

11-324-cr
United States v. Williams

1 **UNITED STATES COURT OF APPEALS**
2 **FOR THE SECOND CIRCUIT**

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4
5 August Term, 2011

6
7 (Argued: March 5, 2012

Decided: May 17, 2012)

8
9 Docket No. 11-324-cr

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13 UNITED STATES OF AMERICA,

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15 *Appellant-Cross-Appellee,*

16
17 v.

18
19 ROBERT STEVEN BRODIE WILLIAMS,

20
21 *Defendant-Appellee-Cross-Appellant.*

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24
25 Before: McLAUGHLIN, B.D. PARKER, WESLEY, *Circuit Judges.*

26
27 Appeal from an order of the United States District Court for the Southern District of New
28 York (Gardaphe, *J.*) suppressing defendant's station house confession to unlawful dealings in
29 firearms, following waiver of his *Miranda* rights. A Government agent had questioned
30 defendant two hours earlier in the apartment where he was arrested without first issuing *Miranda*
31 warnings. The district court suppressed the subsequent confession as the product of a deliberate,
32 two-stage interrogation technique barred by *Missouri v. Seibert*, 542 U.S. 600 (2004).

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34 **REVERSED and REMANDED.**

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12 BARRINGTON D. PARKER, *Circuit Judge:*

13 This appeal arises out of the suppression of defendant Robert Williams’s station house
14 confession to unlawful dealings in firearms.¹ That confession followed an incriminating
15 statement made in response to brief questioning at the apartment where he was arrested earlier
16 that day. The confession followed *Miranda* warnings; the earlier incriminating statement did
17 not. The United States District Court for the Southern District of New York (Gardaphe, *J.*)
18 suppressed the station house confession as the product of a deliberate, two-stage interrogation
19 strategy barred by *Missouri v. Seibert*, 542 U.S. 600 (2004). Relying on this Court’s decision in
20 *United States v. Capers*, 627 F.3d 470 (2d Cir. 2010), the district court reasoned that the
21 admissibility of defendant’s station house confession turned on whether the decision to forego
22 *Miranda* warnings at the apartment was “legally justifiable.” *United States v. Williams*, 758 F.
23 Supp. 2d 287, 310 (S.D.N.Y. 2010). Finding that it was not, the district court suppressed the
24 station house confession. We conclude that the district court’s determination rested on a
25 misapplication of *Capers*. Accordingly, we reverse and remand for further proceedings.

¹ Williams is charged with conspiracy to engage in unlicensed dealing of firearms, *see* 18 U.S.C. §§ 371, 922(a)(1)(A), 922(a)(5), possession of a firearm after a felony conviction, *see id.* § 922(g)(1), and unlawful transportation of firearms, *see id.* § 922(a)(5).

BACKGROUND

1
2
3 In October 2009 Williams, along with his cousin Forenzo Walker, was arrested in a
4 Bronx, New York, apartment following the execution of a search warrant that led to the recovery
5 of four firearms. According to Williams’s subsequent confession, he, Walker, and a man named
6 Charles Smith had arrived in New York City the previous morning from Birmingham, Alabama.
7 Williams and Smith planned to sell thirteen guns they had procured in Alabama.

8 Williams was not the primary target of the search warrant; Smith was. For a year and a
9 half, officers of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) and the New
10 York City Police Department (“NYPD”) had, based on the report of a confidential informant,
11 been investigating a man known to the informant as “Alabama” whom they suspected of buying
12 firearms in Alabama for resale in New York. J.A. at 135. On the day of defendant’s arrest, the
13 informant spotted “Alabama” and two other men selling firearms at the Bronx apartment, and
14 notified an NYPD detective. At the detective’s instruction, the informant returned to the
15 apartment and purchased a firearm from “Alabama” in the presence of the two other men. He
16 then reported to the detective that multiple firearms were being sold by the three men at the
17 apartment.

18 The detective relayed the information to ATF Special Agent Peter D’Antonio, who
19 prepared an application for a search warrant that was issued around 8:30 p.m. that evening.
20 D’Antonio, whom the district court found credible, testified at a suppression hearing that it was
21 important to obtain the search warrant promptly because

22 we had information that there was multiple firearms at the location being
23 sold by two or three of those individuals. And there were totaling over 10
24 firearms At that point, we wanted to get the firearms off the street.

1 We did not want them to get out of the apartment . . . [and] sold and used
2 for illegal purposes up there.

3
4 *Id.* at 239-240.

5 Law enforcement officers executed the search warrant at approximately 10:30 p.m.
6 NYPD personnel entered the apartment first and secured its four occupants: Williams, Walker,
7 and two women. Five ATF agents, including D’Antonio and Special Agent Thomas Kelly, and
8 several more NYPD police officers, including Detective Hector Santiago, then entered the
9 apartment. They found Williams and Walker seated and handcuffed on the floor of the living
10 room. Four semi-automatic handguns and ammunition lay beside them. They also observed one
11 of the women “afraid” and “shaking” in the kitchen. *Id.* at 243.

12 On entering the apartment and observing the guns, D’Antonio asked Williams “whose
13 firearms they were?” *Id.* at 244. Williams responded “that the firearms were all his” and “that
14 he didn’t want to get his cousin [– Walker –] involved.” *Id.* Expecting to find closer to ten
15 firearms in the apartment, D’Antonio also asked where the other firearms were, and where the
16 third gun trafficker was. The record indicates no response from Williams to these latter two
17 questions.

18 Following this brief questioning of Williams, D’Antonio, who is an ATF medic, turned
19 his attention to the frightened woman, whom he “saw was progressively getting a little worse.”
20 *Id.* at 245. After checking her vital signals, he requested an ambulance. Approximately an hour
21 later, following a search of the apartment, Williams was transported to the police station by
22 D’Antonio.

1 Once at the station house, D'Antonio took Williams to a small interview room containing
2 a desk and three to four chairs and removed the handcuffs. D'Antonio, in the presence of Kelly,
3 then read Williams, who was "relatively calm," his *Miranda* rights, and he signed a form
4 waiving them. *Id.* at 251. At that point, nearly two hours after Williams had initially been
5 arrested, Kelly left the room and D'Antonio and Santiago proceeded to question him.

6 According to D'Antonio, Williams then gave a detailed statement. The statement
7 contained information on a range of incriminating activity in connection with his conspiracy
8 with Smith to buy guns in Alabama, transport them to New York, sell them, and divide the
9 proceeds. During the interrogation, Williams did not ask the officers to stop the questioning, nor
10 did he ask to speak to a lawyer.

11 When asked at the suppression hearing why he did not administer Williams *Miranda*
12 warnings before questioning him at the apartment, D'Antonio responded, "Because we were still
13 trying to find who we thought was ['Alabama']. We thought [he] would still be around and
14 would lead to multiple firearms that were not present at that location." *Id.* at 244-245. When
15 asked by defense counsel, "I guess what you're trying to do here is get the guns off the street,
16 right?" D'Antonio responded,

17 It's a public safety issue at that point. We had information that there was
18 more than four guns, that there was approximately nine guns. And there
19 was one individual and approximately five guns that were not there, so we
20 were trying to mitigate the exposure to any other violence by trying to
21 locate those additional five guns.

22
23 *Id.* at 301.

24 D'Antonio further testified that he viewed the station house interrogation as "a separate
25 interview from the one [he] conducted in the apartment," not as "a continuation" of it:

1 [T]he interview at the [] station house was the formal interview of Mr.
2 Williams. . . . That was where we sat down with the individual, advised
3 him of his rights, gave him the opportunity to either waive them or not and
4 to speak with me if he chose to or not at that point. . . . [The purpose] was
5 also . . . to establish evidence against the defendant at that point. And,
6 also, to attempt to locate the individual that the defendant calls Charles
7 Smith. And to try to locate him and the additional firearms.
8

9 *Id.* at 317-318.

10 Following his indictment, Williams moved to suppress his station house confession as the
11 product of a two-step interrogation practice proscribed by *Missouri v. Seibert*, 542 U.S. 600
12 (2004). In *Seibert* arresting officers were taught to intentionally omit *Miranda* warnings until
13 their interrogation produced a confession, administer the warnings, and then question the
14 defendant based on his pre-*Miranda* confession, in order to get him to restate it. *Id.* at 605-06.
15 Williams argued that D'Antonio was required to administer *Miranda* warnings prior to
16 questioning him in the apartment and that, under *Seibert*, his failure to do so required
17 suppression of the later “step two” station house confession.²

18 The Government contended in response that D'Antonio had not employed the two-step
19 technique barred by *Seibert*. It further argued that the public safety exception to *Miranda*
20 justified D'Antonio's asking immediate questions “aimed at determining whether there had
21 indeed been an additional gun-seller on the premises; whether the people responsible for the
22 firearms that the officers had found [were] among those secured in the apartment or [were]
23 instead elsewhere; and where the additional male they had expected to find was.” J.A. at 404;

² The Government does not appeal the exclusion of Williams's statement in the Bronx apartment acknowledging ownership of the four guns recovered there.

