STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
The Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

Respondent,

v.

JAMES ELBERT DANIELS, JR.,

Appellant.

Appellate Case No. 2018-001630

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

APPELLANT'S QUESTION PRESENTED

In violation of the Fifth and Fourteenth Amendments, did the trial judge err by admitting statements made by Appellant to law enforcement where the evidence demonstrated Appellant was in custody and the police used the unconstitutional "question-first" tactic to elicit incriminating statements from Appellant rendering any waiver of his rights involuntary and unknowing?

STATEMENT OF THE CASE

On January 2, 2015, Appellant James Daniels, Appellant's brother McKinley Daniels, and Jerome Jenkins committed the armed robbery of *the Sunhouse* convenience store at Red Bluff Road and Highway 905 in Horry County. (R. 243-44). Bala Paruchuri was working at the time and during the robbery Mr. Paruchuri was shot and killed. (R. 361-63). On January 25, 2015, the same three (3) men committed the armed robbery of *the Scotchman* convenience store at Lake Arrowhead Road and Kings Road in Horry County, near Kingston Plantation. Also on January 25, 2015, shortly after the robbery at *the Scotchman*, the same three (3) men committed the armed robbery of another *Sunhouse* convenience store, this one located at Oak Street and Cultra Road in Conway, S.C., also in Horry County. During that robbery, the clerk, Trish Stull, was murdered. On February 5, 2015, Appellant was arrested for the above crimes. On April 23, 2015, the Horry County grand jury indicted Appellant for two (2) counts of armed robbery (2015-GS-26-1752;-1766)[the armed robberies of *the Scotchman* on Kings Road and *the Sunhouse* in Conway] and one (1) count of murder [victim Trish Stull (Conway)] (2015-GS-26-1764). Solicitor Jimmy A. Richardson, III. and Deputy Solicitor Scott R. Hixson prosecuted the case. Barbara W. Pratt, Esquire, represented Appellant. (R. 125.) Appellant proceeded to a jury trial on the above indictments before the Honorable Robert E. Hood on August 27-30, 2018. (R. 124.).[1] At the conclusion of the trial, the jury found Appellant guilty as charged. (R. 550-51).

[1] These indictments were joined for trial because they occurred on the same day and the same perpetrators were involved. The murder of Bala Paruchuri at the first convenience store on January 2nd was admitted as 404(b) [prior bad acts] and/or *res gestae* of the crime evidence because the same perpetrators were involved in that murder and armed robbery and that crime made it foreseeable that Trish Stull would be murdered in the last armed robbery on January 25th. (R. August 22, 2018, pp. 73-122; R., pp. 3-5; 107-115). There was also evidence Appellant "cased" another store, *the Sunhouse* on Hwy. 9, and he and other men committed a bank robbery just over the North Carolina state line during the same time period; however, Judge Hood would not admit these two (2) incidents as 404(b) or *res gestae* of the crime evidence. (R. August 22, 2018, pp. 73-122; R. pp. 3-5; 107-115).

Judge Hood sentenced Appellant to life imprisonment without parole (LWOP) because Appellant had a prior kidnapping conviction from 2005. (R. 557; R. 562, 565, 568).[2] Appellant directly appeals his convictions and sentences raising one (1) issue. This is Respondent's responsive brief.

RESPONDENT'S STATEMENT OF FACTS

The Crimes

The murder of Bala Paruchuri

On January 2, 2015, *the Sunhouse* convenience store located at the corner of Red Bluff Road and Highway 905 in Horry County was robbed. (R. 243 - 44). Appellant was the "scout" and "wheel man" during this armed robbery. Appellant entered the store about twenty-two (22) minutes before the actual robbery, pretended to be a customer, and purchased an item, and scouted out the store. (R. 343-45, State's Ex. 15, 116-20). After Appellant left the store and returned to the car he was driving, his co-defendants Jerome Jenkins (a.k.a. "J.J.") and Appellant's brother McKinley Daniels entered the store wearing masks and carrying handguns. (R. 350-367; State's Ex. 17, 121-33, 134-44). During the armed robbery, Bala Parachuri was shot and killed. (R. 361-63; State's Ex. 17, 134-44). Both masked men fired their weapons during the murder. One (1) of the two (2) perpetrators who entered the store left the store with the cash drawer. (R. 363-65; State's Ex. 134-44). Both masked men fled the store on foot and ran down a nearby road. Appellant then picked up his brother and Jerome Jenkins in Appellant's girlfriend's car and the three (3) men made their getaway. The armed robbery and murder were

[2] Appellant's co-defendants were tried separately. Jerome Jenkins was convicted of murder and armed robbery and sentenced to death. Appellant's brother pleaded guilty to murder and armed robbery and was sentenced to forty-three (43) years.

captured on a video surveillance camera. (R. 362-65; State's Ex. 2 & 3 Aug. 22, 2018 hearing; State's Ex. 134-44).[3]

The robbery of the Scotchman convenience store on January 25th

On January 25, 2015, *the Scotchman* convenience store at Lake Arrowhead Road and Kings Road was robbed by the same three (3) men. (R. 206). Appellant, who worked at a nearby Walmart, did not enter this store before the robbery. Appellant parked at a nearby apartment complex and let Jerome Jenkins and McKinley Daniels out so they could commit the armed robbery. The two (2) men approached the store on foot. Outside the front window of the store, the clerk saw "two guys scrunched down." (R. 207). Suddenly, the two (2) masked men were entering the store through the front door. (R. 207- 08). "One of the guys went straight behind the counter, and the other guy [went] straight towards [her]." (R. 208, ll. 2-5). The clerk noticed the man who approached her had a gun. (R. 208). The clerk emptied the registers, providing the men with approximately $50. (R. 209). One (1) man also took Newport cigarettes. (R. 210- 11). The two (2) men fled the store on foot. (R. 215-16). Appellant was still waiting at the apartment complex when Jenkins and Appellant's brother returned from committing the armed robbery. He then drove the men away from the armed robbery. As soon as the men left, the clerk, pushed the panic button and the police arrived shortly thereafter. (R. 215). When the police arrived at this store, the officers watched surveillance video capturing the robbery. Bloodhounds also attempted to track the men but the track ended at the end of the parking lot. (R. 310).[4]

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[3] For the convenience of this Court, throughout the brief Respondent will refer to this armed robbery as the one where Mr. Parachuri was murdered or *the Sunhouse* at Hwy. 905.

