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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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MISSOURI *v.* SEIBERT

CERTIORARI TO THE SUPREME COURT OF MISSOURI

No. 02–1371. Argued December 9, 2003—Decided June 28, 2004

Respondent Seibert feared charges of neglect when her son, afflicted with cerebral palsy, died in his sleep. She was present when two of her sons and their friends discussed burning her family's mobile home to conceal the circumstances of her son's death. Donald, an unrelated mentally ill 18-year-old living with the family, was left to die in the fire, in order to avoid the appearance that Seibert's son had been unattended. Five days later, the police arrested Seibert, but did not read her her rights under *Miranda* v. *Arizona,* 384 U. S. 436. At the police station, Officer Hanrahan questioned her for 30 to 40 minutes, obtaining a confession that the plan was for Donald to die in the fire. He then gave her a 20-minute break, returned to give her *Miranda* warnings, and obtained a signed waiver. He resumed questioning, confronting Seibert with her prewarning statements and getting her to repeat the information. Seibert moved to suppress both her prewarning and postwarning statements. Hanrahan testified that he made a conscious decision to withhold *Miranda* warnings, question first, then give the warnings, and then repeat the question until he got the answer previously given. The District Court suppressed the prewarning statement but admitted the postwarning one, and Seibert was convicted of second-degree murder. The Missouri Court of Appeals affirmed, finding the case indistinguishable from *Oregon* v. *Elstad,* 470 U. S. 298, in which this Court held that a suspect's unwarned inculpatory statement made during a brief exchange at his house did not make a later, fully warned inculpatory statement inadmissible. In reversing, the State Supreme Court held that, because the interrogation was nearly continuous, the second statement, which was clearly the product of the invalid first statement, should be suppressed; and distinguished *Elstad* on the ground that the warnings had not intentionally been withheld there.

Held: The judgment is affirmed.

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93 S. W. 3d 700, affirmed.

JUSTICE SOUTER, joined by JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER, concluded that, because the midstream recitation of warnings after interrogation and unwarned confession in this case could not comply with *Miranda*'s constitutional warning requirement, Seibert's postwarning statements are inadmissible. Pp. 4–15.

(a) Failure to give *Miranda* warnings and obtain a waiver of rights before custodial questioning generally requires exclusion of any statements obtained. Conversely, giving the warnings and getting a waiver generally produces a virtual ticket of admissibility, with most litigation over voluntariness ending with valid waiver finding. This common consequence would not be at all common unless *Miranda* warnings were customarily given under circumstances that reasonably suggest a real choice between talking and not talking. Pp. 4–6.

(b) *Dickerson* v. *United States,* 530 U. S. 428, reaffirmed *Miranda,* holding that *Miranda*'s constitutional character prevailed against a federal statute that sought to restore the old regime of giving no warnings and litigating most statements' voluntariness. The technique of interrogating in successive, unwarned and warned phases raises a new challenge to *Miranda.* Pp. 6–9.

(c) When a confession so obtained is offered and challenged, attention must be paid to the conflicting objects of *Miranda* and the question-first strategy. *Miranda* addressed "interrogation practices . . . likely . . . to disable [an individual] from making a free and rational choice" about speaking, 384 U. S., at 464–465, and held that a suspect must be "adequately and effectively" advised of the choice the Constitution guarantees, *id.,* at 467. Question-first's object, however, is to render *Miranda* warnings ineffective by waiting to give them until after the suspect has already confessed. The threshold question in this situation is whether it would be reasonable to find that the warnings could function "effectively" as *Miranda* requires. There is no doubt about the answer. By any objective measure, it is likely that warnings withheld until after interrogation and confession will be ineffective in preparing a suspect for successive interrogation, close in time and similar in content. The manifest purpose of question-first is to get a confession the suspect would not make if he understood his rights at the outset. When the 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." *Moran* v. *Burbine,* 475 U. S. 412, 424. And it would be unrealistic to treat two spates of integrated and proximately conducted questioning as independent interrogations subject

to independent evaluation simply because *Miranda* warnings formally punctuate them in the middle. Pp. 9–12.

(d) *Elstad* does not authorize admission of a confession repeated under the question-first strategy. The contrast between *Elstad* and this case reveals relevant facts bearing on whether midstream *Miranda* warnings could be effective to accomplish their object: the completeness and detail of the questions and answers to the first round of questioning, the two statements' overlapping content, the timing and setting of the first and second rounds, the continuity of police personnel, and the degree to which the interrogator's questions treated the second round as continuous with the first. In *Elstad,* the station house questioning could sensibly be seen as a distinct experience from a short conversation at home, and thus the *Miranda* warnings could have made sense as presenting a genuine choice whether to follow up on the earlier admission. Here, however, the unwarned interrogation was conducted in the station house, and the questioning was systematic, exhaustive, and managed with psychological skill. The warned phase proceeded after only a 15-to-20 minute pause, in the same place and with the same officer, who did not advise Seibert that her prior statement could not be used against her. These circumstances challenge the comprehensibility and efficacy of the *Miranda* warnings to the point that a reasonable person in the suspect's shoes could not have understood them to convey a message that she retained a choice about continuing to talk. Pp. 12–15.

JUSTICE KENNEDY concluded that when a two-step interrogation technique is used, postwarning statements related to prewarning statements must be excluded unless curative measures are taken before the postwarning statement is made. Not every violation of *Miranda* v. *Arizona,* 384 U. S. 436, requires suppression of the evidence obtained. Admission may be proper when it would further important objectives without compromising *Miranda*'s central concerns. See, *e.g., Harris* v. *New York,* 401 U. S. 222. *Oregon* v. *Elstad,* 470 U. S. 298, reflects a balanced and pragmatic approach to enforcing the *Miranda* warning. An officer may not realize that a suspect is in custody and warnings are required, and may not plan to question the suspect or may be waiting for a more appropriate time. Suppressing postwarning statements under such circumstances would serve "neither the general goal of deterring improper police conduct nor the Fifth Amendment goal of assuring trustworthy evidence." *Elstad, supra,* at 308. In contrast, the technique used in this case distorts *Miranda*'s meaning and furthers no legitimate countervailing interest. The warning was withheld to obscure both the practical and legal significance of the admonition when finally given. That the interrogating officer relied on respondent's prewarning statement to

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obtain the postwarning one used at trial shows the temptations for abuse inherent in the two-step technique. Reference to the prewarning statement was an implicit, and false, suggestion that the mere repetition of the earlier statement was not independently incriminating. The *Miranda* rule would be frustrated were the police permitted to undermine its meaning and effect. However, the plurality's test—that whenever a two-stage interview occurs, the postwarning statement's admissibility depends on whether the midstream warnings could have been effective enough to accomplish their object given the case's specific facts—cuts too broadly. The admissibility of postwarning statements should continue to be governed by *Elstad*'s principles unless the deliberate two-step strategy is employed. Then, the postwarning statements must be excluded unless curative measures are taken before they were made. Such measures should be designed to ensure that a reasonable person in the suspect's situation would understand the import and effect of the *Miranda* warning and waiver. For example, a substantial break in time and circumstances between the prewarning statement and the warning may suffice in most instances, as may an additional warning explaining the likely inadmissibility of the prewarning statement. Because no curative steps were taken in this case, the postwarning statements are inadmissible and the conviction cannot stand. Pp. 1–5.

SOUTER, J., announced the judgment of Court and delivered an opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion. KENNEDY, J., filed an opinion concurring in the judgment. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined.