The Supreme Court of South Carolina

RE: General Sessions Docket Management Order

Appellate Case No. 2023-000806

ORDER

General Sessions Docket Management Order

Preamble

In an efficient criminal justice system, cases should be disposed of within months instead of years, regardless of whether defendants go to trial, plead guilty, enter into a diversion program, or have their cases dismissed. In order for the system to function optimally, the judicial and executive branches of government must share responsibility. This must be a cooperative effort. In furtherance of this effort, the Court issues this Order to establish a framework for an efficient criminal justice system.[1] The Court notes no order from the Supreme Court will ensure an efficient criminal justice system unless there are sufficient numbers of prosecutors and public defenders in each circuit and county. Nor will any order succeed unless the circuit judges, this Court, Clerks of Court, and the attorneys do their part in ensuring cases are disposed of efficiently and justly. Solicitors shall deliver a copy of this Order to the Sheriffs in their circuits and to all local police departments in their circuits. This Court will deliver a copy of this Order to the Chief of the South Carolina Law Enforcement Division.

This Order will be amended as necessary from time to time to reflect best practices in the court of General Sessions. Good faith input from all participants is critical.

---

[1] The preservation of crime victims' rights is not directly addressed in this Order; however, the Court reminds all prosecutors, defense counsel, and circuit judges that applicable statutes and constitutional provisions—and case law interpreting the same—are to be followed.

There must be an emphasis on the disposition of older cases and addressing new cases as they come into the system. The jury trial is a crucial stage of the criminal justice system and, accordingly, jury trials receive the most attention from the public. However, the vast percentage of cases are disposed of by diversion programs, guilty pleas, and dismissals. South Carolina Court Administration data supports this conclusion. The courtroom must run efficiently; however, the Court recognizes that what happens "in court" is directly related to the degree of preparation that takes place beforehand. Therefore, prosecutors and defense attorneys must have time to receive and prepare cases outside of court.

This Order recognizes those truths and assists the litigants in achieving the cooperative goal of efficiently and fairly moving cases through the General Sessions system. It is also the Court's intention that the South Carolina Solicitors will develop, in their respective offices, a three-tier system in which prosecutors (1) take in and examine, or "triage" new cases as they come into the system, (2) prepare for court, and (3) present guilty pleas, participate in motion hearings and other pertinent pre-trial matters, and try cases in the courtroom. A Solicitor's triage system shall ensure that new cases are disposed of quickly and not left on dockets for an extended time. Further, a team of prosecutors preparing for court and a separate team of prosecutors running court will ensure that court time is not wasted.

Because public defenders must also have adequate time to resolve cases outside of court and must have adequate time to prepare for court, it would be beneficial for the Chief Public Defenders to create a similar system tailored to their respective Solicitor's system. For example, while the Chief Public Defender may not have the need for a triage system, the Chief Public Defender should allocate adequate resources to post a public defender at the local detention facility to interview arrestees and establish preliminary contact with the triage solicitor during the early stages of a case.

The Court acknowledges that the procedure for screening defendants for qualification for appointed counsel differs from circuit to circuit. At some point in the future, a uniform procedure for screening must be implemented. At this time, the Court encourages bond court judges to conduct the screening, but if bond court judges do not do so, screening must be conducted as soon as possible; therefore, in those circuits in which screening is conducted by the Chief Public Defender, the screening should be conducted before a defendant's Initial Appearance. By July 1, 2024, the Court shall implement a uniform system for screening defendants for qualification for appointed counsel.

In most circuits, it will take additional resources, primarily in the form of additional attorneys, for the Solicitors and the Chief Public Defenders to put such systems into place. As increased attorney staffing becomes a reality, the Court strongly suggests each Solicitor develop a satisfactory version of the foregoing three-tiered plan and notify the Chief Judge for Administrative Purposes (CJAP) for that circuit of the plan.

In *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012), this Court held unconstitutional a statute giving the Solicitor the *exclusive* authority over the docketing and calling of cases for trial. The Court held that because the Solicitors are a part of the executive branch of government, granting them exclusive authority to run the trial docket infringed on the judicial branch's authority and was, therefore, a violation of the separation of powers doctrine. In discussing the nuances of the doctrine of separation of powers, the Court noted,

> "[A] usurpation of powers exists, for purposes of [the] constitutional separation of powers doctrine, when there is a significant interference by one branch of government with the operations of another branch." This rule is not fixed and immutable, however, as there are grey areas which are "tolerated in complex areas of government." There consequently is "some overlap of authority and some encroachment to a limited degree." ("Separation of powers does not require that the branches of government be hermetically sealed; the doctrine of separation requires a cooperative accommodation among the three branches of government; a rigid and inflexible classification of powers would render government unworkable."). At its core, the doctrine therefore "is directed only to those powers which belong exclusively to a single branch of government."

Langford, 400 S.C. at 434-35, 735 S.E.2d at 478 (citations omitted).

The *Langford* Court did not prohibit Solicitors from being involved in the docketing process as long as the trial judge has ultimate authority over the setting and calling of a case for trial. The Court recognizes Solicitors cannot perform their duties without having meaningful input into the operation of the General Sessions docket. Unlike the Common Pleas docket, one lawyer—the Solicitor—is responsible for the prosecution of almost all cases comprising the docket. Solicitors, as the prosecuting authorities in their respective circuits, have the burden of proof and, therefore, the responsibility of securing the attendance of the great majority of witnesses, most of whose schedules must be managed. Accordingly, this Order

provides that the Solicitors shall have substantial input into the creation of the trial docket. Defendants also have the burden of securing the attendance of witnesses whose schedules must be managed and, therefore, due consideration is to be given to defendants in the scheduling of cases for trial. In all instances, the creation of the trial docket shall be within the parameters outlined in this Order.

The backlog of old cases brought on by the COVID-19 shutdown must be addressed and older cases disposed of. However, it is not enough that cases are disposed of; how cases are disposed of is paramount. All cases must be handled within the singular focus of obtaining justice. This Order vacates and supersedes any existing county or circuit-level differentiated case management or trial scheduling orders. Accordingly, all General Sessions cases shall be processed under the minimum procedures provided for in this Order.[2]

(a) Initial Appearance, Discovery, and Second Appearance.

(1) Initial Appearance.

(A) If, after arrest, a defendant appears at a bond proceeding before a magistrate or summary court judge, the judge shall provide notice to the defendant of the date, time, and location of the Initial Appearance in accordance with a pre-arranged schedule developed by the Solicitor or by the CJAP. The CJAP is not required to preside over Initial Appearances, but may do so from time to time in his or her discretion.

(B) If the defendant has obtained counsel and counsel has notified the Solicitor of such representation and has provided the Clerk of Court with the defendant's correct address and telephone number, neither the defendant nor his counsel will be required to attend the Initial Appearance, unless the defendant has mental health issues requiring a hearing and/or court order mandating an evaluation. The defendant may move for protection against prosecution pursuant to the Protection of Persons and Property Act at the Initial Appearance. *See* S.C. Code Ann. § 16-11-410 to -450 (2015 & Supp. 2022).

(C) An Initial Appearance shall be held in every case in which a defendant does not have counsel. The purposes of the Initial Appearance shall include,

[2] Failure to comply with a provision contained in this Order shall not, in and of itself, be a ground for dismissal of a charge.

but shall not be limited to, inquiry into:

(i) whether the defendant has any mental health issues requiring a hearing and/or an order of the court;

(ii) whether the defendant desires appointed counsel or will retain private counsel, or desires to represent himself;

(iii) whether the defendant who desires appointed counsel has been advised how to apply for appointed counsel.

(D) If a circuit judge presides over the Initial Appearance, *Faretta*[3] warnings shall be given to a defendant who desires to represent himself. If a circuit judge does not preside, *Faretta* warnings will be given during the Second Appearance. The Solicitor or the court shall ensure that the Clerk of Court has been given proper contact information for the unrepresented defendant or self-represented defendant to allow the Clerk to notify the defendant of future court appearances.

(E) To facilitate the giving of *Faretta* warnings during Initial Appearances and Second Appearances when there is not a court reporter present, Court Administration will develop a form to be employed by the court when giving the warnings. A full on-the-record *Faretta* colloquy must be conducted at the earliest opportunity after the *Faretta* form is used.

(F) The prosecuting solicitor must file a Notice of Appearance with the Clerk of Court. If a public defender is assigned to represent a defendant, the public defender must, within ten (10) days of such assignment, file a Notice of Appearance with the Clerk of Court. If the case is later assigned to another solicitor or public defender, the succeeding solicitor or public defender must file a Notice of Appearance. Private counsel must file a Notice of Appearance. If a defendant who was initially represented by the public defender or other appointed counsel fully retains private counsel, the public defender must be relieved by order of the court, and private counsel must file

[3] *Faretta v. California*, 422 U.S. 806 (1975).

a Notice of Appearance.[4] The Notice of Appearance requirement may be satisfied by letter from counsel to the Clerk of Court, provided the letter contains the case name and indictment number(s).

(2) Discovery; General.

(A) Timely and complete production and supplementation of discovery material in accordance with Rule 5 of the South Carolina Rules of Criminal Procedure (SCRCrimP) and *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny is paramount. While the production of *Brady* material is mandatory in every case, the Court notes the production of such material often cannot be made near the beginning of a case because the material may not yet exist; therefore, for the purposes of this Order, the term "discovery" is defined as any material subject to discovery under Rule 5, SCRCrimP. Law enforcement should provide the Solicitor with discovery and available *Brady* material within thirty (30) days of the arrest. The prosecuting solicitor shall regularly monitor all files to ensure prompt, complete, and good faith production of discovery and *Brady* material. Defense counsel shall regularly monitor all files to detect any delay in the State's production of discovery and to ensure defense counsel's own compliance with discovery rules.

(B) As noted below in paragraph (b)(1)(F), the Solicitor shall not list any case on the proposed trial docket in which production of discovery and available *Brady* material is not complete at the time the proposed docket is presented to the CJAP and the Clerk of Court. Communication between the Solicitor and law enforcement (including SLED) and between the Solicitor and defense counsel regarding discovery deficiencies is paramount.