[4] Also for convenience, Respondent will refer throughout the brief to this armed robbery as the robbery of *the Scotchman* on Kings Road.

The murder of Trish Stull in Conway

Also on January 25, 2015, after the robbery of *the Scotchman* on Kings Road, Appellant, Jerome Jenkins, and Appellant's brother robbed *the Sunhouse* convenience store located on the corner of Cultra Road and Oak Street in Conway, S.C. Appellant was again the scout and wheelman in this armed robbery. Appellant entered the store first approximately thirty (30) minutes before the crimes, as he had done in the first armed robbery, and spoke with the clerk, Trisha Stull. (R. 221-22; 366-73; 379-83; State's Ex. 19, 83-88, 89-101). Appellant then left and returned to his car. Jerome Jenkins and Appellant's brother McKinley Daniels then entered the store wearing masks. (R. 320; 366-73; 379-87). The two (2) perpetrators went behind the counter. (R. 321-22; 366-73; 379-87). One (1) of the men shot and killed Stull and "[s]ome cash was taken, [and] a purse was taken from behind the counter." (R. 322; 366-73). The men fled the store on foot and Appellant picked them up in his girlfriend's car, then three (3) men fled the scene together and made their getaway. This armed robbery and murder was also captured on surveillance video. (R. 366-73, 379-87; State's Ex. 2 & 3 Aug. 22nd hearing; State's Ex. 19, 83-88, 167, 168).[5]

The Investigation of the Crimes

After the first robbery in which Mr. Paruchuri was murdered, police and citizens were on edge because Mr. Paruchuri fully cooperated with the perpetrators in the armed robbery but he was murdered despite this fact. As a result, police stationed officers in other convenience stores, and assisted in closing some stores between January 3rd and January 25th.

After the murder of Trish Stull on January 25th, a police investigator who watched the surveillance videos from the robbery at *the Sunhouse* in Conway and from the robbery at *the*

[5] Also for convenience, Respondent will refer to this armed robbery as the robbery where Trish Stull was murdered or the robbery of the *Sunhouse* in Conway.

Scotchman on Kings Road, noticed there was "a clothing pattern" - "red pants and gray sweatshirt." (R. 323, ll. 18-23). This led the investigator to believe that the same individuals robbed both of those stores. (R. 323; 434). This officer also had seen the video from the store where Mr. Paruchuri was murdered and he believed he had "seen that same clothing attire in that store, not during the commission of the robbery, but earlier on in that store." (R. 323, ln. 25 - 324, ln. 3.)

While watching the video from the store where Mr. Paruchuri was killed, the officer saw "a vehicle of interest" and a person of interest. (R. 344, ll. 14-22; 366, ll. 24-25). Specifically, "approximately 22 minutes prior to the robbery, a subject was in that store, oddly enough, wearing red pants and a ... dark color gray or something hooded sweatshirt, which appeared ... to be similar clothing to that worn by one (1) of the perpetrators in *the Scotchman* at Kings Road and at *the Sunhouse* in Conway. (R. 345, ll. 13-23). The investigator also saw a similar car arrive at the store where Mr. Paruchuri was killed and driving near *the Sunhouse* in Conway prior to the robberies. (R. 351, ln. 5 - 352, ll. 8; 366, ll. 24-25. The investigator believed this was a silver or grey Chevy Malibu. (R. 352).

A member of the Multidisciplinary Accident Investigation Team (MAIT) with the South Carolina Highway Patrol looked at the videos from *the Sunhouse* at 905 and *the Sunhouse* in Conway. (R. 412,). The MAIT officer advised the Horry County Police Department that the video showed "an '08 to a ... 2012 Chevrolet Malibu." (R. 412, ll. 14-21). SLED generated a list of registered owners of those cars in the area. (R. 412, ln. 22 - 413, ln. 1).

On February 5th, Appellant was developed as a possible suspect or person of interest when an investigator viewed the surveillance videos from the different stores and another investigator walked in and recognized Appellant as the person who entered one (1) store, the

store where Mr. Paruchi was murdered, approximately twenty (22) minutes before that robbery and purchased a soda. This investigator also knew Appellant's girlfriend drove a silver or grey car. As a result, several investigators went to Appellant's girlfriend's home, where they believed Appellant resided, to talk with him. (R. 436; R. 458).

Upon their arrival, investigators saw a silver Chevy Malibu parked in the yard of Appellant's girlfriend's mother's home. (R. 436-37). The Malibu was eventually seized by police. (R. 460).

When investigators arrived to interview Appellant, Appellant was not at the home. Appellant's girlfriend's mother called Appellant at work and informed him that investigators were there and they wished to talk to Appellant. Appellant voluntarily drove home and met with investigators in his front yard. He was asked if he would come to the police substation and answer questions. He agreed. His girlfriend also agreed to come to the police substation and answer questions. (R. 435-440; 460).

Appellant and his girlfriend accompanied investigators to the police substation where they were formally interviewed. After being read his Miranda rights and waiving them, Appellant eventually admitted he drove the car in each of the armed robberies including the two (2) in which the murders occurred. Appellant identified his brother, McKinley Daniels, and Jerome Jenkins (a.k.a. "J.J.") as the two (2) men who went in the stores and actually perpetrated the murders and armed robberies of *the Sunhouse* at 905 and *the Sunhouse* in Conway and committed the armed robbery of *the Scotchman* on Kings Road where no one was killed. (State's Ex. 2 August 22, 2018 hearing/ Trial Ex. State's Ex. 167; R. August 22, 2018 pp. 1-77; R. 445-517, 448, 450-53; 454-58; 459-68).

