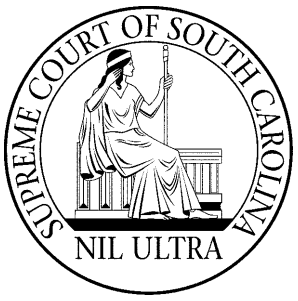

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 10
March 24, 2021
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas J. Torrence, #094651, Respondent,

v.

South Carolina Department of Corrections, Petitioner.

Appellate Case No. 2019-001490

Appeal from Richland County
Deborah Brooks Durden, Administrative Law Judge

Opinion No. 28017
Submitted November 16, 2020 – Filed March 24, 2021

REVERSED AND REMANDED

Thomas J. Torrence, of Pelzer, Pro Se., Respondent.

Lake E. Summers, of Malone, Thompson, Summers & Ott LLC, of Columbia, for Petitioner.

JUSTICE KITTREDGE: We confront the often perplexing challenge of determining whether an order of the Administrative Law Court (ALC) that includes a remand to a state agency is a final decision and thus appealable. Petitioner South Carolina Department of Corrections (SCDC) appealed from an adverse ruling rendered by the ALC. The court of appeals dismissed the appeal as interlocutory, citing *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health & Environmental Control*.[1] *See Torrence v. S.C. Dep't of*

[1] 387 S.C. 265, 266, 692 S.E.2d 894, 894 (2010).

Corr., Op. No. 2018-UP-432 (S.C. Ct. App. filed Nov. 28, 2018). We granted a writ of certiorari. For the reasons explained below, we find the order of the ALC was a final decision notwithstanding the remand to SCDC. We therefore reverse and remand to the court of appeals to address the merits of SCDC's appeal.

I.

Before discussing the appealability question in this case, we believe it may be helpful to provide some general guidance in this difficult area. There are aspects of appealability that arise in ALC decisions but not in decisions from the circuit and family courts. The ALC is part of the Executive Branch. The ALC resolves disputes from state agencies, which are, of course, Executive Branch agencies. Beyond the statutory requirement for a final decision, respect for separation of powers demands that judicial review of an administrative decision not occur until the decision of the ALC is truly final. It is often challenging to determine when a seemingly interlocutory order is, in fact, a final decision and thus appealable. It is our hope today to provide some clarity.

We start with the general proposition that where an ALC order includes a remand to an administrative agency, there is no final judgment in the vast majority of situations. The case before us today presents an exception to the typical situation, in that—despite the presence of a remand—the ALC's decision was, in fact, final. This is so because the ALC ruled as a matter of law on the dispositive issues and granted the claimant the very relief he sought. The remand left the agency with no further discretion or decision to make. The remand merely ordered the agency to award the claimant a sum-certain based on a defined methodology determined by the ALC. Under these circumstances, the remand may be viewed as ministerial, for the ALC determined the rights of the parties with finality. As we have in the past, we again refer to our decision in *Charlotte-Mecklenburg* as a leading case that succinctly describes with precision what is required for a final judgment in this area.

Importantly, the question of appealability often presents a critical timing quandary for litigants and the practicing bar. If a party believes that an order from the ALC that includes a remand may be a final judgment, is the aggrieved party required to test the appellate waters by filing an appeal lest it risk losing the right to challenge the decision of the ALC? The answer is no. Where a remand to the agency is ordered, yet it is believed the order of the ALC finally determines the rights of the parties and constitutes a final judgment, the aggrieved party may allow the remand to conclude without forfeiting its right to appeal. Take this case as an example: if

the ALC-mandated award was entered on remand for Respondent, SCDC would have retained its right to challenge that award on appeal.

We understand that parties facing an agency remand will often pursue an appeal for fear of losing the right to challenge the ALC's decision. While we agree with SCDC here due to the circumstances presented, the better approach when facing a remand is to conclude the remand before pursuing an appeal.

We now turn our attention to the case at hand.

II.

Respondent Thomas J. Torrence is an inmate with SCDC. As a prisoner, Respondent participated in the private sector prison industries program, and he claims he was not paid the wages required by law. Section 24-3-430 of the South Carolina Code (2007) provides that inmates must receive the "prevailing wage" for their salaries while employed in the private sector. The federal framework, on which our state law is based, requires that inmates "receive[] wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work [is] performed." 18 U.S.C. § 1761(c)(2) (2012). The guidelines state that the prevailing wage for an employee must be obtained from the state agency that calculates average wage rates. Respondent contends that he did not receive the prevailing wage while employed by ESCOD, Inc., which participated in the program as a private industry sponsor.

Throughout the administrative process,[2] there were two disputed primary issues—whether Respondent was an employee of ESCOD and, if so, what was the prevailing wage at the time Respondent was employed there. SCDC denied Respondent's claim at every step of the grievance process. The ALC reversed and remanded the matter to SCDC.

It appears the mere presence of the remand to SCDC formed the basis of the court of appeals' decision to dismiss the appeal as interlocutory. Section 1-23-610(A)(1) of the South Carolina Code (Supp. 2019) provides that judicial review may only be sought from a final decision of the ALC. In most instances, the court of appeals would be correct to assume that a remand to an administrative agency would preclude an appeal of an ostensibly interlocutory order. But here, upon careful review, we conclude the order of the ALC is a final judgment.

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[2] *See Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000).

III.

Respondent asserted, and SCDC disputed, he was an employee of ESCOD. The ALC determined Respondent was an employee of ESCOD as a matter of law, finding he "performed [labor] for ESCOD." The ALC further concluded that Respondent "must be paid the mean average South Carolina wage of an electronic assembler, including overtime, for the years he worked as a harness assembler for ESCOD." Additional findings from the ALC order further confirm SCDC's contention that the ALC order constitutes a final judgment, including:

> Specifically, [SCDC] must pay [Respondent] the mean average wage reflected by OEC Code 93114 for the years 1997 through 1999 and the mean average wage reflected by that code or its counterpart for the years data is not contained in the record [and] IT IS FURTHER ORDERED that [SCDC] disburse, in accordance with Section 24-3-40, the difference between the amounts previously disbursed and the prevailing wage. This disbursement should be done immediately upon determination of the prevailing wage, but not later than July 1, 2016.[3]

SCDC asserts it has numerous factual and legal challenges to the decision of the ALC, and the remand mandates, with no agency discretion, the exact relief sought by Respondent. SCDC specifically disputes (1) that Respondent was an employee for purposes of the applicable law, and (2) the method of computing Respondent's wages mandated by the ALC. SCDC correctly views the ALC order as a final judgment and the remand to the agency as essentially ministerial to execute the judgment ordered by the ALC. SCDC finds support for its position in the analysis and discussion set forth in *Charlotte-Mecklenburg*.