(C) Law enforcement must regularly review case files to ensure compliance with all discovery rules and case law.

(D) Upon receipt of discovery and *Brady* material, defense counsel shall promptly share that information with the defendant unless a court order prohibits defense counsel from sharing any particular item of discovery with the defendant.

[4] In counties where the Clerk of Court is able to import representation information from the Solicitor or Chief Public Defender, the Notice of Appearance requirement may be satisfied electronically.

(E) If the Solicitor has not received adequate discovery from law enforcement, or if the Solicitor has not been able to gather enough information concerning the validity of the charge, the Solicitor may return the case to law enforcement for further investigation. If thirty (30) days pass after the Solicitor returns the case to law enforcement, and the Solicitor still has not received enough information to properly assess the case, the Solicitor may administratively dismiss the warrant and any related indictment. Within ten (10) days of the administrative dismissal, the Solicitor's office shall notify the Clerk of Court of the dismissal and shall return the matter to law enforcement for further investigation. Administrative dismissals for this reason shall be coded by the Clerk of Court and South Carolina Court Administration as "dismissed: returned to law enforcement for further investigation." The case shall then be removed by the Clerk of Court and Court Administration from the list of pending cases. As there are no statutes of limitation on criminal offenses in South Carolina, the Solicitor may present the case for indictment at a later date if law enforcement provides the necessary evidence.

(3) Second Appearance.

(A) General.

(i) Second Appearances shall be held to facilitate the process of determining: (1) whether the defendant will enter a diversion program, (2) whether the case will be dismissed, (3) whether the defendant will plead guilty, or (4) whether the defendant will go to trial. The dates for Second Appearances shall be scheduled by the CJAP—in consultation with the Solicitor and Chief Public Defender—and shall be presided over by the CJAP or his/her designee. Any "designee" must be a circuit judge.

(ii) If a defendant was not required to attend an Initial Appearance (*see* paragraph (a)(1)(B)), that defendant's Second Appearance shall be held during the fourth month after arrest.

(iii) For those defendants who were required to attend an Initial Appearance, Second Appearances shall be held in murder and criminal sexual conduct cases no later than the seventh month after the date of the Initial Appearance. In all other cases in which a defendant was required to attend an Initial Appearance, Second Appearances shall be held no later than the fourth month after the Initial Appearance. As the

backlog subsides, this Order may be amended to alter these time frames.

(iv) No less than thirty (30) days before the Second Appearance, the prosecuting solicitor shall provide to defense counsel (or to the self-represented defendant) discovery, a plea offer (if one is to be made), and existing *Brady* material. At least twenty-one (21) days before the scheduled Second Appearance, the Solicitor shall notify the Clerk of Court of the cases to be listed on the Second Appearance roster. At least fifteen (15) days before the Second Appearance, the Clerk of Court shall provide notice of the Second Appearance to defense counsel by email through the trial court case management system (CMS),[5] and to the self-represented defendant by regular mail.

(B) Procedure During Second Appearance.

(i) During the Second Appearance, the court shall again inquire of an unrepresented defendant whether the defendant desires counsel or to represent himself. If the defendant desires to represent himself, the court shall provide *Faretta* warnings to the defendant and make appropriate findings. If the defendant desires to be represented by counsel, the court shall require the defendant to secure private representation or apply for a public defender within fourteen (14) days. If the unrepresented defendant desires to be represented by counsel, the Second Appearance shall be rescheduled for the next available date. If the unrepresented defendant unreasonably delays securing private counsel or applying for a public defender, the court will allow the case to move forward.

(ii) At the Second Appearance, at a minimum, the Solicitor shall inform the court:

- whether the Grand Jury has indicted the defendant,
- that the Solicitor provided to defense counsel (or to the self-represented defendant) all discovery and all available *Brady* material at least thirty (30) days prior to the Second Appearance, and
- that the Solicitor has provided a plea offer (if one is to be made) to defense counsel or to the self-represented defendant.

[5] The trial court CMS will use attorney email addresses from the Attorney Information System (AIS). Rule 410(e), SCACR.

(iii) Defense counsel and self-represented defendants shall confirm to the court whether they have received and reviewed:

- discovery,
- any *Brady* material that has been provided, and
- any plea offer.

(iv) The defendant and his counsel (or the self-represented defendant) must inform the court whether the defendant intends to plead guilty or go to trial.

(v) The prosecuting solicitor, defense counsel, or the self-represented defendant should be prepared to notify the court if there are any pretrial issues, the resolution of which could assist the defendant in deciding whether to plead guilty or go to trial. This includes, but is not limited to, motions pursuant to the Protection of Persons and Property Act, and any other motions that, if granted, would prevent the prosecution of the defendant. Defense counsel should also notify the court if the defendant has any mental health issues that should be addressed by the court.

(vi) A representative from the office of the Clerk of Court must be present at the Second Appearance and shall be given information as to the identity of counsel for the defendant and shall enter such information into the Clerk's records. If counsel is substituted, withdraws, or is relieved, such must be memorialized by order of the presiding judge to be delivered to the Clerk of Court for filing and recording in the CMS.

(C) Scheduling. At the Second Appearance, the court may schedule a guilty plea and any motions (except those motions that must be heard by the trial judge) filed by the Solicitor or the defendant. The Clerk of Court will add the plea and any filed motions to the appropriate list of pleas or motions to be heard.

(b) Trial Docket.

(1) General.

(A) The Solicitors should evaluate their caseloads well in advance of the forty-five (45) day deadline set forth in this paragraph and regularly communicate with the CJAP and all defense counsel to ensure orderly and just disposition of pretrial issues and the case itself.

(B) Notwithstanding any provision in this Order, if a speedy trial motion is granted, the CJAP will determine the placement of the case on a proposed trial docket; however, the case will not be placed on a proposed trial docket that has already been presented by the Solicitor to the CJAP and Clerk of Court unless the Solicitor and defense counsel (or the self-represented defendant) agree.

(C) Notwithstanding any provision in this Order, if the Attorney General and the Solicitor cannot resolve a conflict as to the placement of an AG case on the proposed trial docket, the CJAP shall make the determination after consultation with the Solicitor, the AG, and defense counsel (or the self-represented defendant).

(D) Likewise, to ensure cases placed on the trial docket are truly ready for trial, the Solicitor should regularly consult with defense counsel in the generation of the proposed trial docket. Prosecuting solicitors, public defenders and private defense counsel should regularly communicate with each other regarding reasonably perceived discovery deficiencies and any other issues that may reasonably require a delay in the disposition of a case.

(E) The order of cases listed on the proposed trial docket by the Solicitor shall be the order in which they are to be called for trial. A case may be called for trial out of order by the presiding judge if the prosecuting solicitor and defense counsel or self-represented defendant agree, and if defense counsel or the self-represented defendant in preceding cases also agree. In the discretion of the presiding judge, a case may be called out of order if the trials of preceding cases on the docket cannot be concluded before the end of the term.

(F) The Solicitor shall not list any case on the proposed trial docket that the Solicitor does not reasonably expect to be ready for trial during the term of court. The Solicitor shall not list any case in which the State (the Solicitor and law enforcement) has not complied with Rule 5 and *Brady* at the time the proposed trial docket is transmitted to the CJAP and the Clerk of Court. As used in this Order, the term "discovery" is defined as any material subject to

discovery under Rule 5, SCRCrimP. *See* Paragraph (a)(2)(A).[6]

(G) Even though the Solicitors have discretion to determine the number of cases to be listed on their proposed trial dockets, the Solicitor shall communicate regularly with the CJAP, Chief Public Defender, and Clerk of Court to determine the optimal number of cases to be placed by the Solicitor on the proposed trial docket.

(2) Proposed Trial Docket

(A) No less than forty-five (45) days before the term of court, the Solicitor shall transmit by email a proposed trial docket for that term to the CJAP and the Clerk of Court. The Solicitor must copy the Chief Public Defender—and private defense counsel listed on the proposed trial docket—with the email and proposed trial docket, and must copy the self-represented defendant by regular mail.[7] The Chief Public Defender shall have the responsibility of conveying the proposed trial docket to individual public defenders defending cases listed on the proposed trial docket.

(B) At least 70% of the proposed trial docket shall consist of cases that are

---

[6] This paragraph is not intended to create an independent basis for a claim of prosecutorial misconduct if there is a shortcoming in production of discovery. However, this provision and the provisions governing Second Appearances are intended to ensure the State's timely production of discovery to the defense in accordance with Rule 5. To that end, it is incumbent upon law enforcement to efficiently and timely submit material to the prosecuting attorney so the prosecuting attorney can timely produce all discovery and *Brady* material to the defense. Of course, Rule 5 also requires production of discovery by the defendant on a timely basis.

[7] This notification of the proposed trial docket from the Solicitor to the CJAP and the Clerk of Court is only for informational purposes. As provided in paragraph (2)(D) below, the Clerk of Court will transmit the official proposed docket to public defenders and private defense counsel who are on the proposed trial docket by email through CMS, and to self-represented defendants by regular mail. Any objections to the proposed docket must be made in accordance with paragraph (2)(E).

thirty (30) months old[8] or older from the date of indictment. The Solicitor may exclude from the proposed trial docket (a) defendants with outstanding bench warrants; (b) defendants in failure to appear status; (c) defendants participating in pretrial intervention, multidisciplinary court, a conditional discharge sentence, or other diversion program; and (d) cases in which the prosecuting solicitors or defense attorneys are personally unavailable for trial. The Solicitor must be mindful of those defendants who have been detained for a significant time in local detention facilities.

(C) Except by consent of the CJAP, prosecuting solicitor, and defense counsel (or the self-represented defendant), a case may not be added to the proposed trial docket after the proposed trial docket is presented by the Solicitor to the CJAP and Clerk of Court. Provided, however, the CJAP may from time to time require the Solicitor and defense counsel to provide reasons why cases more than thirty (30) months old from the date of indictment are not prepared for trial.

(D) Within seven (7) days after receiving the proposed trial docket from the Solicitor, the Clerk of Court shall transmit the proposed docket to public defenders and private defense counsel on the proposed trial docket by email through CMS, and to self-represented defendants by regular mail.

(E) Within seven (7) days after the proposed docket is transmitted to defense counsel or self-represented defendants by the Clerk of Court, defense counsel or the self-represented defendant may provide the CJAP (and copy the prosecuting solicitor and the Clerk of Court) with any objections to the proposed trial docket. A self-represented defendant must mail any objections to the proposed trial docket to the Clerk of Court and the Solicitor within seven (7) days from the date of mailing of the proposed trial docket by the Clerk of Court.

(F) The CJAP will consider all objections and may convene an on or off-the-record status conference to discuss the case.

(3) Final Trial Docket.

(A) No less than twenty (20) days before the term of court, the CJAP will

[8] As the backlog subsides in any given county, the Court may shorten the thirty-month time frame, or reduce the percentage from 70, or both.

send the final trial docket to the Clerk of Court by email or hand delivery, or by such other method agreed upon by the CJAP and the Clerk of Court. Within five (5) days thereafter, the Clerk of Court shall electronically transmit the final trial docket to defense counsel of record by email through CMS and shall send the docket by regular mail to self-represented defendants.

(B) Cases not reached during a scheduled term shall not automatically roll over onto the trial docket for the next term. While a case will not automatically roll over onto the trial docket for the next term, the Solicitor may place a case on successive proposed trial dockets in accordance with the provisions of paragraphs (b)(1) and (2).

(4) Continuances. Either the State or the defendant may file a motion with the court for a continuance or for protection or relief from the final trial docket. Such a motion shall contain an affirmation that the moving party, prior to filing the motion, communicated or attempted to communicate with the opposing party in good faith in attempt to resolve the motion, together with an explanation of whether the opposing party consented to or objected to the request. The nonmoving party may file and serve a response to the motion for continuance within three (3) business days after receiving notice of the motion. The CJAP or a designee may resolve the motion on the filings without a hearing or may hold a hearing to determine whether a motion for continuance, protection, or relief should be granted.

(5) Trial Docket Status Conferences. Trial Docket status conferences may be scheduled at the discretion of the CJAP and may be held by the CJAP or a designee.

(6) Multiple Trial Terms. In any county in which multiple terms of jury trials will be held during the same month, the Solicitor may present a different proposed trial docket for each term.

(c) List of Matters.

(1) Separate and apart from the trial docket, the Solicitor, the CJAP, and the Clerk of Court shall compile a list of matters to be scheduled by the court for disposition by the court. Defense counsel or the self-represented defendant may request the CJAP to add to the list of matters. The list of matters shall include, but shall not be limited to, guilty pleas, bond hearings, motions, or any other non-trial matters.

(2) The CJAP, docket liaison, and Clerk of Court shall monitor the number of outstanding motions in each county. The following motions shall be heard only by

the trial judge: *Jackson v. Denno*, *Crawford v. Washington*, *U.S. v. Bruton*, *Neil v. Biggers*, *Franks v. Delaware*, and other motions to suppress evidence. However, these motions may be heard by a judge other than the trial judge if both parties agree, and if both parties agree to be bound by the ruling.[9]

(3) Other motions may be heard by the CJAP or any circuit judge assigned to the county in which the motion is pending. Speedy trial motions should be given priority.

(4) Guilty plea dockets shall consist of those pleas announced at a Second Appearance and Trial Docket Status Conferences, as well as those pleas communicated to the CJAP by the Solicitor, Chief Public Defender, and private counsel. The CJAP shall, with the input of the Clerk of Court, the Solicitor, Chief Public Defender, and private counsel, create the plea docket for an appropriate term of court. The Clerk of Court shall provide notice of the guilty plea docket to defense counsel by email through CMS, and to the self-represented defendant by regular mail. The presiding judge may add guilty pleas to the guilty plea docket.

(d) Attorney General.

(1) The Attorney General (AG) prosecutes a substantial number of cases throughout the State of South Carolina. The AG shall have regular access to the scheduling of motions, pleas, and trials. The AG shall provide the Clerk of Court, the Solicitor, the docket liaison, and the CJAP quarterly with a list of each indicted case being prosecuted by the AG, together with the name of the prosecuting AG, in the county over which the CJAP and Solicitor have authority. Upon request of the AG, the CJAP shall instruct the Clerk of Court to add cases to the Second Appearance list, provided proper notice has been given to defense counsel or the self-represented defendant. Upon request of the AG, the CJAP shall instruct the Clerk of Court to add cases prosecuted by the AG to a plea or motion docket, provided fifteen (15)-days' notice has been given to defense counsel or the self-represented defendant. The Solicitor and the AG shall regularly communicate with one another and with the CJAP to ensure the AG has input into the listing of AG cases on the proposed trial docket. The AG and the Solicitor shall make every effort to resolve any disputes between each other concerning the scheduling of pleas,

[9] At some point, it will likely be advisable for the Court to amend this order or propose an addition to the Rules of Criminal Procedure allowing such motions to be heard with finality by a judge other than the trial judge. However, that will not be a requirement at this time.

motions, or trials.

(2) In any case prosecuted by the AG (except for State Grand Jury cases), the identifier "AG" shall be inserted on the indictment at the end of the indictment number. Court Administration records, including those records posted on the sccourts.org website, shall include that or a similar identifier. If a case is originally indicted and prosecuted by the Solicitor, and prosecution is later assumed by the AG, the indictment must be amended to include the identifier.

(e) Docket Reconciliation. A representative from the Clerk of Court's Office, a representative from the Solicitor's Office, a representative from the Chief Public Defender's office, and the docket liaison shall meet at least once each six months to ensure that all cases disposed of during the previous six months were properly recorded, and that the respective dockets are consistent. The CJAP can order these meetings to be held more frequently. After the meeting, the docket liaison shall then provide the CJAP with a list of all cases that are over thirty (30) months old from the date of indictment and, if not indicted, over thirty-six (36) months old from the date of arrest. The CJAP or designee may hold status conferences in these cases.

(f) Effective Date. This Order shall be effective July 3, 2023. The deadlines and lead times set forth in this Order will not be in force until the effective date.

IT IS SO ORDERED.

s/ Donald W. Beatty C.J.

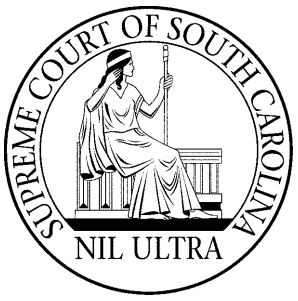
s/ John W. Kittredge J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

s/ D. Garrison Hill J.

Columbia, South Carolina
May 24, 2023



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 20
May 24, 2023
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

PETITIONS - UNITED STATES SUPREME COURT

EXTENSION TO FILE PETITION - UNITED STATES SUPREME COURT

None

PETITIONS FOR REHEARING

28149 – State v. Mary Ann German	Pending
28151 – Ani Creation Inc., et al. v. City of Myrtle Beach	Pending
28153 – Town of Sullivan's Island v. Michael Murray	Pending

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

2023-UP-201 – Nancy Morris v. State Fiscal Accountability Authority

2023-UP-202 – SCE&G v. Pitch Landing, LLC

2023-UP-203 – Kevin Paul v. Richland County Sheriff's Office

2023-UP-204 – Rita St. Aubin v. THI of South Carolina at Camp Care, LLC

2023-UP-205 – Michelle Holliman v. We Are Sharing Hope SC

2023-UP-207 – Gerald R. Smith v. United Cable Construction Co.

2023-UP-208 – Gregory Pencille, #312332 v. SCDC (3)

2023-UP-209 – The State v. Diante J. Rogers

2023-UP-210 – Marsh Waterproofing, Inc. v. Steeple Dorchester Ltd.

PETITIONS FOR REHEARING

5972 – McEntire Produce v. S.C. Dep't of Revenue	Denied 5/18/2023
5974 – The State v. Calvin D. Ford	Denied 5/18/2023
5975 – Rita Glenn v. 3M Company	Pending
5977 – Jackie Chalfant v. Carolinas Dermatology Group, PA	Pending
5984 – In the Matter of the Estate of Chris Combis	Pending

EXTENSIONS TO FILE PETITION FOR REHEARING

None

PETITIONS – SUPREME COURT OF SOUTH CAROLINA

5832 – State v. Adam Rowell	Granted in part 5/17/2023
5834 – Vanessa Williams v. Bradford Jeffcoat	Granted 5/17/2023
5839 – In the Matter of Thomas Griffin	Pending
5855 – SC Department of Consumer Affairs v. Cash Central	Pending
5860 – Kelaher, Connell & Conner, PC v. SCWCC	Denied 5/17/2023
5882 – Donald Stanley v. Southern State Police	Pending
5903 – State v. Phillip W. Lowery	Pending
5906 – Isaac D. Brailey v. Michelin N.A.	Pending
5911 – Charles S. Blackmon v. SCDHEC	Pending
5912 – State v. Lance Antonio Brewton	Pending
5914 – State v. Tammy D. Brown	Pending
5916 – Amanda Huskins v. Mungo Homes, LLC	Pending
5921 – Cynthia Wright v. SCDOT	Pending
5922 – State v. Olandio R. Workman	Pending
5923 – Susan Ball Dover v. Nell Ball	Denied 5/17/2023
5925 – Patricia Pate v. College of Charleston	Pending
5926 – Theodore Wills v. State	Pending
5930 – State v. Kyle M. Robinson	Pending

5931 – Stephen R. Edwards v. Scapa Waycross, Inc.	Pending
5932 – Basilides Cruz v. City of Columbia	Pending
5933 – State v. Michael Cliff Eubanks	Pending
5934 – Nicole Lampo v. Amedisys Holding, LLC	Pending
5935 – The Gulfstream Café v. Palmetto Industrial	Pending
5942 – State v. Joseph L. Brown, Jr.	Pending
5943 – State v. Nicholas B. Chhith-Berry	Pending
5946 – The State v. Frankie L. Davis, III	Pending
5947 – Richard W. Meier v. Mary J. Burnsed	Pending
5948 – Frankie Padgett v. Cast and Crew Entertainment	Pending
5951 – State v. Xzariera O. Gray	Pending
5953 – State v. Nyquan T. Brown	Pending
5954 – State v. Rashawn Carter	Pending
5955 – State v. Philip Guderyon	Pending
5956 – Trident Medical v. SCDHEC (Medical University)	Pending
5957 – SCDSS v. Brian Frank	Pending
5969 – Wendy Grungo-Smith v. Joseph Grungo	Pending
2021-UP-242 – G. Allen Rutter v. City of Columbia	Pending
2021-UP-252 – Betty Jean Perkins v. SCDOT	Denied 5/17/2023

2021-UP-277 – State v. Dana L. Morton Denied 5/17/2023

2021-UP-288 – Gabriel Barnhill v. J. Floyd Swilley Granted 5/17/2023

2022-UP-095 – Samuel Paulino v. Diversified Coatings, Inc. Pending

2022-UP-113 – Jennifer McFarland v. Thomas Morris Pending

2022-UP-118 – State v. Donald R. Richburg Pending

2022-UP-119 – Merilee Landano v. Norman Landano Pending

2022-UP-161 – Denis Yeo v. Lexington Cty. Assessor Pending

2022-UP-170 – Tony Young v. Greenwood Cty. Sheriff's Office
Granted in part 5/17/2023

2022-UP-175 – Brown Contractors, LLC v. Andrew McMarlin Pending

2022-UP-186 – William B. Justice v. State Pending

2022-UP-189 – State v. Jordan M. Hodge Pending

2022-UP-197 – State v. Kenneth W. Carlisle Pending

2022-UP-205 – Katkams Ventures, LLC v. No Limit, LLC Pending

2022-UP-209 – The State v. Dustin L. Hooper Denied 5/17/2023

2022-UP-213 – Dr. Gregory May v. Advanced Cardiology Pending

2022-UP-228 – State v. Rickey D. Tate Pending

2022-UP-243 – In the Matter of Almeter B. Robinson (2) Denied 5/17/2023

2022-UP-245 – State v. John Steen d/b/a John Steen Bail Bonding Pending

2022-UP-251 – Lady Beaufort, LLC v. Hird Island Investments Pending

2022-UP-252 – Lady Beaufort, LLC v. Hird Island Investments (2) Pending

2022-UP-253 – Mathes Auto Sales v. Dixon Automotive Pending

2022-UP-255 – Frances K. Chestnut v. Florence Keese Pending

2022-UP-256 – Sterling Hills v. Elliot Hayes Pending

2022-UP-269 – Steven M. Bernard v. 3 Chisolm Street Pending

2022-UP-270 – Latarsha Docena-Guerrero v. Government Employees Insurance Pending

2022-UP-276 – Isiah James, #096883 v. SCDC (2) Pending

2022-UP-282 – Roger Herrington, II v. Roger Dale Herrington Pending

2022-UP-293 – State v. Malette D. Kimbrough Pending

2022-UP-294 – Bernard Bagley #175851 v. SCDPPPS (2) Pending

2022-UP-296 – SCDOR v. Study Hall, LLC Pending

2022-UP-298 – State v. Gregory Sanders Pending

2022-UP-303 – Daisy Frederick v. Daniel McDowell Pending

2022-UP-305 – Terri L. Johnson v. State Farm Pending

2022-UP-307 – Frieda H. Dortch v. City of Columbia Pending

2022-UP-308 – Ditech Financial, LLC v. Kevin Snyder Pending

2022-UP-309 – State v. Derrick T. Mills Pending

2022-UP-312 – Guardian ad Litem, James Seeger v. Richland School Dt. Pending

2022-UP-313 – Vermell Daniels v. THI of SC Pending

2022-UP-314 – Ronald L. Jones v. Rogers Townsend & Thomas, P.C.	Pending
2022-UP-316 – Barry Adickes v. Phillips Healthcare (2)	Pending
2022-UP-319 – State v. Tyler J. Evans	Pending
2022-UP-320 – State v. Christopher Huggins	Pending
2022-UP-323 – Justin R. Cone v. State	Pending
2022-UP-326 – Wells Fargo Bank v. Michelle Hodges	Pending
2022-UP-331 – Ex Parte: Donald Smith (In re: Battersby v. Kirkman)	Pending
2022-UP-333 – Ex Parte: Beaullah and James Belin	Pending
2022-UP-334 – Anthony Whitfield v. David Swanson	Pending
2022-UP-336 – In the Matter of Ronald MJ Gregg	Pending
2022-UP-337 – U.S. Bank, N.A. v. Rhonda Lewis Meisner (3)	Pending
2022-UP-338 – State v. Derrick J. Miles	Pending
2022-UP-340 – State v. Amy N. Taylor	Pending
2022-UP-354 – Chicora Life Center v. Fetter Health Care Network	Pending
2022-UP-360 – Nationstar Mortgage LLC v. Barbara A. Gibbs	Pending
2022-UP-362 – Jonathan Duncan v. State	Pending
2022-UP-380 – Adonis Williams v. State	Pending
2022-UP-382 – Mark Giles Pafford v. Robert Wayne Duncan, Jr.	Pending
2022-UP-402 – Todd Olds v. Berkeley County	Pending
2022-UP-410 – Alvetta L. Massenberg v. Clarendon County Treasurer	Pending

2022-UP-413 – Lucas Marchant v. John Doe Pending

2022-UP-415 – J. Morgan Kearse v. The Kearse Family Education Trust Pending

2022-UP-422 – Paula Russell v. Wal-Mart Stores, Inc. Pending

2022-UP-425 – Michele Blank v. Patricia Timmons (2) Pending

2022-UP-435 – Andrew Desilet v. S.C. Dep't of Motor Vehicles Pending

2022-UP-437 – Nicholas Thompson v. Bluffton Township Fire District Pending

2022-UP-444 – State v. James H. Baldwin Pending

2022-UP-450 – State v. Melvin J. White Pending

2022-UP-452 – In the Matter of Kevin Wright Pending

2022-UP-462 – Karrie Gurwood & Howard Gurwood v. GCA Services Group, Inc. Pending

2023-UP-005 – David Abdo v. City of Charleston Pending

2023-UP-020 – Bridgett Fowler v. Fedex Pending

2023-UP-037 – Diana Bright v. Craig Bright Pending

2023-UP-041 –Joy Wymer v. Floyd Hiott Pending

2023-UP-044 – Deutsche Bank National Trust Company v. Doris J. Dixon Pending

2023-UP-051 – State v. Jason E. Stoots Pending

2023-UP-062 – Raglins Creek Farms, LLC v. Nancy D. Martin Pending

2023-UP-064 – Karen K. Baber v. Summit Funding, Inc. Pending

2023-UP-070 – James Kincannon v. Ashely Griffith Pending

2023-UP-075 – Dana Dixon v. SCDMH (2) Pending

The Supreme Court of South Carolina

In the Matter of MaRhonda Shatoya Smith, Respondent.

Appellate Case No. 2023-000784

ORDER

The Office of Disciplinary Counsel asks this Court to place Respondent on interim suspension pursuant to Rule 17(a) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). Respondent consents to the issuance of an order of interim suspension in this matter.

IT IS ORDERED that Respondent's license to practice law in this state is suspended until further order of this Court.

s/ John W. Kittredge A.C.J.

s/ John Cannon Few J.

s/ George C. James Jr. J.

s/ D. Garrison Hill J.

Beatty, C.J., not participating.

Columbia, South Carolina
May 17, 2023

The Supreme Court of South Carolina

In the Matter of Drelton A. Carson, Jr., Respondent.

Appellate Case Nos. 2021-000621 and 2023-000801

ORDER

By order dated June 18, 2021, Respondent was placed on interim suspension. *In re Carson*, 433 S.C. 488, 860 S.E.2d 360 (2021). He was subsequently placed on administrative suspension for failing to comply with annual continuing legal education requirements. *In re Admin. Suspensions for Failure to Comply with Continuing Legal Educ. Requirements*, S.C. Sup. Ct. Order dated Apr. 28, 2022. Respondent has now filed a motion pursuant to Rule 17(d), RLDE, Rule 413, SCACR, requesting that his interim suspension be lifted. Respondent has also filed a petition for reinstatement from administrative suspension pursuant to Rule 419(e), SCACR.

The motion for reconsideration and petition for reinstatement from administrative suspension are both granted. Respondent is hereby reinstated as regular member of the South Carolina Bar.

s/ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina
May 19, 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

James Elbert Daniels, Jr., Appellant.

Appellate Case No. 2018-001630

Appeal From Horry County
Robert E. Hood, Circuit Court Judge

Opinion No. 5986
Heard June 15, 2021 – Filed May 24, 2023

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, Senior Assistant Attorney General J. Anthony Mabry, and Assistant Attorney General Mark Reynolds Farthing, all of Columbia; and Solicitor Jimmy A. Richardson, II, of Conway, for Respondent.

MCDONALD, J.: In January 2015, two masked men robbed three Horry County convenience stores; the men shot and killed the clerk at one store and an employee

at another. James Elbert Daniels, Jr. served as the scout before his masked accomplices entered the stores. Daniels now appeals his convictions for murder and armed robbery, arguing law enforcement elicited his incriminating statements in violation of his constitutional rights. As evidence supports the circuit court's findings that Daniels voluntarily accompanied officers to a police substation and his initial thirty-one minute interview was not custodial, we affirm the convictions.

Facts and Procedural History

On January 2, 2015, Daniels entered the Sunhouse convenience store at the intersection of Highway 905 and Red Bluff Road in Longs (Sunhouse #1) and purchased a bottle of lemonade. Minutes after Daniels exited the store, Jerome "J.J." Jenkins, Jr. and McKinley Daniels (Brother) entered. Both were masked and armed with handguns. The two men first encountered and shot at Sunhouse employee Jimmy McZeke, but both missed. McZeke ran to the back of the store and locked himself in a bathroom. Jenkins followed and shot at him through the bathroom door, shattering some glass bottles that cut McZeke's head.