The following day, Appellant was interviewed a second time at the Horry County Detention Center. (State's Ex. 3, August 22, 2018 / Trial Ex. State's Ex. 168; R. August 22, 2018, pp. 1-77; R. 443, 449-51). After again being read his Miranda warnings, Appellant again implicated himself in the armed robberies and murders and gave further evidence against his brother McKinley Daniels and Jerome Jenkins. (State's Ex. 3, August 22, 2018 / Trial Ex. State's Ex. 168; R. August 22, 2018, pp. 1-77; R. 443, 449-51, 452-58).

On February 6th, a search warrant was obtained for Appellant's girlfriend's car, the silver or grey Chevrolet Malibu. A subsequent search of Appellant's girlfriend's Malibu revealed the presence of "a red, white and black headgear attire," which was "similar to" what one (1) of the perpetrators was wearing in the video of one (1) of the armed robberies. (R. 385-86). And, a blue bandana similar to what the other perpetrator in the armed robbery wore was recovered as well. (R. 262-263).

A search warrant of Jerome Jenkins' home revealed the same tennis shoes worn in each of the armed robberies by Jenkins. These shoes were unique low-top Nike shoes with a silver emblem that is visible in the surveillance videos at each store. (R. 270-73; 318-20; 333-37; 362-63)

A black hooded sweatshirt worn by Appellant's brother McKinley Daniels during two (2) of the robberies was recovered during the search of 1470 Goose Bay Road, the residence of Appellant and his brother. This sweatshirt had a unique tear under one (1) shoulder that can be seen on the surveillance videos from two (2) of the armed robberies. (R. 263-70; 333-34). High top Nike Air tennis shoes with neon green soles, seen in the surveillance video of the armed robbery in which Trish Stull was murdered, were also recovered by police in the residence of Appellant and his brother McKinley Daniels. (R. 263-70; 334-37).

SLED determined the three (3) fired cartridge cases recovered from the store where Mr. Paruchuri was murdered, were fired by the same firearm. (R. 256- 57; 299-300). Additionally, SLED determined the two (2) fired cartridge cases, which were recovered from the convenience store where Ms. Stull was murdered, were fired by the same firearm. (R. 239 - 41; 298). Then, SLED compared the cartridge cases from both murders. (R. 300). It was determined all five (5) fired cartridge cases were fired by the same firearm. (R. 300,). Although SLED had no firearm to use for comparison, SLED determined the cartridges were "most likely" fired by a Hi-Point firearm. (R. 301-02).

Police arrested Jerome Jenkins and Appellant's brother McKinley Daniels. Jenkins was tried, convicted of murder and armed robbery, and sentenced to death. Appellant's brother, McKinley Daniels pleaded guilty to murder and armed robbery and was sentenced to forty-three (43) years.

While incarcerated at the J. Reuben Long Detention Center, Appellant and his brother McKinley Daniels wrote letters to each other which further incriminated themselves in the murders and armed robberies. (R. 469-88; State's Ex. 2, 3, 5, 6, 146). The State introduced the letters Appellant wrote along with surveillance footage at the detention center showing Appellant and his brother exchanging letters and expert testimony that each letter was written by Appellant or his brother McKinley Daniels. In the letters Appellant wrote, Appellant explains to his brother what he did and did not tell police about McKinley Daniels' and Jerome Jenkins' involvement in the murders and armed robberies. Appellant also asks his brother if he is going to testify against Appellant when Appellant goes to trial. (R. 469-88; State's Ex. 2, 3, 5, 6, 146).

Appellant did not testify at trial. Nor did Appellant call any witnesses or present any evidence in his defense. (R. 490-91).

ARGUMENT

Judge Hood did not err in admitting Appellant's statements where Judge Hood correctly determined the police did not engage in the improper banned practice of "question first" outlawed in Missouri v. Seibert and State v. Navy.

How the issue arose / What occurred below

Prior to trial, Appellant moved to suppress his confession to participation in the crimes for which he was indicted. Appellant alleged the police investigators engaged in the improper banned practice of "question first/Miranda[6] later" outlawed in Missouri v. Seibert[7] and State v. Navy.[8] Judge Hood conducted an *in camera* hearing to determine the truth or falsity of this allegation. At the conclusion of the hearing, Judge Hood determine the police investigators did not engage in the banned improper practice of "question first" outlawed in Seibert and Navy, and that Appellant knowingly, intelligently, and voluntarily waived his Miranda rights before making any admission or confession of guilt, and those statements were admissible during the trial of Appellant's case. (R. August 22, 2018, pp. 1-73).

The in camera hearing

At the pre-trial *in camera* hearing conducted by Judge Hood, Horry County Police Department Investigator Greg Lent testified. (R. Aug. 22nd hearing, 6-64). The State also introduced the audio-recording of the entire interview of Appellant on February 5th, and provided the court with a transcript of that entire interview. (State's Ex. 2, Aug. 22nd hearing / Trial Ex. State's Ex. 167). The State also introduced the audio-recording of the entire interview of Appellant the following day, February 6th, along with providing Judge Hood with the transcript of that entire interview. (State's Ex. 3/ Trial Ex. State's Ex. 168). Both recordings

[6] Miranda v. Arizona, 384 U.S. 436 (1966).
[7] Missouri v. Seibert, 542 U.S. 600 (2004).
[8] State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010).

were played for Judge Hood and Judge Hood followed along with the transcripts provided. As a result, there was no question whatsoever what occurred during the interviews of Appellant on February 5th and 6th of 2015. Appellant did not testify at the pre-trial hearing and dispute Investigator Lent's testimony or the audio-recordings or transcripts. (R. August 22, 2018, 1-73).

Investigator Lent's testimony

Investigator Lent testified during the *in camera* hearing that in January of 2015 there were several armed robberies and murders committed in Horry County. The first occurred on January 2nd at *the Sunhouse* convenience store on Highway 905. It was during this armed robbery that Bala Paruchuri was shot and killed. There was video surveillance of this robbery and murder. The second robbery occurred on the afternoon of January 25th at *the Scotchman* on Kings Road. The clerk was not murdered in this robbery. Then, a short time later the same day, *the Sunhouse* convenience store in Conway was robbed and Trish Stull was murdered. There was also video surveillance of these last two (2) armed robberies and the murder. (R. August 22, 2018, 6-42, 57-64).

