. 2007)(The overwhelming evidence of guilt renders any possible Miranda violation harmless.); State v. Newell, 303 S.C. 471, 477, 401 S.E.2d 420, 424

[22] *Overruled on other grounds*, State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018).

(Ct. App. 1991)(although error in not suppressing in-custody statement because of Miranda violation, it was harmless beyond a reasonable doubt; there is overwhelming evidence of guilt independent of statements. (citation omitted)); State v. Miles, 421 S.C. 154, 166-67, 805 S.E.2d 204 (Ct. App. 2017)(where Navy/Seibert challenge was to 3rd statement but it was cumulative to others, error was harmless). As a result, certiorari should be denied.

CONCLUSION

For all of the foregoing reasons, certiorari should be denied.

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