While Jenkins chased McZeke, Brother remained at the front of the store. Brother pointed his pistol at the store clerk, 40-year-old Bala Paruchuri, and grabbed money from the cash register. As Jenkins and Brother were leaving the store, one of the men shot and killed Paruchuri.[1] The Sunhouse #1's video surveillance cameras captured footage of the robbery and the murder.

On January 25, 2015, the trio robbed two other convenience stores in the area. Again, Daniels served as the scout; Jenkins and Brother then entered and robbed the stores. Barbara McDowell was working at the Scotchman on Lake Arrowhead Road in Myrtle Beach on an unusually quiet night when, through the store window, she saw "two guys scrunched down" outside. She watched as the two men, whom she was unable to identify because they were "totally covered," entered the Scotchman through the front door. McDowell testified, "One of the guys went straight behind the counter, and the other guy came straight towards me." The man who approached McDowell had a gun, so she emptied the two cash registers and gave him approximately fifty dollars in cash before both men fled on foot. As soon as the men left the store, McDowell pushed the panic button. Because the Scotchman is on a cul-de-sac, McDowell watched for a car to drive back down the

[1] Both masked men fired their weapons at Paruchuri as they fled.

road but never saw one. Law enforcement responded and viewed the store's video surveillance footage in an effort to identify the men, while bloodhounds lost their trail at the edge of the store parking lot.

Within hours of the Scotchman robbery, two men robbed the Sunhouse at Cultra Road and Oak Street in Conway (Sunhouse #2) and killed thirty-year-old employee Trisha Stull. Officers responded and watched the surveillance video, which showed two masked men enter and go behind the counter. According to Lieutenant Peter Cestare of the Horry County Police Department (HCPD), shots were fired in the store and some cash and a purse were taken. While watching the videos from the Scotchman and Sunhouse #2, Lt. Cestare noticed a clothing pattern of "red pants and gray sweatshirt," which led him to believe the same men robbed both stores. Lt. Cestare also viewed the surveillance from the Sunhouse #1 crime scene and believed he had "seen that same clothing attire in that store, not during the commission of the robbery, but earlier on in that store."

While watching the video from the Sunhouse #1, Lt. Cestare saw "a vehicle of interest" and "a couple of subjects of interest." He testified that approximately twenty-two minutes prior to the robbery, "a subject was in that store, oddly enough, wearing red pants and a . . . dark color gray . . . hooded sweatshirt," similar to the clothing in the footage from the Sunhouse #2 and Scotchman. Lt. Cestare also saw a car, which he believed to be a silver Chevy Malibu, arrive at both the Sunhouse #1 and Sunhouse #2 prior to the robberies.

Tyler Jennings Luther, a South Carolina Highway Patrol accident reconstructionist and member of the Multidisciplinary Accident Investigation Team (MAIT team), viewed the videos from the Sunhouse #1 and Sunhouse #2 and advised the HCPD that the vehicle in both videos was a 2008 to 2012 Chevrolet Malibu.

The South Carolina Law Enforcement Division (SLED) generated a list of Malibu owners in the area and connected the same firearm to all three casings recovered from the Sunhouse #1. SLED further determined the same firearm was used to fire the two casings recovered from the Sunhouse #2. SLED ultimately concluded all five casings were ejected from the same weapon. Although there was no gun to use for comparison, a SLED firearms specialist opined the cartridges were most likely fired by a Hi-Point weapon.

After developing Daniels as a suspect and learning his girlfriend, LaShania Chestnut, drove a silver Malibu, officers went to Chestnut's home to interview Daniels. Upon arrival, officers saw the Malibu; thus, they obtained a search warrant and seized the vehicle.[2] Daniels and Chestnut agreed to accompany officers to the west precinct in Green Sea for interviews, and the two rode in separate unmarked cars to the substation. The two were not handcuffed during the ride, and no officer advised Daniels of his *Miranda*[3] rights prior to his initial interview. Instead, HCPD Senior Detective Greg Lent waited until "it became apparent . . . that there was most likely further information that [Daniels] was going to provide that . . . would cause [an officer] to place him under arrest." Approximately thirty minutes into the interview, Detective Lent advised Daniels of his *Miranda* rights; Daniels subsequently identified Brother[4] and Jenkins[5] as the men who robbed all three stores.[6] Following Daniels's arrest, Detective Lent questioned him again the following day at the Horry County Detention Center.

The Horry County grand jury indicted Daniels on two counts of armed robbery and murder. At Daniels's trial, the jury found Daniels guilty as indicted, and the circuit court sentenced him to life imprisonment without the possibility of parole.

---

[2] A search of the Malibu revealed "red, white and black headgear attire," which an officer described as similar to that worn by one of the men in the armed robberies. Law enforcement also recovered a blue bandana similar to that worn by one of the perpetrators.

[3] *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

[4] During a search of Daniels and Brother's home, officers seized a black hooded sweatshirt with a tear under one shoulder that can be seen in the surveillance videos from two of the robberies. Officers also seized a pair of Nike Air high-tops with neon green soles—again, visible in one of the robbery videos.

[5] A search warrant executed at Jenkins's home revealed the same athletic shoes worn by Jenkins during the robberies—Nike low-tops with a silver emblem.

[6] Jenkins was convicted of murder and armed robbery and sentenced to death. *See State v. Jenkins*, 436 S.C. 362, 872 S.E.2d 620 (2022). Brother pled guilty to murder and armed robbery. The circuit court sentenced Brother to forty-five years for the murder and thirty years for armed robbery.

Standard of Review

"In criminal cases, appellate courts are bound by fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law." *State v. Asbury*, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997). "Appellate review of whether a person is in custody is confined to a determination of whether the ruling by the trial judge is supported by the record." *State v. Evans*, 354 S.C. 579, 583, 582 S.E.2d 407, 409 (2003). The appellate court will reverse a trial court's ruling on the voluntariness of a confession only when the ruling is "so erroneous as to constitute an abuse of discretion." *State v. Myers*, 359 S.C. 40, 47, 596 S.E.2d 488, 491 (2004).

Law and Analysis

Daniels argues the circuit court erred in admitting into evidence his interviews with law enforcement because the interrogating officers used an unconstitutional "question-first" tactic to elicit incriminating statements in his initial interview, rendering any subsequent waiver of his *Miranda* rights involuntary. We disagree.

Pretrial, defense counsel moved to exclude Daniels's police interviews, and the circuit court held an in camera hearing. Detective Lent testified Daniels was identified by another police officer as a person "inside the store prior to one of the armed robberies." The surveillance videos from the crime scenes enabled officers to identify the car Daniels drove; on the night of the first robbery and murder, the Malibu passed by the Sunhouse #1 several times and then left the scene "at a decent rate of speed and running through a red light." Once officers identified the Malibu, Detective Lent and several other detectives went to Chestnut's home in unmarked cars.

Upon their arrival around 8:00 p.m. on February 5, 2015, the officers saw a car in Chestnut's yard that "looked to be the same vehicle" seen in the videos. Because Daniels was at work, officers initially spoke to Chestnut, who told them that although she owned the vehicle, Daniels "had control and would use her car." When Chestnut's mother called Daniels at work and told him police officers were there questioning his pregnant girlfriend, Daniels left his work site and came to Chestnut's house. By the time Daniels arrived, Chestnut was seated in a police car.

Detective Lent then asked if the couple would come to the police precinct in Green Sea to speak with investigators. Detective Lent testified Daniels and Chestnut were not under arrest, were not in custody, and voluntarily agreed to accompany officers to the substation. Officers drove the two, uncuffed, in separate unmarked cars. At the conclusion of his direct examination testimony, Detective Lent stated:

> If [Daniels] would've asked—if he would've told us he didn't wish to speak with us and would've asked to [be] taken home or had told us that he did not wish to go to the west precinct to speak with us, we … would not've spoken to him or we would've driven him home.

At approximately 9:45 p.m. that evening at the Green Sea precinct, which shares space with the magistrate's office, Daniels met with officers in one room while Chestnut met with others in a separate office. Detective Lent, accompanied by another officer, then interviewed Daniels for thirty-one minutes prior to advising him of his *Miranda* rights. During that pre-*Miranda* time, Detective Lent questioned Daniels about his work schedule, contact information, the circumstances of his car being in the repair shop, and his whereabouts on certain days and nights in January.

Detective Lent testified he questioned Daniels about his work schedule because he "wanted to find out . . . if he had access to [Chestnut's] car, if he was even in the area or around, or would've been able to have been free on the dates when these crimes [were] committed." Daniels's answers led Detective Lent to believe Daniels "would've been off work at the time these crimes were committed, and that he . . . would've had access to [Chestnut]'s vehicle at the times those crimes were committed." Detective Lent noted Daniels's "body language and just his demeanor during the course of the interview" led Detective Lent to believe that if he continued to speak to Daniels, "there was a possibility other information would end up coming out, that he was possibly involved." Thus, at that point in the interview, Detective Lent told Daniels "we need to talk about that store that night" and advised Daniels of his *Miranda* rights.

Detective Lent explained he verbally advised Daniels rather than using the written warning and waiver because he "wanted to make things as smooth as possible . . . and [he] knew [another officer] was recording the interview so it would be memorialized." Following the advisement of rights, Detective Lent and

another officer continued the interview for approximately an hour before arresting Daniels.

The following day, Detective Lent again interviewed Daniels, this time at the jail. According to Detective Lent, "[t]here was another individual who was stating that somebody else had possibly been at [Sunhouse #2]." Detective Lent spoke with Daniels again "to clear up or just to confirm" what Daniels told him "in the original statement."