Investigator Lent testified the investigation into these crimes was extensive and exhausting. Approximately thirty (30) witnesses had been interviewed with no real leads developed in the cases before February 5, 2005. (R. August 22, 2018, 6-42, 57-64).

On February 5, 2015, Investigator Lent was reviewing the surveillance footage from the Bala Paruchuri murder when he noticed an individual in the store, a customer, approximately twenty-two (22) minutes before the robbery and murder. The customer appeared to buy a soft drink. Another investigator happened to see Lent reviewing the video and identified Appellant, who the investigator knew, as the individual in the store buying the soft drink. This investigator also told Lent that Appellant'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 Appellant and his brother had recently been released from prison for robberies. (R. August 22, 2018, 6-42, 57-64).

Lent testified that the same afternoon, February 5, 2015, investigators decided to attempt to speak with Appellant, determined his most current address, and drove to that location in Nichols, S.C. The residence belonged to Appellant's girlfriend's mother. The investigators were in unmarked cars. The investigators were in plain clothes. Appellant was not there, but his girlfriend and mother were present. Upon arriving at the residence, police noticed a grey or silver Chevrolet Malibu parked in the driveway. Appellant was not driving the car because he was at work and had driven his own Grand Prix. It was determined the car belonged to Appellant's girlfriend. The car was actually registered to Appellant's girlfriend's aunt, but Appellant's girlfriend used the car. Appellant's girlfriend confirmed Appellant had been allowed to use the car in the past. Appellant's girlfriend's mother contacted Appellant at work and informed him investigators were there to speak with him. Appellant voluntarily left his job and drove home and met the investigators in the front yard. They asked Appellant and his girlfriend if they would voluntarily accompany investigators to a police substation and answer questions about a matter. Both Appellant and his girlfriend agreed and each rode in a separate unmarked car with an investigator to the police substation. Neither Appellant nor his girlfriend were handcuffed or arrested. (R. August 22, 2018, 6-42, 57-64).

The police substation in question is not the Horry County Police Department or a jail or detention center. (R. August 22, 2018, 6-42, 57-64). It does not contain jail cells. (R. August 22, 2018, 6-42, 57-64). 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, Appellant was interviewed by Investigator Lent and another investigator in an office with computer desks and chairs. Appellant's girlfriend was also interviewed in a separate office with computer desks and chairs. Appellant's girlfriend was interviewed first briefly, then Appellant was interviewed. (R. August 22, 2018, 6-42, 57-64).

Investigator Lent testified neither Appellant 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, the interview would have been terminated, and they would have been transported back home. (R. August 22, 2018, 6-42, 57-64).

Investigator Lent testified the entire interview with Appellant was audio-recorded. He identified State's Ex. 2 as the audio-recording of the entire interview of Appellant on February 5, 2015. Lent testified he interviewed Appellant for approximately thirty (30) minutes obtaining background information such as his employment and work schedule. Appellant was also asked about his girlfriend's car and whether he had access to it. Appellant admitted he did drive the car from time to time and when his car was in the shop. Appellant also admitted that he was in one (1) of the convenience stores about twenty (20) minutes before it was robbed during which time he bought a soft drink. However, Appellant denied being involved in any of the crimes. Prior to Appellant making any incriminating statements about any of the armed robberies or murders, Investigator Lent read Appellant his Miranda rights. Appellant 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. August 22, 2018, 6-42, 57-64).

Appellant was then questioned about whether he was involved in one (1) of the armed robberies and murders. At first, Appellant denied involvement in the crime. Eventually, Appellant admitted that he had driven the car in one (1) of the armed robberies, but denied

knowing that the two (2) perpetrators, Jerome Jenkins and McKinley Daniels, were going to commit and had actually committed an armed robbery or murder. Eventually, after much questioning Appellant admitted his involvement in two (2) other armed robberies. As to *the Scotchman* on Kings Road, Appellant admitted he drove the car and let Jerome Jenkins and McKinley Daniels out at an apartment complex near that store. He claimed they told him they were going to meet someone. They got out with a gun and returned approximately fifteen (15) minutes later with Newport cigarettes. Appellant also admitted he drove the men to Conway where they committed the armed robbery and murder of Trish Stull. Appellant 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. Jerome Jenkins and McKinley Daniels then robbed the store with a gun and shot and killed the clerk. They ran back to the car and he drove them away from the scene. (R. August 22, 2018, 6-42, 57-64).

Investigator Lent testified Appellant was arrested at the end of the interview based on his admissions of guilt and participation in the armed robberies and murders. At some point, during the interview of Appellant or at the conclusion of Appellant's interview, Appellant's girlfriend left the substation. She was not arrested. (R. August 22, 2018, 6-42, 57-64).

Lent testified that the following day, February 6th, he interviewed Appellant again at the Horry County Detention Center. This entire interview was also audio-recorded. (State's Ex. 3, August 22, 2018). Prior to interviewing Appellant, Lent read Appellant his Miranda rights again. Appellant again indicated he understood those rights and waived them and spoke with Lent. Appellant again admitted his complicity in the armed robberies as the wheel man and provided

further details of the crimes and the participants' identities. (R. August 22, 2018, pp. 6-42, 57-64; State's Ex. 3 [audiotape of February 6th interview]).[9]

Appellant did not testify at the hearing. Both sides stipulated to the authenticity of the recordings of the interviews of Appellant on February 5th and February 6th. Both sides agreed to a transcript provided to Judge Hood of both interviews of Appellant so he could read the transcript as he also listened to the recordings of the interviews. (R. August 22, 2018, 1-73; State's Ex. 2 & 3, August 22, 2018).