IV.

In *Charlotte-Mecklenburg*, parties competed for a "certificate of need" with the South Carolina Department of Health and Environmental Control (DHEC). 387 S.C. at 266, 692 S.E.2d at 894. DHEC made an initial certificate of need

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[3] The ALC order includes a footnote which purports to "decline[] to address" Respondent's status as an employee. The presence of the confusing footnote does not alter the result on appealability, for the unmistakable award to Respondent of a defined method for calculating the prevailing wage removes any question that the ALC ruled with finality in favor of Respondent on the employee question.

determination that was appealed to the ALC. The ALC ruled "DHEC erroneously interpreted the State Health Plan to allow only existing providers to obtain a certificate of need. Based on this finding, the ALC remanded the matter to DHEC to determine whether any of the applicants were entitled to the certificate of need." *Id*. at 267, 692 S.E.2d at 895. On appeal, we recognized that "a final determination as to the certificate of need has not been made" and held the order of the ALC was "interlocutory and [] not a final decision [that could be] immediately appeal[ed] under section 1-23-610." *Id*.

In analyzing appealability, we critically noted that "*[i]f there is some further act which must be done by the court prior to a determination of the rights of the parties*, the order is interlocutory." *Id*. (emphasis added) (citing *Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358 (1999); *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993); *Adickes v. Allison & Bratton*, 21 S.C. 245 (1884)). Because the order of the ALC left the decision and final determination as to the certificate of need with the administrative agency, we held the order of the ALC was interlocutory and not final. *Id.*

Charlotte-Mecklenburg cited to the case of *Adickes v. Allison & Bratton*, 21 S.C. at 245. Our decision in *Adickes* in 1884 did not, of course, concern an administrative agency or administrative appeal, yet it is instructive today in distinguishing between a final judgment and one that is interlocutory. In *Adickes*, this Court found that a judgment was final although "there was some further act to be done." *Id*. at 259. We noted that "[n]othing was lacking but a calculation of the interest, which was not necessary; but if so, being a mere clerical matter, it was referred to the officer of the court, whose duty it was to enter the formal judgment of the court." *Id*. As to the argument that the judgment was not final, we noted the "objection really goes to the form rather than the substance." *Id.*

Adickes provides an example of a final judgment that nonetheless requires an additional "act to be done." In the case before us, the "act to be done" is a calculation of the prevailing wage for Respondent as an employee pursuant to the mandated formulation and method set forth in the ALC order. As in *Adickes*, the remand may be viewed as ministerial or clerical, for SCDC was divested of any agency discretion; rather, it was SCDC's sole duty to enter the judgment as ordered by the ALC. Thus, here, the ALC "determin[ed] the rights of the parties" with finality. *Charlotte-Mecklenburg*, 387 S.C. at 267, 692 S.E.2d at 894.

V.

We therefore reverse the dismissal of the appeal as interlocutory and remand to the court of appeals to address the merits of SCDC's appeal. Finally, we reiterate our preference going forward that parties in an ALC proceeding allow a remand to the agency to conclude before pursuing an appeal.

REVERSED AND REMANDED.

BEATTY, C.J., HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Henry Pressley, Respondent,

v.

Eric Sanders, Appellant.

Appellate Case No. 2017-000163

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Opinion No. 5811
Submitted March 2, 2020 – Filed March 24, 2021

AFFIRMED

R. Hawthorne Barrett, of Turner Padget Graham & Laney, PA, and Richard Abner Jones, III, of McGowan Hood & Felder, LLC, both of Columbia, for Appellant.

Page McAulay Kalish, of PMK Law, LLC, and Hammond A. Beale, Jr., both of Columbia, for Respondent.

LOCKEMY, C.J.: In this personal injury case, Eric Sanders appeals the trial court's order granting Henry Pressley's motion for a new trial *nisi additur*, arguing the trial court erred by granting the motion when Sanders challenged the nature and extent of Pressley's injuries and substantial evidence supported the jury's verdict. We affirm.

FACTS

Pressley and Sanders were involved in a car accident on February 16, 2015, when Sanders rear-ended Pressley's stopped vehicle after both cars exited Interstate-77 to turn onto Garners Ferry Road. Pressley was able to drive away from the accident scene, and Sanders admitted fault for causing the accident. Pressley subsequently brought this action against Sanders seeking damages for the injuries he suffered in the accident, and the case proceeded to a jury trial. Sanders testified at trial and admitted he rear-ended Pressley but stated he "rolled" into the vehicle.

Pressley testified the impact from the accident caused his body to jerk forward, he felt pain in his neck and back, and he went to the emergency room (ER). X-rays were performed, and he was prescribed pain medication. Pressley testified he incurred $1,652 in medical expenses from that visit. He stated his pain worsened after the ER visit and he began treating with a chiropractor on February 17, 2015. The chiropractor ordered an MRI and performed manipulations and massages. Pressley continued this treatment for three weeks until March 11, 2015. He stated the cost of the treatments was $2,059 and the cost of the MRI was $989.[1] Pressley testified the treatments did not provide lasting relief and the pain returned—sometimes worse than before—and occasionally radiated to his legs and arms. Pressley recalled he visited his family doctor about a month later because he was still in pain. His family doctor recommended exercises and prescribed pain medication. Pressley explained the medication helped "for a time" but the pain eventually returned. He stated he still suffered with "bad" pain, the muscles in his back and neck hurt, and he continued to experience pain radiating to his arms and legs. About three weeks after his visit with the family doctor, Pressley consulted with his attorney, who suggested Pressley see Dr. Zgleszewski for pain treatment. Pressley explained Dr. Zgleszewski's diagnostic procedures involved the use of needles and he chose to discontinue treatment because the needles were painful and he was unable to tolerate them along with his existing pain. Although Pressley's family doctor continued to prescribe him pain medication as needed, Pressley sought no further treatment after his visits with Dr. Zgleszewski.