Relying upon *Missouri v. Seibert*, 542 U.S. 600 (2004) (plurality opinion) and *State v. Navy*, 386 S.C. 294, 688 S.E.2d 638 (2010), Daniels moved to exclude all of his statements to law enforcement because one-third of his initial interview was conducted prior to any officer advising him of his *Miranda* rights. Daniels argued that under the totality of the circumstances, he was in custody during the entirety of the first interview; he noted the heavy law enforcement presence at Chestnut's home and at the precinct, the fact that he was not permitted to drive himself to the precinct, and Chestnut's separate transport and interrogation all demonstrated he was not free to leave at any point during the initial interview. Daniels also challenged Detective Lent's claim that the police would have permitted Daniels to leave had he asked.

In support of his motion to exclude the statements, Daniels demonstrated that during the first interview, Detective Lent pinned down important incriminating information, such as Daniels's work schedule, his access to and use of Chestnut's car during the relevant time periods, and his presence at the Sunhouse #1 on the day of the robbery. Only after obtaining this information did Detective Lent advise Daniels of his rights to remain silent and to an attorney. Daniels conceded nothing in the record indicates Detective Lent knew from the moment he started the questioning that Daniels was the scout for the armed robberies. However, he asserted, "I don't think that there's any doubt that that's what they thought from the way the questions are . . . when you read the way the questions come in the second part of that first statement, you see how [Detective Lent] boxes [Daniels] in from the information at the beginning" of the interview.

Daniels noted Detective Lent's failure to obtain a written waiver despite being in a police substation where such documents are readily available. Moreover, Daniels

asserts Detective Lent never obtained his verbal or nonverbal assent that he understood his rights as Detective Lent recited them to him.[7]

Addressing the *Seibert* factors,[8] Daniels argued "the timing and setting of the first questioning" were "exactly the same," as were the personnel. Additionally, the detectives treated the second round of questioning as a continuation of the first. Finally, Daniels argued *Miranda* required suppression of his subsequent statement at the jail because it was tainted by the initial interrogation conducted without warnings through the improper question-first tactic.

In response to Daniels's challenge, the State referenced Daniels's voluntary appearance at Chestnut's home after Chestnut's mother called to alert him to the presence of police officers at the house. As to the voluntariness of his February 5 initial statement, the State noted Daniels was free to leave "but he never did." Regarding the timing of the *Miranda* warnings, the State argued "it was an absolute textbook example of when a detective realizes that he'd better stop asking questions and *Mirandize* this person when he felt as if it was getting into an area that may be a concern." Addressing the question-first tactic, the State contends Daniels made no incriminating statements pre-*Miranda*:

> He absolutely says that I went in and bought a soda. He doesn't have a mask on, no crime has been committed, putting himself in a place buying a soda in an area where he lives; there's nothing incriminating about it.

---

[7] Detective Lent was subsequently recalled and testified that during the advisement of rights, Daniels "was nodding and agreeing, yes, I understand, I understand. He nodded throughout the entire reading of *Miranda*."

[8] A court weighs four factors in considering whether a *Seibert* violation has occurred: "1) the completeness and detail of the question[s] and answers in the first round of interrogation; 2) the timing and setting of the first questioning and the second; 3) the continuity of police personnel; and 4) the degree to which the interrogator's questions treated the second round as continuous with the first." *Navy*, 386 S.C. at 302, 688 S.E.2d 838, 841–42.

> As it relates to the details and the completeness of the first statement, [Detective Lent] spent 15 pages talking about [Daniels's] work schedule and never got anything incriminating, not even an admission of any kind beyond historical information concerning work.

Although the continuity of police personnel was the same, the State argued the timing of the subsequent jail interview demonstrates this was not a continuous statement as there was a clear break between the pre- and post-*Miranda* interviews.

After hearing the evidence and arguments of counsel, the circuit court found: when law enforcement arrived at Chestnut's home, the only information they had was that Daniels was at the Sunhouse #1 prior to the armed robbery and Chestnut drove a silver Chevy Malibu; Daniels voluntarily came to Chestnut's house from work, knowing the police were there; Daniels and Chestnut both agreed to accompany officers for questioning; there was no evidence either Daniels or Chestnut was under arrest; and because Daniels did not confess to committing any criminal act during the pre-*Miranda* portion of the interview, his statements were admissible.

Ultimately, the circuit court concluded Daniels was "given the appropriate *Miranda* warnings," and based on the additional testimony from Detective Lent, Daniels "agrees and goes along with [the interview] after acknowledgment of his constitutional rights with the decision to continue to talk to law enforcement." Thus, the circuit court found no violation of either *Miranda* or *Seibert*. The circuit court held the totality of the circumstances demonstrated Daniels was not in custody for the first thirty-one minutes of the interview, detailing its findings that Daniels was at a police precinct rather than headquarters or the jail, was not handcuffed, was not forced to accompany the officers, and suffered no denial of creature comforts, no threats, and no intimidation. Finally, the circuit court found Daniels made his interview statements freely, voluntarily, knowingly, and intelligently after he was advised of and waived his constitutional rights.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession and even though there is ample evidence aside from the confession to support the conviction." *Jackson v. Denno*, 378 U.S. 368, 376 (1964) (citation omitted). *Miranda* mandates "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from

custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." 384 U.S. at 444. The United States Supreme Court has defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* A defendant "may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently." *Id.*

In *Oregon v. Mathiason*, 429 U.S. 492, 494 (1977), the Supreme Court considered *Miranda* in the context of a station-house interview of a suspect who voluntarily participated in the interview and met police at the station for that purpose. Finding Mathiason was not in custody for purposes of *Miranda*, the Court stated:

> [T]here is no indication that the questioning took place in a context where respondent's freedom to depart was restricted in any way. He came voluntarily to the police station, where he was immediately informed that he was not under arrest. At the close of a ½-hour interview[,] respondent did in fact leave the police station without hindrance. It is clear from these facts that Mathiason was not in custody "or otherwise deprived of his freedom of action in any significant way."

Id. at 495. The Court reaffirmed *Mathiason* in *California v. Beheler*, 463 U.S. 1121, 1124–25 (1983), explaining, "Although the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Id.* at 1125 (quoting *Mathiason*, 429 U.S. at 495).

"*Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300–01 (1980). "[T]he definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response." *Id.* at 302. Two discrete

inquiries are essential to the ultimate "in custody" determination for *Miranda* purposes: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

In *Evans*, the defendant went to the police station accompanied by her family after her three children perished in a mobile home fire. 354 S.C. at 581, 582 S.E.2d at 408. Two police officers took the defendant "into a back office to take her statement" but did not advise her of her *Miranda* rights. *Id.* at 581, 582 S.E.2d at 409. The officers, who knew the fire they were investigating was started with an accelerant, told Evans they did not believe her story regarding the fire. *Id.* at 581, 582 S.E.2d at 408–09. Evans was "shaking, sobbing, and very nervous" when the two male police officers left the room and sent in a female SLED agent, who used a sympathy tactic with her. *Id.* The two women were in the room for at least forty-five minutes until Evans went to the bathroom; the SLED agent followed and waited for Evans outside the bathroom door. *Id.* at 582, 582 S.E.2d at 409. Evans eventually confessed to setting the deadly fire. *Id*.

Our supreme court found Evans was in custody even though she was not formally arrested until after giving her statement. *Id.* at 584, 582 S.E.2d at 410. The court explained, "To determine whether a suspect is in custody, the trial court must examine the totality of the circumstances, which include factors such as the place, purpose, and length of interrogation, as well as whether the suspect was free to leave the place of questioning." *Id*. When analyzing whether the defendant was free to leave, the court emphasized the fact that the SLED agent accompanied the defendant to the restroom and waited outside the door. *Id.* The court was also persuaded the defendant was in custody because she was interviewed in a back office in the police station, her cousin was not allowed to go into the interview room, and the interview lasted three hours. *Id.* The court concluded the officers' purpose for the interview changed from routine inquiry to the questioning of a suspect when the female officer entered the interrogation room. *Id.*

In *Seibert*, the defendant's twelve-year-old son, Jonathan, died in his sleep. 542 U.S. at 604. Seibert feared charges of neglect because Jonathan, who was born with cerebral palsy, had bedsores. *Id.* In Seibert's presence, two of her teenage sons and two of their friends devised a plan to incinerate Jonathan's body in the course of burning the family's mobile home, in which they planned to leave Donald

Rector, a mentally ill teenager living with the family, to avoid any appearance that Jonathan had been left unattended. *Id.* Seibert's son Darian and a friend set the fire, and Donald died. *Id.*

Five days later, the police awakened Seibert at 3:00 a.m. at the hospital where Darian was being treated for burns. *Id.* Following instructions from another officer, the arresting officer initially refrained from giving Seibert *Miranda* warnings. *Id.* After Seibert was transported to the police station and left alone in an interview room for fifteen to twenty minutes, the officer questioned her for thirty to forty minutes, squeezing her arm, and repeating "Donald was also to die in his sleep." *Id.* at 604–05. After Seibert admitted she knew Donald was meant to die in the fire, the officer permitted Seibert a twenty-minute break. *Id.* at 105. He then turned on a tape recorder, *Mirandized* Seibert, and had her sign a waiver of rights. *Id.* The questioning resumed, and the officer confronted Seibert with her pre-*Miranda* statements. *Id.* Again, the officer obtained the answer he wanted—Seibert knew Donald would die in the fire. *Id*.

The trial court suppressed the pre-*Miranda* statement but admitted the discussion that occurred post-*Miranda*. *Id.* at 606. On appeal from her conviction of second-degree murder, the Missouri Court of Appeals affirmed. *Id.* The Supreme Court of Missouri reversed, holding, "[i]n the circumstances here, where the interrogation was nearly continuous, . . . the second statement, clearly the product of the invalid first statement, should have been suppressed." *Id.* (quoting *Missouri v. Siebert*, 93 S.W.3d 700, 701 (2002) (en banc)). The court reasoned the arresting officer's purposeful omission of *Miranda* "was intended to deprive Seibert of the opportunity knowingly and intelligently to waive her *Miranda* rights." *Id.* (quoting *Siebert,* 93 S.W.3d at 706). "Since there were 'no circumstances that would seem to dispel the effect of the *Miranda* violation,' the court held that the postwarning confession was involuntary and therefore inadmissible." *Id.* "To allow the police to achieve an 'end run' around *Miranda*," would encourage *Miranda* violations and diminish *Miranda*'s role in protecting the privilege against self-incrimination. *Id*.