Judge Hood's Ruling

At the conclusion of the hearing, and after reviewing the testimony and audio-recordings, Judge Hood found the Horry County Police 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 United States Supreme Court's opinion in Seibert and the South Carolina Supreme 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. August 22, 2018, 64-73).

Judge Hood found Appellant 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 Appellant was not at home when investigators first came to his home to interview him on February 5th. And, when investigators arrived at Appellant's home, all they knew was Appellant had been in one (1) store about twenty (20) minutes prior to an armed robbery and Appellant's girlfriend also owned a car similar to one (1) seen near the store around the time of the crime. Judge Hood found Appellant voluntary left

[9] Investigator Lent's trial testimony, which is consistent with his *in camera* testimony, is contained on pages 377-420 of the trial transcript. (R. pp. 429-468)

work and came to his residence to speak with investigators when he did not have to do so but chose to do so. Once he arrived home, Appellant was asked by investigators if he would voluntarily come to the police substation and answer questions about a matter and Appellant agreed to do so. Appellant voluntarily rode to the police substation in an unmarked car with one (1) of the investigators and was not handcuffed or placed in the back of a marked police car. Appellant was not under arrest. Once at the substation, Appellant was interviewed in an office at the substation that contained computer desks, not at the detention center or even the Horry County 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. Appellant was not handcuffed or restrained in any way while he was questioned. Appellant sat in a desk chair as did the two (2) investigators. Appellant was free to stop the interview at any time and if he had asked to leave, the investigators would have transported him back home. Appellant was not surrounded by uniformed police officers during the interview. The interview was conversational and Appellant was offered "creature comforts" such as food and drink during the interview. There was no yelling at Appellant whatsoever. It was basically an interview in which prior to any Miranda warnings investigators obtained background information from Appellant. Basically, the only thing Appellant admitted to before Miranda was that he had been in one (1) of the store's twenty (20) to thirty (30) minutes before one (1) of the crimes and purchased a soda, which was not illegal, and Appellant admitted 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. August 22, 2018, 64-73).

Importantly, Judge Hood also found Appellant 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 Appellant 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. (R. August 22, 2018, 64-73).

Furthermore, Judge Hood found Appellant was questioned again the following day, February 6th, after his arrest, at the detention center. Appellant was in custody at that time, but prior to any questioning of Appellant, Investigator Lent again read Appellant his Miranda rights, and Appellant again voluntarily, knowingly, and intelligently, waived those rights and spoke with Investigator Lent. During this interview, Appellant affirmed his involvement in the crimes and affirmed his statements of the previous day. Judge Hood found it was clear from both interviews that Appellant understood his Miranda rights, waived them, and voluntarily spoke with police. (R. August 22, 2018, 64-73).

As a result of Judge Hood's ruling, during Appellant's trial, the State introduced Appellant's two (2) recorded statements into evidence over Appellant's objection. Appellant now challenges on appeal Judge Hood's ruling below that investigators did not violate Seibert and Navy.

Standard of Review

Appellate Standard

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Williams, 405 S.C. 263, 747 S.E.2d 194, 199 (Ct. App. 2013). Thus an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.

Admission of Evidence

"The admission of evidence is within the discretion of the trial court and will not be reversed absent and abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); State v. Williams, 405 S.C. 263, 747 S.E.2d 194, 199 (Ct. App. 2013). 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., *see also* State v Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.").

Statements given by a criminal defendant

"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); *see also* State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998). Put another way, the reviewing court will reverse a trial judge's ruling on the voluntariness of the confession when the ruling is "so erroneous as to constitute and abuse of discretion." State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 491 (2004). "In criminal cases, appellate courts are bound by fact finding in response to preliminary motions where there has been conflicting testimony 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).

The Lack of Merit of Appellant's Issue on Appeal

In Missouri v. Seibert, 542 U.S. 600 (2004)(*plurality opinion*),[10] 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 the defendant 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 investigating 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 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:

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[10] 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).

> 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 v. Dixon, 565 U.S. at 31. The Court in Dixon 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" not to "repeat at the second stage [of the interrogation] what had been said before." Dixon, 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. Our Supreme 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), this 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.[11]

As Judge Hood correctly found below, what occurred in Seibert and Navy [and subsequently in Hill] did not occur here. Police did not interrogate Appellant 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. Appellant, 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].

[11] In Hill, 425 S.C. 324, 822 S.E.2d 344, decided after the trial of this case, 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, Appellant was not in custody. Further, in this case, as will be discussed, police did not employ the improper question first tactic outlawed in Seibert and Navy, i.e. they did not question Appellant 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 v. Dixon, 565 U.S. 23, 31 (2011).

Bobby v. Dixon, 565 U.S. at 31 (emphasis added). And, like the defendant in Bobby v. Dixon, Appellant post-Miranda contradicted his prior unwarned statements and made admissions of guilt. (R. August 22, 2015, 1-73; State's Ex. 2 & 3, August 22, 2018 hearing).

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 Sixth Circuit Court of Appeals held the Michigan Supreme Court did not err in finding no Seibert violation on these facts 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 v. MacLaren, 933 F.3d at 536-39. *See also* People v. Mitchell, 822 N.W.2d 224 (Mich. 2012), *quoting* Bobby v. Dixon, 565 U.S. at 31.

Other courts have similarly recognized that the United States Supreme Court distinguished Seibert in Bobby v. Dixon and limited Seibert to the situation where the police elicit an illegal pre-Miranda confession or admission of guilt 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*)(petitioner's confession was not taken in violation of Seibert where he 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); 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. Iles, 753 Fed. Appx. 107, 110, n. 18 (3rd Cir. 2018); 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*); People v. Mitchell, 822 N.W.2d 224 (Mich. 2012)(*memorandum opinion*); 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").