Pressley was sixty-nine years old when the accident occurred and had worked as a bricklayer since high school. He denied having any problems with his neck or

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[1] The ER, X-ray, MRI, and chiropractic bills were admitted into evidence without objection.

back prior to the accident. Pressley stated he was unable to continue working after the accident; however, he did not present a claim for lost wages. He testified his physical activities had been limited since the accident due to the ongoing pain.

On cross-examination, Pressley stated he was still in pain when Dr. Zgleszewski released him on June 9, 2015. He acknowledged he might have stated his pain was gone when he declined further treatment but he believed Dr. Zgleszewski knew he did not want any more injections. He stated he was still in pain at the time of trial.

Dr. Zgleszewski's video deposition was played for the jury, and Pressley offered him as an expert in medicine, physical medicine and rehabilitation, and pain. Sanders did not perform any additional voir dire or object to his testimony or qualifications.

Dr. Zgleszewski reviewed Pressley's records, including his ER visit and chiropractic treatment. He testified the ER physician's findings—that Pressley's back was tender to palpation and tender across the lower lumbar area—were typical after a motor vehicle accident. He stated the X-ray showed no fracture but demonstrated degenerative changes typical for Pressley's age. Dr. Zgleszewski opined chiropractic treatment helped accelerate healing and minimize dysfunction. He stated Pressley's chiropractic examination revealed abnormal findings of moderate degenerative joint disease and his MRI showed degeneration and bulging discs but there was no impingement or entrapment of the nerve roots. He testified the facet joints showed mild arthritis or degeneration, and although he could not determine if the arthritis was symptomatic, he stated that in the absence of nerve root impingement, a patient was less likely to experience nerve root irritation due to the arthritis or any other degenerative changes of the spine. The notes of Pressley's April 20, 2015 visit to his family doctor indicated Pressley complained of neck pain and weakness in his right hand. The family doctor's notes indicated Pressley's "cervical range of motion [wa]s limited to about fifteen-degrees of lateral rotation toward the left and he ha[d] some limitation of side bending." Dr. Zgleszewski confirmed the family doctor prescribed pain medication and muscle relaxers and recommended local heat and stretching.

Dr. Zgleszewski testified he began treating Pressley on May 14, 2015, and that he billed Pressley $4,935 for these treatments. He opined to a reasonable degree of medical certainty these expenses were fair and reasonable for the services rendered. He explained Pressley reported "low back and neck pain" as well as pain

radiating through his right arm. Dr. Zgleszewski stated he initially diagnosed Pressley with low back and cervical pain based on Pressley's history and a physical exam. On May 21, 2015, he performed a diagnostic sacroiliac (SI) joint injection, which involved injecting a numbing agent into the left and right joints. He acknowledged this procedure was painful for patients. Dr. Zgleszewski stated the purpose of the procedure was diagnostic but some patients experienced long-term relief from the numbing agent used in the procedure. He stated this particular procedure cost $3,855. Dr. Zgleszewski explained Pressley had "a positive block," meaning he was able to determine the source of the pain. He recommended radiofrequency ablation and platelet-rich plasma injections—both of which involved needles—to each joint as well as diagnostic injections for the neck. However, he recalled Pressley declined further procedures because he had expressed fear of injections. Dr. Zgleszewski stated Pressley reported pain averaging between three and four on a scale of ten during their visits, and he testified Pressley stated his pain was gone during his June 9, 2015 follow-up visit. At that visit, he gave Pressley a 0% impairment rating and found he reached maximum medical improvement (MMI).

Dr. Zgleszewski opined, to a reasonable degree of medical certainty, that based upon his review of the records, his interview with Pressley, and "other information [he] had," it was more likely than not the automobile accident "caused a medical problem that [he] treated." He agreed it was possible Pressley's occupation caused the degenerative joint disease, but Dr. Zgleszewski opined the accident was "the actual and proximate cause of . . . [the] medical problems that [he] treated him for," and the evidence of degeneration was either "an exacerbation of a preexisting condition or it was a new problem that was caused by the car wreck."

In his closing argument, Sanders asked the jury to consider whether all of Pressley's medical treatment was "reasonable and necessary" and stressed that no physician had referred Pressley to Dr. Zgleszewski. Sanders argued Pressley's occupation "may have caused deterioration of [his] body through the years" and emphasized that Pressley told Dr. Zgleszewski on June 9, 2015, that he did not want any further treatment and he received a 0% impairment rating.

The jury returned a verdict for Pressley and awarded him $4,888.30 in actual damages and $5,000 for pain and suffering. Pressley moved for a new trial absolute, or in the alternative, for a new trial *nisi additur*. The trial court found the verdict was inadequate based on the evidence and granted a new trial *nisi additur*.

It ordered Sanders to pay an additional $10,000 in actual damages to bring the total verdict to $19,888.30. The court provided the following as compelling reasons to grant a new trial *nisi additur*. First, the court reasoned no evidence was presented to dispute that the medical treatment and bills resulted from the accident and Pressley submitted "undisputed, uncontroverted evidence of loss in the amount of his total medical bills that were $9,658."[2] The court noted Dr. Zgleszewski "gave an undisputed opinion that the injuries, pain, and subsequent treatment were related to the collision." Additionally, the court stated Dr. Zgleszewski testified the treatment and the bills incurred were reasonable and necessary and no evidence rebutted the treating physician's testimony or opinions. The court explained Pressley testified he suffered injuries to his neck and back that caused radiating pain, missed work due to the injuries, could not sleep at night, and could not engage in normal daily activities. The court stated Pressley "suffered great pain as a result of the accident" and no evidence showed he suffered from neck or back injuries prior to the collision. The court concluded the jury's verdict was "significantly insufficient and inadequate" to compensate Pressley for the actual damages he suffered due to the collision. This appeal followed.