The United States Supreme Court affirmed the reversal, explaining "[t]he object of question-first is to render *Miranda* warnings ineffective by waiting for a particularly opportune time to give them, after the suspect has already confessed." *Id.* at 611. The "threshold issue when interrogators question first and warn later is thus whether it would be reasonable to find that in these circumstances the

warnings could function 'effectively' as *Miranda* requires." *Id.* at 611–12. The Court held "when *Miranda* warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to mislead and 'deprive a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.'" *Id.* at 613–14 (quoting *Moran v. Burbine*, 475 U.S. 421, 424 (1986)). In finding Seibert's post-*Miranda* statements inadmissible, the Court explained "[t]he unwarned interrogation was conducted in the station house, and the questioning was systematic, exhaustive, and managed with psychological skill. When the police were finished there was little, if anything, of incriminating potential left unsaid." *Id.* at 616–17.

However, the Supreme Court distinguished *Seibert* in *Bobby v. Dixon*, 565 U.S. 23 (2011), noting:

> 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 a 15- to 20-minute break, gave Seibert *Miranda* warnings and led her to repeat her prior confession. 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 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." *Seibert*, 542 U.S. at 613. Justice KENNEDY concurred in the judgment, noting he "would apply a narrower test applicable only in the infrequent case . . . in which the two-step interrogation technique was used in a calculated way to undermine the *Miranda* warning."
>
> In this case, no two-step interrogation technique of the type that concerned the Court in *Seibert* undermined the *Miranda* warnings Dixon received. In *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 what had been said before." *Id.* at 616–17. But in this case Dixon steadfastly maintained during his first, unwarned interrogation that he had "[n]othing whatsoever" to do with Hammer's disappearance. 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.

Id. at 30–31 (alterations by Court).

Here, there is no dispute that Daniels participated in the initial thirty-one minutes of questioning without the benefit of *Miranda* warnings. While our inquiry focuses on whether Daniels was in custody when initially questioned, the State persuasively argues the content of Daniels's initial statements, specifically the lack of any confession, is pertinent to the inquiry.

Detective Lent's questioning of Daniels during the first thirty minutes was conversational in nature and officers offered Daniels food and a drink. He initially questioned Daniels about his own vehicle; Daniels responded that his car was not working in January 2015, so he used Chestnut's car during that time period. While Daniels admitted to having access to a car matching the vehicle in the surveillance videos, law enforcement already knew this from their earlier discussions with Chestnut.

Next, Detective Lent questioned Daniels about his work schedule, and Daniels told him which days and times he worked during the month of January. Detective Lent testified he questioned Daniels about his work schedule because he "wanted to find out . . . if he had access to the car, if he was even in the area or around, or would've been able to have been free on the dates when these crimes had been committed." Daniels's answers led Detective Lent to believe Daniels "would've been off work at the time these crimes were committed, and that he . . . would've had access to Ms. Chestnut's vehicle at the times those crimes were committed."

Finally, Detective Lent questioned Daniels about his whereabouts and conduct on the day of the armed robbery and murder at the Sunhouse #1. When Daniels told

Detective Lent that he and Brother bought a soda at the Sunhouse #1 on January 2, 2015—a fact detectives already knew from the surveillance footage—Detective Lent told Daniels they needed to have a "serious talk" because he did not know if Daniels would tell him there "was a dead midget buried in the backyard" or something similarly incriminating. Detective Lent said he was "afraid of what would come out" and people sometimes say "off-the-wall and crazy stuff," thus, he advised Daniels of his *Miranda* rights to "cover" any incriminating statements Daniels might make.

Our supreme court addressed *Seibert* and the improper two-step interview technique in *Navy*, 386 S.C. 294, 688 S.E.2d 838. After the death of Navy's toddler son, Navy gave a statement at the hospital but because he was so upset and distraught, it was thought to be incomplete. *Id.* at 297, 688 S.E.2d at 839. The following day, after learning the child's cause of death was smothering or suffocation, officers went to Navy's home to transport him to the sheriff's office for further questioning. *Id.* There, Navy gave a statement at 9:50 a.m., in which he described his panic after noticing the child was having breathing problems. *Id.* at 297–98, 688 S.E.2d at 839.

After Navy gave this statement, police officers informed him that the child had suffocated and noted the toddler's previously broken ribs. *Id.* at 298, 688 S.E.2d at 840. Navy asked if he was under arrest and was told, "No, we are just trying to get some answers." *Id.* "At this juncture, the nature of the interrogation and [Navy]'s status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation." *Id.* "In response to these follow-up questions, [Navy] told the officers he had 'popped' the child on the back rather than simply patted him, and that he may have 'patted' the child on [his] mouth to stop the crying." *Id.* at 298–99, 688 S.E.2d at 840. Navy received a smoke break, and officers decided "it was now appropriate to give [Navy] *Miranda* warnings and administered them to [him] at 11:35 am." *Id.*

Navy then gave his second statement—this time in writing. *Id.* This statement mirrored the first; however, Navy also admitted to (1) placing his hand over the child's mouth multiple times to stop the child's crying, (2) possibly covering the child's nose as well, (3) "popping" the child on the back, causing the child to cry out "real loud," and (4) feeling frustrated by the child's crying. *Id.* at 299–300, 688 S.E.2d at 840. Following this statement, officers contacted the pathologist who conducted the autopsy to ask whether the actions Navy disclosed in his second

statement "could have caused" the child's death. *Id.* at 300, 688 S.E.2d at 840. The pathologist advised such could not have caused the child's death as Navy would have had to cover the child's nose and mouth for at least a minute. *Id.* Officers then obtained a third statement from Navy, also in writing, at 12:25 pm. *Id.* In that statement, Navy admitted he could have held his hand over the child's nose and mouth for "a minute, not more than two minutes." *Id.* at 300, 688 S.E.2d at 840–41.

The circuit court admitted all three statements, finding Navy "was not in custody, was not significantly deprived of his freedom, and that the first statement was voluntary and no *Miranda* [warnings] were required." *Id.* at 301, 688 S.E.2d at 841. As to the second and third statements, the circuit court found the statements were freely and voluntarily made after Navy had been given the proper *Miranda* warnings. *Id.* On appeal, this court reversed, finding none of the three statements should have been admitted. *Id.* As to the first statement, our supreme court disagreed, determining "it is debatable whether a reasonable person would have believed himself to be in custody at the time the first statement was given, and thus the trial court's finding that respondent was not in custody should have been upheld as it is supported by the record." *Id.* The supreme court agreed the second and third statements should have been suppressed because they were obtained in violation of the rule announced in *Seibert*. *Id.* at 302, 688 S.E.2d at 841.

More recently, this court reversed a conviction when the trial court erroneously admitted the defendant's statement based upon investigators' improper use of a question-first tactic in obtaining a confession. *See State v. Hill*, 425 S.C. 374, 822 S.E.2d 344 (Ct. App. 2018). There, when police officers arrived at the scene where an individual had died, they determined Hill, who was also present, was too intoxicated to be questioned. *Id.* at 377, 822 S.E.2d at 346. The following day, officers learned the decedent had died as a result of blunt force trauma caused by an object such as a broom handle or cane. *Id.* Because the officers remembered Hill walked with a cane, they returned to question him. *Id.* Hill agreed to accompany the officers to the law enforcement center for questioning once they promised to drive him back home. *Id.* at 378, 822 S.E.2d at 346. Hill met with officers in "a common work area," which was "furnished with six desks and numerous chairs." *Id.* "Hill had not been handcuffed or advised he was in (or not in) custody." *Id.* The police questioned Hill regarding the victim's death, but Hill did not provide any incriminating information. *Id.* at 378, 822 S.E.2d at 346–47. After conferring, one officer asked Hill a direct question about his television; Hill

responded that the victim tried to steal his television and that Hill "tapped him twice" as a result. *Id.* at 378, 822 S.E.2d at 347.

Thereafter, the officers took Hill, "whose sobriety was questionable," across the hall to an interview room, where Hill "initialed but did not sign a set of warnings printed on a Waiver of Rights form." *Id.* at 379, 822 S.E.2d at 347. Although Hill stated the officers told him he could not go home, an officer countered that Hill was told the police could not make that decision until they found out what he had to say. *Id.* The officers advised Hill they "could not talk any further with him about what happened unless he signed the form, but the statement they wanted from him was 'no more than what [he] already said.'" *Id.* Further, the officers indicated Hill would not be "signing his rights away"; rather, he would be "'waiving' them by 'setting them aside.'" *Id.* Ultimately, the officers interrogated Hill without requiring him to sign the waiver. *Id.* "At the [i]nvestigators' prodding, Hill confessed he hit [the victim] numerous times with his cane when he caught [the victim] trying to steal his television." *Id.*

On appeal, Hill challenged the admissibility of his first statement that he "tapped" the victim twice and his second statement that he caned the decedent numerous times. *Id.* at 380, 822 S.E.2d at 347. This court explained the admissibility of the first statement turned on whether Hill was in custody, which would require an advisement of his rights. *Id.* at 380, 822 S.E.2d at 348. The question presented required the court to determine "if a reasonable-person—faced with the same circumstances confronting Hill—would have felt free to leave." *Id.* at 380–81, 822 S.E.2d at 348. After examining "the time, place, purpose, and length of the questioning," as well as "the use or absence of physical restraints, the statements made by police, and whether the defendant was released at the end of the encounter," this court concluded Hill was in custody when he told officers he "tapped" the victim twice with his cane. *Id.* at 383, 822 S.E.2d at 349.