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. Appellant maintained his innocence pre-Miranda. It was only after Miranda warnings that Appellant made any admission or confession 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. Bobby v. Dixon, *supra*; Mitchell v. MacLaren, *supra* (numerous other citations above omitted).[12]

Furthermore, as recognized in Seibert, here there was a complete break in the questioning of Appellant of approximately twelve (12) hours. The following day, February 6th, Appellant was Mirandized again, at the County Detention Center, a completely different location, and he

[12] Furthermore, Investigator Lent did not intentionally set out to circumvent Miranda and lessen the import of the Miranda warnings by questioning Appellant until a confession or admission of guilt was obtained and only then reading Appellant his Miranda warnings. When it became apparent to Lent that Appellant could be a perpetrator and might make an admission of guilt, Lent stopped questioning Appellant and read him his Miranda rights. (R. August 22, 2018, 6-42, 57-64, State's Ex. 2).

again waived his Miranda rights and implicated himself in the armed robberies and murders as the "wheel man" and again named Jerome Jenkins and his brother McKinley Daniels as the two (2) individuals who actually entered the stores and committed the armed robberies and murders. (State's Ex. 3, August 22, 2018; August 22, 2018 R. pp. 6-42, 57-64).

Appellant also argues Judge Hood erred in finding his statements were voluntary. Under the totality of the circumstances, Judge Hood did not err in finding Appellant's statements were voluntarily made and Appellant's post-Miranda statements were properly admitted in evidence.

Even if this Court were to find Appellant was in custody when initially questioned at the substation on February 5th, the improper "question first" technique was not used. Therefore, at most, what occurred here, if any violation, was a Miranda violation. Appellant did not confess or make any admission of guilt before he was given Miranda warnings. Further, police already knew Appellant had been in the convenience store where Mr. Paruchuri was murdered twenty-two (22) minutes before the robbery buying a soda and that he had access to a silver or grey Chevy Malibu.[13] *See* Bobby v. Dixon, 565 U.S. 23, 32 (admission of Dixon's confession was 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

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

S.C. 18, 787 S.E.2d 847 (Ct. App. 2016)(while the circuit court erred in admitting pre-Miranda statements because they were result of custodial interrogation, circuit 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 that 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 which is 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. Approximately an hour later, after he had received Miranda warnings, the suspect again confessed to the same burglary. The Supreme Court held that 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 v. Dixon, 565 U.S. 23, 29-30 (2011).

In Bobby v. Dixon, the Supreme Court likewise clarified that where there is a Miranda violation but not a Seibert violation, the relevant inquiry is still that set forth in Oregon v. Elstad,

supra, i.e. whether in fact, the second [warned] statement was voluntarily made. Bobby v. Dixon, 565 U.S. at 29-30.[14] *See also* Seibert, 542 U.S. at 620-22 (Kennedy, concurring in judgment)(Elstad applies unless police intentionally employed improper two-step interrogation technique); United States v. Williams, 435 F.3d 1148 (9th Cir. 2006)(Kennedy concurrence is controlling).

As Judge Hood correctly found, based on the testimony and evidence presented at the *in camera* hearing, the totality of the circumstances surrounding Appellant's 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 of a defendant's statements, the trial judge should examine the totality of the circumstances under which the statements were made, including the characteristics of the accused, and the details of the interrogation, to determine whether voluntariness has been demonstrated).[15]

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[14] In his brief, Appellant mistakenly discusses those factors set forth in Seibert for determining whether a later warned statement is admissible in evidence; however, those factors are not apposite here. Bobby v. Dixon, 565 U.S. at 29-30. The factors set forth in Seibert, and correctly relied upon by this Court in Hill, *supra* and State v. Medley, 417 S.C. 18, 787 S.E.2d 847 (Ct. App. 2016), are used for determining whether a later warned statement is admissible or not when police first obtain an unwarned confession or admission of guilt. Seibert, 542 U.S. at 620-22 (Kennedy, concurring)(admissibility should still be governed by Elstad, unless the outlawed two-step interrogation technique is intentionally employed). Those factors are not applicable here where police did not obtain an unwarned confession or admission of guilt, and at most, if this Court determines Appellant was in custody, a Miranda violation, if any violation, occurred. Id.; Bobby v. Dixon, 565 U.S. at 29-30.

[15] Supporting Judge Hood's finding on the issue of voluntariness, Appellant elected not to testify during the Denno / Seibert hearing and thus never presented 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").

Factors to be considered in the totality of the circumstances analysis include: (1) the age of the accused; (2) the educational level and intelligence of the accused; (3) the accused's knowledge of his constitutional rights; (4) the length of the accused's detention; (5) the nature of the questioning and whether it was repeated and prolonged; 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, the voluntariness analysis hinges upon whether the confession was the product of an essentially free an 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)("the question is whether the defendant's will was overborne when he confessed."); *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.").

Appellant was an adult. He already had one (1) child and another child on the way. Appellant was employed at two (2) different jobs.

This was not Appellant's first involvement with law enforcement. He had previously been convicted of grand larceny and kidnapping and was on federal probation or parole at the time he was questioned as well. Respondent submits Appellant was already familiar with his Miranda rights before any questioning by investigators in this case.

Prior to making any admission of guilt or giving any confession, Appellant was read his Miranda rights and he knowingly, intelligently, and voluntarily waived those rights and agreed to speak with the investigators. *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)). During this questioning, Appellant was offered something to drink, and was not threatened or coerced by police. He was not physically abused. Appellant did not ask to speak with an attorney or invoke his right to remain silent. This entire interview was also audio and video recorded so there can be no contention he was coerced in any way. (State's Ex. 2 & 3).