ISSUE ON APPEAL

Did the trial court abuse its discretion by granting Pressley's motion for a new trial *nisi additur*?

STANDARD OF REVIEW

"The grant or denial of a motion for a new trial *nisi* rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." *Waring v. Johnson*, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000). "'Compelling reasons' must be given to justify the trial court invading the jury's province in this manner." *Riley v. Ford Motor Co.*, 414 S.C. 185, 193, 777 S.E.2d 824, 829 (2015) (quoting *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691(1995)). "The reviewing court has the duty to review the record

[2] The medical expenses, excluding the charges for Dr. Zgleszewski's treatments, total $4,888.30—which was the jury's actual damages verdict—rather than $4,658. The latter figure, which the court and parties mentioned several times, excludes the $138.30 bill for the family doctor and appears to be an inadvertent miscalculation.

and determine whether there has been an abuse of discretion amounting to an error of law." *Pelican Bldg. Ctrs. of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993). "Absent an abuse of discretion, the trial court's grant of a motion for new trial *nisi additur* will not be reversed on appeal." *Waring*, 341 S.C. at 258, 533 S.E.2d at 911.

LAW/ANALYSIS

Sanders argues evidence supported the jury's verdict and there were no compelling reasons to alter it. He contends he "strongly disputed the reasonableness and necessity" of the expenses for Dr. Zgleszewski's treatments by arguing Pressley's attorney had referred him and relying on the lapse of time between his last visit with the chiropractor and his first visit with Dr. Zgleszewski. Sanders further argues the trial court's conclusion that Pressley "suffered great pain as a result of the accident" was not a compelling reason to disregard the jury's verdict because the extent of Pressley's pain was disputed and the jury compensated him for pain and suffering. Sanders asserts the jury could have concluded Pressley's occupation as a bricklayer—rather than the accident—caused his pain and that the jury's verdict showed that it found Dr. Zgleszewski's treatment was either not causally related to the accident or was not reasonable and necessary. We disagree.

"Although the trial court may not impose its will on a party by substituting its judgment for that of the jury, the court may in the proper case give the party an option in the way of *additur* or *remittitur*, or, in the alternative, a new trial." *Krepps by Krepps v. Ausen*, 324 S.C. 597, 608, 479 S.E.2d 290, 295 (Ct. App. 1996). "[A] new trial *nisi* is one whereby a new trial is granted unless the party opposing it shall comply with the condition prescribed by it." *Id.* at 607, 479 S.E.2d at 295. "Motions for a new trial on the ground of either excessiveness or inadequacy are addressed to the sound discretion of the trial judge." *Riley*, 414 S.C. at 192, 777 S.E.2d at 828 (quoting *Graham v. Whitaker*, 282 S.C. 393, 401, 321 S.E.2d 40, 45 (1984)). "[T]he consideration of a motion for a new trial *nisi additur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." *Patterson v. Reid*, 318 S.C. 183, 187, 456 S.E.2d 436, 438 (Ct. App. 1995). "A new trial *nisi additur* may be ordered when the verdict is merely insufficient based on the evidence." *Pelican Bldg. Ctrs.*, 311 S.C. at 61, 427 S.E.2d at 676; *see also Green v. Fritz*, 356 S.C. 566, 570, 590 S.E.2d 39, 41 (Ct. App. 2003) ("A trial judge may grant a new trial *nisi additur* whenever he or she finds the amount of the verdict to be merely inadequate."). "[T]o grant such

relief, the trial judge must state compelling reasons for invading the province of the jury." *Green*, 356 S.C. at 570, 590 S.E.2d at 41. "[I]f inapplicable grounds are given for granting *additur*, the order fails by error of law." *Id.* "The trial judge, who heard the evidence and is more familiar with the evidentiary atmosphere at trial, possesses a better informed view of the damages than this court." *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 600, 493 S.E.2d 875, 883 (Ct. App. 1997). "Accordingly, great deference is given to the trial judge." *Vinson v. Hartley*, 324 S.C. 389, 406, 477 S.E.2d 715, 723 (Ct. App. 1996).

In *Patterson*, this court affirmed the trial court's grant of a new trial *nisi additur*. 318 S.C. at 184-85, 456 S.E.2d at 437-38. There, the evidence consisted of conflicting medical evidence, and the aggravation of a pre-existing condition was at issue. *Id.* at 186, 456 S.E.2d at 438. However, the plaintiff's treating physician testified the plaintiff's condition was "most probably [the result of] her accident." *Id.* (alteration in original). The plaintiff incurred medical expenses of $6,339.40 and, according to the plaintiff's and the physician's testimony, she experienced an increase in permanent pain. *Id.* The jury awarded the plaintiff actual damages of $500.54. *Id.* at 184, 456 S.E.2d at 437. The trial court granted a new trial *nisi additur* and awarded damages of $7,639.40. *Id.* We affirmed the trial court's decision, finding ample evidence supported its finding of an insufficient verdict, and "[t]herefore, the grant of *nisi additur* was not an abuse of discretion." *See id.* at 187, 456 S.E.2d at 438.

Sanders cites *Luchok v. Vena*, 391 S.C. 262, 705 S.E.2d 71 (Ct. App. 2010), in support of his argument. In *Luchok*, this court found the trial court abused its discretion by granting a new trial *nisi additur* when it failed to provide compelling reasons for granting the motion. *Id.* at 263-65, 705 S.E.2d at 72-73. There, the plaintiff was the only witness in her case-in-chief, and the trial court found her testimony established that her chiropractic treatments were reasonable and necessary. *Id.* at 263-64, 705 S.E.2d at 72. Additionally, the plaintiff went to her family doctor the day after the accident but did not go to the chiropractor until three weeks later and continued chiropractic treatment for seventeen months. *Id.* at 264-65, 705 S.E.2d at 72. In granting the new trial *nisi*, the trial court provided the following as compelling reasons: the verdict did not cover all of the chiropractic bills and the charges for the chiropractic treatments were reasonable and necessary. *Id.* at 265, 705 S.E.2d at 73. This court noted the "amount of recoverable damages was hotly contested" and held the trial court was not entitled to determine the treatment was reasonable and necessary as a matter of law when the evidence was

conflicting. *Id.* at 264-65, 705 S.E.2d at 72-73. Unlike *Luchok*, here, Dr. Zgleszewski testified about Pressley's treatments. He treated Pressley for neck and back pain, and he opined it was more likely than not the automobile accident caused the medical problems that he treated. Furthermore, the trial court did not make a finding that the treatment was reasonable and necessary; rather, it pointed out Sanders offered no evidence to contest Dr. Zgleszewski's medical opinion.