Turning to the admissibility of Hill's statement after he was advised of his *Miranda* rights, this court noted the first and second interrogations were similar as they involved the same police officers, occurred in a room just across the hall from the room where the first interrogation occurred, and the officers treated the interrogations as continuous. *Id.* at 383–84, 822 S.E.2d at 349–50. In this instance, the court could not "suspend reality and find the *Miranda* warnings effective at the late stage they were given." *Id.* While the court did not find the investigators "set out to skirt *Miranda*," the court characterized the interrogations

as "a calculated investigatory interview structured by veteran homicide investigators who at times pitched Hill doubletalk." *Id.* at 384–85, 822 S.E.2d at 350. Thus, the court found Hill's second statement to law enforcement was inadmissible. *Id.* at 385, 822 S.E.2d at 350.

Regarding Daniels's first statement, as our supreme court found in *Navy*, "it is debatable whether a reasonable person would have believed himself to be in custody at the time the first statement was given." 368 S.C. at 301, 688 S.E.2d at 841. Accordingly, the circuit court's finding that Daniels was not in custody should be "upheld as it is supported by the record." *Id*. Daniels was asked—not required—to ride to the substation with police officers for questioning; he was questioned in an office and did not ask to leave; he was offered creature comforts; and the initial pre-*Miranda* questioning lasted only about half an hour. *See Evans*, 354 S.C. at 583, 582 S.E.2d at 410 ("To determine whether a suspect is in custody, the trial court must examine the totality of the circumstances, which include factors such as the place, purpose, and length of interrogation, as well as whether the suspect was free to leave the place of questioning.").

Detective Lent testified Daniels was not in custody upon his arrival at the precinct. As in *Hill*, we find it difficult to characterize law enforcement's asking an individual to come to the station as a true invitation. However, nothing in the record contradicts Detective Lent's testimony that Daniels voluntarily accompanied officers to the precinct and that had he asked to leave, officers would have let him go. Daniels chose to leave his job and go to Chestnut's house when he learned the police were there, and neither Daniels nor Chestnut was handcuffed during the ride. These circumstances support the circuit court's finding that Daniels was not in custody during the initial thirty-minute portion of the interview.

As to the *Seibert* factors, the "timing and setting" as well as the personnel from the initial questioning on February 5, 2015, were "exactly the same," as in the post-*Miranda* round of questioning that evening. Additionally, the record shows the detectives treated the second round of questioning as a continuation of the first; there was not even a quick break following the verbal *Miranda* warnings and the line of questioning piggybacking on the initial inquiries.

However, the *Seibert* factor addressing "the completeness and detail of the question[s] and answers in the first round of interrogation" is absent here. At oral argument before this court, Daniels acknowledged as much but argued "a full

blown confession" is not needed to satisfy this factor. This is a legitimate argument, but the rationale behind the Court's ruling in *Seibert*—that a person who has confessed and is only informed of his *Miranda* rights before being asked to repeat what he has already said has received no effective advisement—is inapplicable here because Daniels gave no pre-*Miranda* confession, and Detective Lent did not seek one. *See, e.g.*, *Dixon*, 565 U.S. at 31 ("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."). When it became apparent Daniels might make an admission of guilt, Detective Lent stopped the interview and read him his rights.[9]

It was only after he was given *Miranda* warnings that Daniels admitted his involvement in the string of convenience store armed robberies. Significantly, there is no indication that once the interrogation became custodial, Daniels's statements were involuntary or that the conditions under which he made the statements were unconstitutionally coercive.

Although Daniels correctly notes Detective Lent failed to execute the standard written advisement of *Miranda* rights, the warnings are clear on the interview audio, and nothing suggests Daniels either misunderstood or did not hear the advisement. We acknowledge Daniels gave no audible assent during Detective Lent's recounting of the *Miranda* rights; however, immediately following the advisement when Lent asked Daniels if he had any questions about those rights and whether Daniels had been at work and had not been drinking, Daniels responded verbally. The tone of the remainder of the interview is conversational, the whole interview lasted approximately an hour and a half, and Daniels was neither threatened nor deprived of food, drink, or sleep. Notably, Daniels told the officers he wanted to come forward earlier, but he was scared of Brother and could not let anything happen to his family.

The following day at the jail, Detective Lent re-advised Daniels of his *Miranda* rights, and Daniels again agreed to speak with him. This nineteen-minute interview was also audio-recorded, and—as with the evening interview at the precinct—evidence supports the circuit court's finding that Daniels's statements were knowingly and voluntarily made.

---

[9] This was a dangerous gamble, but under the unique circumstances of this case, the tactics here did not cross the constitutional line.

Conclusion

For the foregoing reasons, Daniels's convictions for armed robbery and murder are

AFFIRMED.

KONDUROS J., concurs.

GEATHERS, J., concurring in result in a separate opinion.

GEATHERS, J.: I concur with the majority's conclusion that *Seibert* did not require the exclusion of the statements given by Daniels after Detective Lent provided *Miranda* warnings to him. To be sure, Detective Lent elicited some incriminating admissions from Daniels during the first round of questioning. However, the second and third rounds produced much more information about the crime spree, including Daniels's damning confession that he saw Jenkins carrying a cash drawer at the end of the first robbery, indicating Daniels's knowing participation from that point forward, if not before. Because Daniels's statements in the second and third rounds constituted much more than a mere product of the first round, I do not believe a new trial is warranted. I merely point out that the statement given by Daniels prior to receiving *Miranda* warnings should have been excluded from evidence because it was the product of a custodial interrogation.[10]

Under all of the surrounding circumstances, a reasonable person would not have felt free to leave the office in which Detective Lent questioned Daniels.[11] Daniels arrived home from work to find his pregnant girlfriend, LaShania Chestnut, speaking with officers while sitting in one of several unmarked police cars at the residence. When Detective Lent asked Daniels if he would be willing to speak

---

[10] *See Missouri v. Seibert*, 542 U.S. 600, 608 (2004) (holding that the failure to give *Miranda* warnings "before custodial questioning generally requires exclusion of any statements obtained").

[11] *See State v. Hill*, 425 S.C. 374, 381, 822 S.E.2d 344, 348 (Ct. App. 2018) (holding that in determining whether a person is in custody during a police interrogation, the court's "inquiry is objective, centering on whether one in [the suspect's] position would have believed he was free to stop the questioning and depart").

with him at the police substation, Daniels agreed to do so. However, he was not allowed to drive his Grand Prix to the substation, despite the willingness to cooperate he showed by appearing at the residence soon after he was notified that officers were there questioning Chestnut. Rather, officers required Daniels and Chestnut to ride in separate police cars.[12] Once they arrived at the substation, Daniels and Chestnut were taken to separate offices. Detective Lent met with Daniels at approximately 9:45 p.m. and interviewed him for over thirty minutes before advising him of his *Miranda* rights.

Based on the foregoing, I believe the record contradicts the circuit court's finding that Daniels was not in custody.[13] Further, Detective Lent's questioning during this thirty-minute period was not only reasonably likely to elicit an incriminating response, it was specifically designed for this purpose.[14]

> By "incriminating response[,]" we refer to *any response—whether inculpatory or exculpatory—that the prosecution may seek to introduce at trial*. As the Court observed in *Miranda*: "No distinction can be drawn between statements which are direct confessions and statements which amount to 'admissions' of part or all of an offense. The privilege against self-incrimination protects the individual from being compelled to incriminate himself *in any manner*; it does not distinguish degrees of incrimination."

---

[12] *See id.* ("[I]f the 'invitation' [to the police station] is conditioned on the police escorting the defendant to the station, 'a finding of custody is much more likely.'" (quoting 2 LaFave, et al., *Criminal Procedure* § 6.6(d) (4th ed. 2017)).

[13] *See id.* at 380, 822 S.E.2d at 348 ("We review a trial court's custody ruling to determine if it is supported by the record.").

[14] *See Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) ("[T]he term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." (footnote omitted)).

Rhode Island v. Innis, 446 U.S. 291, 301 n.5 (1980) (emphases added) (quoting *Miranda v. Arizona*, 384 U.S. 436, 476 (1966)).

Detective Lent started his questioning by asking Daniels if he had any idea why officers had asked him to talk with them. When Daniels said he had no idea, Detective Lent expressed incredulity and then explained that he was interested in Chestnut's car and Daniels's own car. From his earlier discussions with Chestnut, Detective Lent already knew that Daniels had access to Chestnut's car in January 2015. Detective Lent was also aware prior to his interview with Daniels that Chestnut's car matched the car in the surveillance videos. Therefore, at the very least, Detective Lent should have known that questioning Daniels about Chestnut's car and Daniels's own car was reasonably likely to elicit an incriminating response, i.e., that around the time of the robberies in question, Daniels had access to a car matching the car in the surveillance video.

Next, to nail down the precise days that Daniels was available to participate in the robberies, Detective Lent questioned Daniels about his work schedule during January 2015 and asked him to mark a desk calendar to indicate which days he had worked. Not only should Detective Lent have known that these questions were likely to elicit an incriminating response—i.e., Daniels had no workplace alibi and was available to participate in the robberies—he was counting on it. Detective Lent testified,

> [O]ne of the first things I wanted to find out was if he had access to the car, if he was even in the area or around, or [would have] been able to have been free on the dates when these crimes had been committed. So, we start speaking about some things, some of which were his work schedule and times that he would work.

Detective Lent then questioned Daniels concerning his whereabouts and conduct on the day of the armed robbery and murder at the Sunhouse #1. Detective Lent already knew from the surveillance video that Daniels bought a soda in the store prior to the robbery. Therefore, Detective Lent would have known that the questions about Daniels's whereabouts on the day in question were likely to elicit an incriminating response, i.e., that, consistent with the activity of a scout, Daniels bought a soda at the Sunhouse #1 just prior to the robbery. Yet, it was not until

after Daniels made this admission that Detective Lent advised Daniels of his *Miranda* rights.

In sum, I believe Daniels's first statement should have been excluded from evidence. Nonetheless, I do not believe a new trial is warranted because Daniels's statements in the second and third rounds of questioning constituted much more than a mere product of the first round.