The entire interview was conversational. Appellant was not yelled at or threatened with any kind of violence. (State's Ex. 2 & 3, August 22, 2018). The length of the questioning was minimal. It was not repeated or prolonged. Appellant was questioned for approximately one (1) hour and a half (1/2) on February 5th. Appellant was questioned again briefly on February 6th. (State's Ex. 2; R. August 22, 2018, 6-42, 57-64). The length of Appellant's questioning was not coercive. *See* State v. Johnson, 422 S.C. 439, n. 8, 812 S.E.2d 739 (Ct. App. 2018)(statement held voluntary where defendant was in custody for total of 10 to 11 hours and interrogated for 7 to 8 hours); State v. Crawley, 349 S.C. 459, 562 S.E.2d 683 (Ct. App. 2002)(statement was voluntary where interrogation lasted about 7 and ½ hours, during which time the defendant was given a lie detector test, which lasted an hour and a half, and she also received dinner and restroom breaks); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001)(statement was admissible where interrogation lasted 6 and ½ hours); State v. Chaffee and Ferrell, 285 S.C. 21, 328 S.E.2d 464 (1984)(5 hours); State v. Cannon, 260 S.C. 537, 197 S.E.2d 678 (1973)(statement voluntary where interrogation lasted about 5 and ½ hours); State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008)(3 ½ hours); State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990)(2 and ½ hours). Moreover, statements given after much longer interviews have been found to be

voluntary. *See* People v. Collins, 106 A.D.3d 1544, 1545, 964 N.Y.S.2d 393, 395 (N.Y.A.D., May 03, 2013) ("Contrary to defendant's contention, ... his statements made during the first 15 hours of interrogation were not involuntary due to police coercion"), *leave to appeal denied*, People v. Collins, 21 N.Y.3d 1072 (N.Y. Sep 12, 2013) (Table); Torrence v. Ozmint, 2008 WL 628604, 23 (D.S.C., Mar. 5, 2008); State v. Neeley, 271 S.C. 33, 244 S.E.2d 522 (1978); State v. Chasteen, 228 S.C. 88, 88 S.E.2d 880 (1955); State v. Gilbert, 273 S.C. 690, 258 S.E.2d 890 (1979).

As additional evidence of the voluntariness of the statements, as just stated, Appellant was questioned again the following day after his arrest on February 6th and after being read his Miranda warnings again, a 2nd time. Again, this interview was audio-recorded. Appellant again voluntarily waived his Miranda rights and spoke with the Investigator and admitted his involvement in the crimes. (State's Ex. 3, R. August 22, 2018, 6-42; 57-64).

During the initial questioning on February 5th, Appellant indicated to investigators he had been wanting to come forward and speak with them for some time. He had not come forward because he was afraid of his brother McKinley Daniels and Jerome Jenkins, not because he was afraid of police. Judge Hood found Appellant's 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. August 22, 2018, 64-73). State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996)(when determining whether a confession was voluntary and admissible ... "[t]he pertinent inquiry is, as always, whether the defendant's will was 'overborne.'").

Appellant was not deprived of food, drink, or sleep. No punishment was used to get Appellant to talk to investigators. (R. August 22, 2018; State's Ex. 2 & 3 August 22, 2018). *See*

Bobby v. Dixon, 565 U.S. at 29 (finding that 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 Short's statements were voluntary. State v. Saltz, 346 S.C. at 136, 551 S.E.2d at 252 (recognizing a trial judge's ruling regarding 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)("The trial judge's determination is not in error if there is any evidence to support it.") *See* State v. Rochester, 301 S.C. 196, 201, 391 S.E.2d 244, 246 (1990)(finding Rochester's statement was properly admitted where sufficient evidence was presented to show he "was not worn down by improper interrogation tactics such as lengthy questioning, trickery, or deceit."). Judge Hood's determination that Appellant's statements were knowingly, intelligently, and voluntarily made and therefore admissible is supported by the testimony and evidence presented at the *in camera* hearing. (R. August, 22, 2018, 1-73, State's Ex. 2 & 3 August 22, 2018). Therefore, this appellate ground has no merit.

Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223; *see* State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007)("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190,

196, 577 S.E.2d 445, 448 (2003); *see* State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010)("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). Ultimately, if an error does not contribute to the verdict, that error is harmless beyond a reasonable doubt. State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480, 484 (2008). Moreover, "[w]hen 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 not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); *see* United States v. Hastings, 461 U.S. 499, 509 (1983)("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]").

It is undisputed that on January 2nd, 2015, Appellant entered *the Sunhouse* convenience store where Mr. Paruchuri was murdered approximately twenty-two (22) minutes before the crimes and purchased a soda. Appellant was wearing clothing similar to that worn by one (1) of his co-defendants in the later robbery at *the Scotchman* on Kings Road and *the Sunhouse* in Conway where Ms. Stull was murdered, red pants and a gray hooded sweatshirt. Twenty (20) to thirty (30) minutes after Appellant left the store where Mr. Paruchuri was murdered on January 2nd, Appellant's two (2) co-defendants entered the store wearing masks over their faces, armed robbed the store, and murdered Mr. Paruchuri by shooting him with handguns. A grey or silver in color Chevrolet Malibu was seen in the area of this store on surveillance video around the time of the armed robbery and murder.

It is also undisputed that Appellant worked at the Subway located in the Walmart near *the Scotchman* on Kings Road that was robbed on the early evening of January 25, 2015. It is also

undisputed Appellant did not enter this store, but two (2) other individuals, the same ones who entered and robbed *the Sunhouse* at Hwy. 905 where Mr. Paruchuri was murdered, did enter this store and armed rob this store by use of a handgun. Again, they wore masks over their faces. One (1) of the men wore clothing similar to that worn by Appellant when he entered the store where Mr. Paruchuri was murdered.

It is also undisputed that approximately one (1) hour later, on January 25th, at a completely different convenience store, *the Sunhouse* in Conway, S.C., approximately a thirty (30) minute drive from *the Scotchman* on Kings Road, Appellant entered *the Sunhouse* in Conway and spoke with the clerk Trish Stull. Again, as in the robbery and murder at *the Sunhouse* at Hwy. 905 where Mr. Paruchuri was murdered, Appellant enters this store, *the Sunhouse* in Conway, approximately thirty (30) minutes before the armed robbery and murder of Ms. Stull, as a customer, and appears to purchase an item and speaks with the clerk. Appellant exits the store and enters a grey or silver Chevrolet Malibu and leaves the store parking lot. Approximately, thirty (30) minutes after Appellant exits the store, the same two (2) men who entered *the Sunhouse* at Hwy. 905 on January 5th and the same two (2) men that entered the Scotchman at Kings Road earlier that same night, January 25th, enter *the Sunhouse* store in Conway wearing masks and armed rob the store and shoot and kill the clerk Trish Stull. During the time the two (2) men commit the armed robbery and murder of Ms. Stull and shortly thereafter, a silver or grey Chevrolet Malibu can be seen driving around *the Sunhouse* convenience store and then leaving the area and running a red light after the crimes are committed.