Likewise, we find *Green v. Fritz* is distinguishable. In *Green*, this court found the trial court failed to state any compelling reasons for granting a new trial *nisi additur* and simply listed the plaintiff's claimed damages—which were disputed—in its order. 356 S.C. at 570-71, 590 S.E.2d at 41-42. Unlike *Green*, here, the trial court provided compelling reasons for granting the motion. *See Waring*, 341 S.C. at 261, 533 S.E.2d at 913 (holding the trial court did not err by granting a new trial *nisi additur* when it "articulated compelling reasons in [its] order justifying the grant of the *nisi additur*" and the order included a review of the evidence and applicable law).

We find the trial court did not abuse its discretion in granting Pressley's motion for a new trial *nisi additur*. First, the record supports the trial court's finding that Dr. Zgleszewski gave an undisputed opinion that the injuries, pain, and treatment were related to the collision. Dr. Zgleszewski opined to a reasonable degree of medical certainty that it was more likely than not the automobile accident "caused a medical problem [in Pressley] that [he] treated." Additionally, he opined the accident was "the actual and proximate cause of [the] medical problems that [he] treated [Pressley] for." Even though Dr. Zgleszewski acknowledged Pressley's occupation may have caused his degenerative joint disease, he opined the evidence of degeneration was either "an exacerbation of a preexisting condition or it was a new problem that was caused by the car wreck." Sanders did not dispute Dr. Zgleszewski's testimony concerning causation or necessity of treatment through cross-examination, nor did he present any adverse witnesses or evidence to contradict such testimony. Rather, he simply argued to the jury that the treatment was not medically necessary and emphasized no physician had referred Pressley to Dr. Zgleszewski. We find the evidence supports the trial court's conclusion that Dr. Zgleszewski's testimony regarding the cause and extent of Pressley's injuries and pain was undisputed. *See Waring*, 341 S.C. at 256, 533 S.E.2d at 910 (stating the trial court has discretion in ruling upon a motion for a new trial *nisi* and its "decision will not be disturbed on appeal unless [its] findings are wholly

unsupported by the evidence or the conclusions reached are controlled by error of law").

Further, the record supports the trial court's conclusions that no evidence was offered to dispute that the medical treatment and bills resulted from the accident and that Pressley submitted undisputed evidence of loss equaling the cost of his medical bills. Although Sanders argued to the jury that it should "draw the line at the pain doctor," he never questioned Dr. Zgleszewski as to the necessity of any treatment. Dr. Zgleszewski testified the charges for Pressley's treatments were fair and reasonable, and Sanders failed to offer any evidence to the contrary. We find the foregoing supports the trial court's finding that Sanders presented no evidence to dispute Dr. Zgleszewski's testimony that the medical treatment and bills resulted from the accident.

Moreover, the record supports the trial court's conclusion there was no evidence that Pressley suffered injuries to his neck or back prior to the accident. Pressley testified he never suffered neck or back pain before the accident. Although Dr. Zgleszewski stated imaging revealed some disc degeneration, he stated there was no root impingement, which made it less likely the degeneration caused pain. Further, he opined the accident either caused or exacerbated Pressley's neck and back pain. Therefore, evidence supports the trial court's conclusion Pressley had no prior neck or back injury.

Finally, we find evidence supports the trial court's conclusion Pressley "was in great pain." *See Hawkins*, 328 S.C. at 600, 493 S.E.2d at 883 ("The trial judge, who heard the evidence and is more familiar with the evidentiary atmosphere at trial, possesses a better informed view of the damages than this court."); *Vinson*, 324 S.C. at 406, 477 S.E.2d at 723 ("Accordingly, great deference is given to the trial judge."). Dr. Zgleszewski noted Pressley's pain averaged a three out of ten. Pressley testified he could no longer work due to the pain, was limited in his daily activities, and was still in pain at the time of trial. Although Pressley did not testify to the exact extent of his pain, he stated he was "in a lot of pain" and "[i]t was bad." He stated the pain subsided at times with treatment but would then return, sometimes worse, and sometimes radiated to his arms and legs. We find this testimony supports the trial court's finding that Pressley was in great pain.

Based on the foregoing, we conclude the trial court articulated compelling reasons to support its conclusion that the verdict was inadequate in light of the evidence

presented at trial. We find the record supports the trial court's findings and therefore the trial court did not abuse its discretion by granting a new trial *nisi additur*.

CONCLUSION

For the foregoing reasons, we find the trial court did not abuse its discretion by granting a new trial *nisi additur*, and the decision of the trial court is

AFFIRMED.[3]

GEATHERS and HEWITT, JJ., concur.

[3] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Appellant,

v.

Leon LaGwan Barksdale, Respondent.

Appellate Case No. 2017-002306

Appeal From Laurens County
Donald B. Hocker, Circuit Court Judge

Opinion No. 5812
Heard October 12, 2020 – Filed March 24, 2021

REVERSED AND REMANDED

Attorney General Alan McCrory Wilson, and Senior Assistant Deputy Attorney General William M. Blitch, Jr., both of Columbia; and Solicitor David Matthew Stumbo, of Greenwood, all for Appellant.

Appellate Defender David Alexander, of Columbia, for Respondent.

WILLIAMS, J.: In this criminal appeal, the State appeals the trial court's suppression of incriminating statements that Leon L. Barksdale made regarding his alcohol consumption prior to a traffic accident. The State argues (1) the record contains no evidence to support the court's ruling that Barksdale was in custody at the time he was questioned regarding his alcohol consumption; (2) the court erred

by utilizing an incorrect definition of "custody" as set forth in *Miranda v. Arizona*[1] and its progeny; and (3) the court improperly relied on the subjective intentions and knowledge of the officer that questioned Barksdale rather than the totality of the circumstances. We reverse and remand.

FACTS/PROCEDURAL HISTORY

On the evening of October 21, 2013, at approximately 9:15 P.M., Officer Patrick Craven of the Laurens Police Department responded to a traffic accident involving a sedan and a motorcycle. EMS and other officers were already at the scene of the accident when Officer Craven arrived. After learning that the other officers had not yet determined the sedan driver's identity, Officer Craven began asking individuals at the scene who was driving, and Barksdale answered he was the driver. Officer Craven asked Barksdale for his driver's license, car registration, and proof of insurance, and he allowed Barksdale to return to his car for the requested documentation. After Barksdale left to find the documentation, Officer Craven immediately remarked to another officer "I think he has been drinking," "that boy's been drinking," and "he smells like alcohol." Officer Craven then asked another officer to accompany him while he spoke with Barksdale to confirm he smelled alcohol on Barksdale's person.

When Barksdale returned with the requested documentation, Officer Craven asked him, "How much you had to drink tonight? I can smell it on you. I just gotta ask." Barksdale did not answer, and Officer Craven repeated the question multiple times. Barksdale then confessed that he had consumed a forty-ounce beer at home before the accident occurred. Following his confession, EMS requested to speak with Barksdale to evaluate his health.

As EMS spoke with Barksdale, Officer Craven found an open, cold, forty-ounce beer bottle near Barksdale's car, which he suspected belonged to Barksdale. The bottle matched an unopen beer found in the passenger compartment of Barksdale's car. At that point, Officer Craven decided to administer field sobriety tests to Barksdale and asked other officers to not "let [Barksdale] walk off." Officer Craven then moved his patrol vehicle to an adjacent gas station parking lot so the dash camera could better capture footage of the field sobriety tests.[2] After Officer

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[1] 384 U.S. 436 (1966).

[2] During the first ten minutes of the encounter between Officer Craven and Barksdale, Officer Craven's car was parked behind several other cars. Neither

Craven moved his vehicle, the camera showed Barksdale sitting in the passenger seat of his car speaking with EMS. Officer Craven spoke with EMS, and he asked Barksdale to follow him to the front of his car. Officer Craven informed Barksdale he was not under arrest and asked if he would submit to field sobriety tests. Barksdale agreed to take the tests.

Officer Craven administered five different field sobriety tests. Immediately after concluding the tests, Officer Craven asked Barksdale to rate his current sobriety on a scale of one to ten, with ten being the most inebriated Barksdale had ever been prior to that night. Barksdale responded, "I wouldn't say I'm drunk. But I'd say [about] five." Officer Craven then asked Barksdale if he could feel the effects of alcohol, and Barksdale responded "yeah, I can feel that." Officer Craven then placed Barksdale under arrest for driving under the influence of alcohol and *Mirandized* him. Thereafter, Barksdale admitted that the open beer found near his car was his and he threw it out to avoid an open container charge.

The State charged Barksdale with felony driving under the influence, and a jury trial commenced on October 23, 2017. After the jury was empaneled but before trial began, Barksdale objected to the admission of his statements to Officer Craven pertaining to his alcohol consumption. The trial court held a *Jackson v. Denno*[3] hearing during which Officer Craven testified regarding his encounter with Barksdale and the court reviewed Officer Craven's dash camera footage.

During the hearing, Barksdale argued that all statements he made before receiving *Miranda* warnings should have been suppressed as a violation of his Fifth Amendment rights because he was under custodial interrogation from the outset of Officer Craven's arrival at the scene. Barksdale asserted he was in custody because (1) he was involved in a traffic accident and bound by law to remain at the scene, (2) the nature of the accident scene was not merely a routine traffic stop, (3) Officer Craven instructed other officers not to allow Barksdale to "walk off," (4) the interrogation process was prolonged, (5) Barksdale was immediately identified as a suspect, and (6) EMS and several officers were on the scene.

The State argued Barksdale's incriminating statements were admissible because Officer Craven asked the questions as a routine investigation of a traffic accident.

Officer Craven nor Barksdale were visible on dash camera footage until Officer Craven moved his car to capture the field sobriety tests.

[3] 378 U.S. 368 (1964).

The State also asserted that Barksdale could not have heard Officer Craven instruct the other officers to not let Barksdale leave the scene because EMS was speaking with Barksdale at that time and, therefore, it should not be considered in evaluating the totality of the circumstances.

The trial court suppressed all of Barksdale's pre-*Miranda* statements made to Officer Craven. The court found that "based upon the totality of the circumstances, it certainly [was] clear . . . that as soon as Officer Craven started talking [to Barksdale] he smelled alcohol." The court weighed the fact that Officer Craven never advised Barksdale that he was not in custody. The court noted that (1) once Officer Craven smelled alcohol on Barksdale, he was not "in any position to allow Mr. Barksdale to leave the scene" and (2) several minutes after smelling the alcohol, Officer Craven advised other officers to not let Barksdale leave. In conclusion, the court determined that "at the very outset Officer Craven would not have allowed [Barksdale] to leave" and *Miranda* warnings were therefore required.

Immediately after the court made its ruling, the State conceded that it no longer had a case against Barksdale and dismissed the charges. This appeal followed.

ISSUE ON APPEAL

Did the trial court err in suppressing Barksdale's statements based on a finding that Barksdale was in custody at the time he was questioned regarding his alcohol consumption?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Jenkins*, 412 S.C. 643, 650, 773 S.E.2d 906, 909 (2015). The decision to admit or exclude evidence is within the sound discretion of the trial court. *State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009). This court will not disturb the trial court's admissibility determinations absent a prejudicial abuse of discretion. *State v. Adkins*, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct. App. 2003). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001). "Appellate review of whether a person is in custody is confined to a determination of whether the ruling by the trial [court] is supported by the record." *State v. Evans*, 354 S.C. 579, 583, 582 S.E.2d 407, 409 (2003).

LAW/ANALYSIS

The State argues the trial court erred in suppressing Barksdale's statements pertaining to his alcohol consumption because the court misinterpreted the definition of "custody." Specifically, the State contends the court improperly relied upon Officer Craven's subjective intent and views in determining if Barksdale was in custody at the time he made the incriminating statements. We agree.

We find the trial court's determination that Barksdale was in custody when Officer Craven questioned him regarding his alcohol consumption was based on an error of law. The Fifth Amendment of the United States Constitution states "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." This constitutional safeguard protects individuals from overzealous police practices and limits the admissibility of incriminating statements, "whether exculpatory or inculpatory, stemming from custodial interrogation of [a] defendant unless [the prosecution] demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Miranda*, 384 U.S. at 444. "A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his [constitutional] rights." *State v. Miller*, 375 S.C. 370, 379, 652 S.E.2d 444, 449 (Ct. App. 2007).

Miranda warnings, the procedural safeguards used to secure the privilege against self-incrimination, are required for official interrogation "only when a suspect 'has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" *State v. Easler*, 327 S.C. 121, 127, 489 S.E.2d 617, 621 (1997), (quoting *Miranda*, 348 U.S. at 444), *overruled on other grounds by State v. Greene*, 423 S.C. 263, 814 S.E.2d 496 (2018). A significant deprivation of freedom "has been interpreted as meaning formal arrest or detention associated with a formal arrest." *Id.* at 127, 489 S.E.2d at 621; *see also Howes v. Fields*, 565 U.S. 499, 508–09 (2012) ("'[C]ustody' is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion.").

Whether an individual is in "custody" is determined based on the totality of the circumstances surrounding the interrogation, including "the location, purpose, and length of interrogation, and whether the suspect was free to leave the place of questioning." *State v. Medley*, 417 S.C. 18, 25, 787 S.E.2d 847, 851 (Ct. App. 2016) (quoting *State v. Navy*, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010)). "The initial determination of whether an individual was in custody depends on the

objective circumstances of the interrogation, not the subjective views harbored by either the interrogating officers or the person being questioned." *State v. Sprouse*, 325 S.C. 275, 282, 478 S.E.2d 871, 875 (Ct. App. 1996). "The relevant inquiry is whether a reasonable man in the suspect's position would have understood himself to be in custody." *Easler*, 327 S.C. at 128, 489 S.E.2d at 621. Even if an officer focuses his inquiries on a suspect, *Miranda* warnings are not warranted if the setting is non-custodial. *Id.* at 127–28, 489 S.E.2d at 621. *Miranda* warnings were "not intended to hamper the traditional function of police officers in investigating crime." *See Miranda*, 384 U.S. at 477.

Examining the record, we find the trial court erred in determining Barksdale was in custody when Officer Craven questioned him regarding his alcohol consumption. Initially, the trial court erred by primarily considering Officer Craven's subjective intent and knowledge in determining whether Barksdale was in custody rather than whether a reasonable person in Barksdale's position would believe he was in custody. *See Sprouse*, 325 S.C. at 282, 478 S.E.2d at 875 (emphasizing that the relevant inquiry when determining whether a suspect is in custody revolves around the *objective circumstances* surrounding the encounter and not the subjective views harbored by the investigator or the suspect); *see also State v. Hill*, 425 S.C. 374, 381, 822 S.E.2d 344, 348 (Ct. App. 2018) (stating an investigating officer's testimony that a defendant was not in custody was weightless as the proper inquiry is objective and focuses instead on whether or not a person in the defendant's shoes would believe he was free to stop the questioning and depart). Specifically, the court considered Officer Craven's subjective knowledge and intent when it noted (1) Officer Craven smelled alcohol on Barksdale's person and was in no position to let Barksdale leave the scene after doing so; (2) officer Craven told Barksdale he was not under arrest but failed to inform him that he was not in custody; and (3) Officer Craven would not have let Barksdale leave the scene and told other officers to prevent Barksdale from leaving.

Moreover, the record does not support a finding that Barksdale was deprived of his freedom of movement in any significant way or detained in such a way as to mimic formal arrest. *See Easler*, 327 S.C. at 127, 489 S.E.2d at 621 ("[A significant deprivation of freedom] has been interpreted as meaning formal arrest or detention associated with a formal arrest"). Regarding freedom of movement, the Supreme Court stated the following:

> [I]n order to determine how a suspect would have "gauge[d]" his "freedom of movement," courts must examine "all of the circumstances surrounding the interrogation." Relevant factors include the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning.

Howes, 565 U.S. at 509 (second alteration in original) (citations omitted) (quoting *Stansbury v. California*, 511 U.S. 318, 322 (1994) (per curiam)).

The Court further noted that an individual's freedom of movement is but one part of the custody analysis and past decisions did not "'accord talismanic power' to the freedom-of-movement inquiry, and . . . instead asked the additional question whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Id.* (citation omitted) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984)). The Court concluded its jurisprudence established "that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody." *Id.* (quoting *Maryland v. Shatzer*, 559 U.S. 98, 112 (2010)).

In *State v. Kerr*, this court found the defendant was not entitled to *Miranda* warnings during questioning because the officer on the scene was performing a routine investigation of a traffic accident. 330 S.C. 132, 146, 498 S.E.2d 212, 219 (Ct. App. 1998). In that case, the defendant collided with another car on I-26, and the first officer on the scene placed the defendant into the back of his police car but did not place him under arrest. *Id.* at 138–39, 498 S.E.2d at 214–15. A highway patrolman later arrived at the scene and noticed a strong smell of alcohol while he questioned the defendant. *Id.* at 139, 498 S.E.2d at 215. The patrolman then asked the defendant if he had been drinking, and the defendant responded that he had several drinks earlier in the night. *Id.* The patrolman subsequently administered field sobriety tests, which the defendant failed, and placed the defendant under arrest for driving under the influence. *Id.* Reasoning the subjective views of the investigating officer and the defendant were irrelevant, this court found *Miranda* warnings were not required because the defendant was not in custody as the patrolman was merely conducting a routine investigation into the cause of a traffic

accident when the defendant admitted to his prior alcohol consumption. *Id.* at 146, 498 S.E.2d at 219.