The State proved independent of any statement of Appellant that Appellant had access to and did drive a silver or grey Chevrolet Malibu which belonged to his girlfriend and her aunt.

When police searched this very car, they located a ski mask matching that worn by one (1) of the perpetrators of the armed robberies and murders and a blue bandana matching that worn by the other perpetrator of the armed robberies and murders. In Appellant's residence, which he shared with his brother, police found the black sweatshirt with a distinctive hole under the left armpit seen in the surveillance videos of the murders and armed robberies and the distinctive tennis shoes worn by one (1) of the perpetrators of the armed robberies and murders, with neon soles. In the residence of Jerome Jenkins, police recovered the distinctive tennis shoes worn by one (1) of the perpetrators in the murders and armed robberies, with a shiny silver button on the shoe strings. The fired shell casings recovered from the Paruchuri murder and the Stull murder were determined to have been fired from the exact same gun. As a result, it was clear to the jury the same two (2) trigger-men committed all three (3) robberies and the two (2) murders. Finally, Appellant wrote incriminating letters while in jail that he drove the car in the armed robberies. As a result, for Appellant not to have been involved in the armed robberies and murders a juror would have to believe the two (2) perpetrators [i.e. the triggermen (Jerome Jenkins and McKinley Daniels)] followed Appellant around Horry County, without his knowledge, on January 2nd and January 25th, to different convenience stores at least a thirty (30) minute drive apart, and coincidentally entered each store twenty (20) to thirty (30) minutes after Appellant left each store, without his knowledge, and were able to commit armed robberies and murders and escape from each crime scene without any assistance of Appellant. That makes absolutely no sense. And, that Appellant did not write the letters he wrote to his brother in jail.

As a result, the evidence of Appellant's guilt was substantial and the admission of his post-Miranda statements, if erroneous was harmless. *See* State v. White, 410 S.C. 56, 60, 762 S.E.2d 726, 728 (Ct. App. 2014)(finding any error in the trial judge's failure to suppress White's

statement placing White at the scene of a murder as the product of impermissible "question first and warn later" questioning was harmless beyond a reasonable doubt because, "notwithstanding White's statement, cell phone evidence clearly placed [the victim] and White together at the time and place of the murder" and further finding any error to be harmless in light of the witness testimony linking White to the murder); *see also* State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314,317 (2003)("Given the abundant evidence of Tench's guilt, we find any error in the admission of the seized items clearly harmless beyond a reasonable doubt); Medley, 417 S.C. at 30, 787 S.E.2d at 853 ("[N]ot withstanding the erroneous admission of Medley's statements regarding his alcohol consumption, we find the record contained ample evidence from which a jury could have concluded Medley was guilty, beyond a reasonable doubt, of second-offense DUI. Thus, to the extent the court erred in admitting such statements, we find the error, if any, was harmless beyond a reasonable doubt."); *see also* State v. Easler, 327 S.C. 121, 129, 489 S.E.2d 617, 621-22 (1997)([A]ny error in the failure to suppress his statements was harmless beyond a reasonable doubt . . . The overwhelming evidence of Easler's guilt renders any Miranda violation harmless.") *overruled on other grounds*, State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018); State v. Lynch, 375 S.C. 628, 636, 654 S.E.2d 292, 297 (Ct. App. 2007)("The overwhelming evidence of Lynch's guilt renders any possible Miranda violation harmless."); State v. Newell, 303 S.C. 471, 477, 401 S.E.2d 420, 424 (Ct. App. 1991)("Although the trial judge erred in not suppressing Sergeant Canty's testimony regarding Newell's in-custody statement because of his failure to advise Newell of her rights under Miranda, we deem the admission of this testimony harmless beyond a reasonable doubt. The record contains overwhelming evidence of Newell's guilt independent of her statements to Sergeant Canty." (citation omitted)); *cf.* White, 410 S.C. at 60, 762 S.E.2d at 728 ("[W]e find the entire record on

appeal establishes beyond a reasonable doubt that any error in the admission of White's statement did not contribute to the verdict obtained."). Appellant's conviction must be affirmed.

As a result, the admission of any of Appellant's statements were harmless. State v. Miles, 421 S.C. 154, 166-67, 805 S.E.2d 204 (Ct. App. 2017)(where appellant challenged the admission of his 3rd statement pursuant to Seibert and Navy but 3rd statement was cumulative to 2 prior statements of appellant introduced by appellant himself, any error was harmless), *cert. denied* October 18, 2018; State v. Martucci, 380 S.C. 232, 261 669 S.E.2d 598, 614 (Ct. App. 2008)("The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence."); State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996) (*citing* People v. Cagle, 158 A.2d 931 (N.Y. 1990)(the admission of the defendant's statements in violation of Miranda held harmless beyond a reasonable doubt because the evidence of the defendant's guilt was overwhelming and the testimony of both the defendant and his witness was essentially the same as the defendant's statement), *affirmed as modified* State v. Easler, 327 S.C. 121, 489 S.E.2d 617.

CONCLUSION

For all of the foregoing reasons, Appellant's convictions and sentences must be affirmed.

Respectfully submitted,

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Columbia, South Carolina

January 10, 2020.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
The Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

Respondent,

v.

JAMES ELBERT DANIELS, JR.,

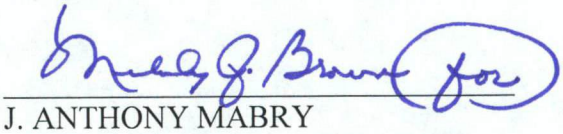
Appellant.

Appellate Case No. 2018-001630

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 10th day of January, 2020.



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