Similarly, in *State v. Morgan*, our supreme court ruled a defendant was not entitled to *Miranda* warnings while officers were investigating a traffic accident. 282 S.C. 409, 412, 319 S.E.2d 335, 336–37 (1984). In that case, the defendant was racing another car, and the other car lost control and crashed. *Id*. at 410, 319 S.E.2d at 336. The defendant fled the scene but returned to the scene minutes later. *Id.* Officers responding to the accident spoke with the defendant, and they arrested him after he admitted that he had consumed alcohol and marijuana before the race. *Id*. at 410–11, 319 S.E.2d at 336. The court ruled *Miranda* warnings were not required because "[a] traffic accident had just occurred" and "[w]hat followed was a routine investigation into the cause." *Id.* at 411–12, 319 S.E.2d at 336–37.

Like the officers in *Kerr* and *Morgan*, Officer Craven responded to the scene of a traffic accident and questioned Barksdale to investigate the accident's cause. *See Morgan*, 282 S.C. at 411–12, 319 S.E.2d at 336–37; *Kerr*, 330 S.C. at 145, 498 S.E.2d at 219. Because Officer Craven's questions regarding Barksdale's alcohol consumption occurred during a routine investigation, *Miranda* warnings were not warranted. *See Morgan*, 282 S.C. at 411–12, 319 S.E.2d at 336–37 (holding *Miranda* warnings were not required for statements made at the scene of a traffic accident if the defendant was not in custody or significantly deprived of his freedom); *see also Kerr*, 330 S.C. at 145, 498 S.E.2d at 219 (reaching a similar conclusion as *Morgan*). Further, the record does not reflect that Barksdale was detained or limited in his freedom of movement such that a reasonable person would believe he was in custody. Officer Craven did not place Barksdale in handcuffs until after he failed a litany of field sobriety tests. Prior to making the statements, Barksdale was able to move about the accident scene freely, and Officer Craven allowed him to walk away to get his license and registration and to speak with EMS regarding potential injuries. EMS did not speak with Barksdale under special orders from Officer Craven, and EMS allowed Barksdale to sit in his own car while they checked him for injuries. *See Howes*, 565 U.S. at 509 (stating the presence or absence of physical restraints during questioning is a relevant factor for determining whether the suspect was in custody); *cf. Medley*, 417 S.C. at 26, 787 S.E.2d at 851 (holding a DUI suspect was in custody when he was interrogated about his alcohol consumption because the suspect was handcuffed and pinned to the ground); *State v. Ledford*, 351 S.C. 83, 88, 567 S.E.2d 904, 907 (Ct. App. 2002) (finding a DUI suspect was in custody when an officer carried the

suspect from the suspect's home to the patrol car and questioned the suspect as he propped him against the car to handcuff him); *State v. Newell*, 303 S.C. 471, 474–75, 477, 401 S.E.2d 420, 423–24 (Ct. App. 1991) (ruling a DUI suspect was in custody when questioned regarding a traffic accident as officers transported her to the detention center in a police car after they placed her under arrest).

Furthermore, Barksdale's interrogation occurred at the scene of the traffic accident and was effectuated in a public place—the side of a public thoroughfare. *See Howes*, 565 U.S. at 509 (stating the location of the questioning is a relevant factor for determining whether the suspect was in custody). Many people were around to witness the interaction between Barksdale, Officer Craven, and the other officers, some of whom were pedestrians and EMS. Additionally, the presence of multiple officers at the scene of an accident has not deterred our appellate courts from finding a DUI suspect was not in custody at the time of interrogation. *See Easler*, 327 S.C. at 126, 128–29 489 S.E.2d at 620, 621 (stating the DUI suspect was not in custody while being questioned in the presence of multiple police officers); *Morgan*, 282 S.C. at 410, 412, 319 S.E.2d at 336, 337 (finding the suspect was not in custody while speaking with three police officers); *Kerr*, 330 S.C. at 139, 146, 498 S.E.2d at 216, 219 (holding a DUI suspect was not in custody after one officer placed him in the back of his patrol car and a different officer questioned him). Under these facts, we find a reasonable person in Barksdale's position would not have believed himself to be in custody.

Finally, Officer Craven telling other officers not to allow Barksdale to "walk off" does not support a finding of custody. EMS was speaking with Barksdale at the time Officer Craven made the statement, and there was no evidence that Barksdale heard him or that the statement was relayed to Barksdale. Even if Barksdale heard Officer Craven's statement, such a statement, along with the facts discussed above, would not amount to a significant deprivation of Barksdale's freedom of movement that would cause a reasonable person to believe he was in custody. *See State v. Walker*, 430 S.C. 411, 419, 844 S.E.2d 405, 409 (Ct. App. 2020) (emphasizing that even though a suspect may subjectively feel unable to leave or terminate an encounter with an officer or may be deprived of his freedom to an extent, that deprivation must be "significant" at the time the suspect is interrogated).

Based on the foregoing, we find the record does not support a finding that Barksdale was in custody at the time Officer Craven questioned him regarding his alcohol consumption. Although we acknowledge that individuals who are subjected to questioning by police officers are likely to feel intimidated, this

inherent intimidation alone is insufficient to warrant *Miranda* warnings. *See State v. Neeley*, 271 S.C. 33, 41, 244 S.E.2d 522, 527 (1978) ("Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer [*Miranda*] warnings to everyone whom they question." (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977))).

Accordingly, we find the trial court erred in finding Barksdale was in custody and suppressing Barksdale's statements.[4]

CONCLUSION

Based on the foregoing, the trial court's ruling is

REVERSED and the matter is **REMANDED** for a new trial.

HUFF and GEATHERS, JJ., concur.

[4] As to Barksdale's argument that he was in custody because a statute precluded him from leaving the scene of the accident, this argument is without merit. Under section 56-5-1220(A) of the South Carolina Code (2012), no motorist involved in a traffic accident is allowed to leave the scene of a wreck unless to seek emergency assistance. A statutory restriction on leaving an accident does not amount to a "formal arrest or detention associated with a formal arrest" that equates to custody. *See Easler*, 327 S.C. at 127, 489 S.E.2d at 621.