1 *see New York v. Quarles*, 467 U.S. 649, 655-56 (1984) (establishing public safety exception to
2 *Miranda*).

3 Initially, the district court offered its view that, while the public safety exception might
4 excuse D'Antonio's questions about the location of the missing guns and the third trafficker, his
5 inquiry about who owned the guns "stepped outside the public safety exception . . . into a
6 situation where the agent [wa]s trying to elicit an incriminating statement." J.A. at 435.

7 Regardless, the district court

8 [didn't] think the record would support a finding that [] D'Antonio
9 pursued a deliberate strategy of trying to elicit incriminating statements
10 that he could then use later to cross-examine the defendant after
11 administering *Miranda* warnings. I don't see that deliberate strategy. . . .
12 I didn't come away with an impression from the [suppression] hearing that
13 [] D'Antonio's conduct here is similar to what was at issue in *Seibert*,
14 which was a deliberate policy and strategy of eliciting incriminating
15 statements without *Miranda* warnings with a plan to then later administer
16 *Miranda* warnings and elicit those same incriminating statements. I didn't
17 find that kind of deliberate strategy here. . . . I don't think the case is
18 controlled by *Seibert*.

19
20 *Id.* at 436-437.

21 Notwithstanding this conclusion, the district court granted defendant's motion to
22 suppress, concluding that it was "constrained" by this Court's subsequent decision in *Capers* to
23 do so:

24 *Capers* sets a high standard for the admission of a second-stage confession
25 following a *Miranda* violation. The implications of the decision are quite
26 broad. . . . The effect of *Capers* . . . is to take [*Seibert*] beyond "the
27 unique and never-again-to-be-repeated circumstances of *Seibert*," and to
28 apply it to a much broader category of cases. This result is the
29 consequence of [*Capers*'s] . . . requirement that law enforcement officers
30 proffer a legitimate reason for not giving *Miranda* warnings during the
31 first interrogation. While [*Seibert*'s] test focuses on whether law
32 enforcement officers acted with premeditation to undermine a *Miranda*

1 warning they planned to give later – a test quite difficult for a defendant to
2 meet – [*Capers's*] inquiry turns on whether the decision to forego
3 Miranda warnings is legally justifiable. It is plain from *Capers* that this
4 will almost never be the case.

5
6 *Williams*, 758 F. Supp. 2d at 309-10 (emphasis added) (citations omitted) (quoting *Capers*, 627
7 F.3d at 483). The district court reasoned that because D'Antonio's unwarned questioning of
8 Williams about ownership of the guns did not fall within the public safety exception to *Miranda*,
9 but was instead intended to elicit an incriminating testimonial response, D'Antonio had no
10 "legitimate reason" under *Capers* to delay the *Miranda* warnings. *Id.* at 311-12. Moreover,
11 because objective evidence also pointed toward use of a deliberate two-step technique, and
12 because no "curative measures intervened to restore the defendant's opportunity voluntarily to
13 exercise his *Miranda* rights," Williams's waiver of those rights "was invalid," warranting
14 suppression of his confession. *Id.* at 312 (quotation marks omitted). The Government appealed.

15 STANDARD OF REVIEW

16 We review a district court's determination regarding the constitutionality of a *Miranda*
17 waiver *de novo*, and its factual findings for clear error, viewing the evidence in the light most
18 favorable to the prevailing party. *United States v. Moore*, 670 F.3d 222, 226 (2d Cir. 2012).

19 DISCUSSION

20 The Government's main contention is that the district court erred in suppressing
21 Williams's station house confession as the product of a deliberate two-step interrogation
22 strategy. In *Seibert*, the Supreme Court found unconstitutional "a police protocol for custodial
23 interrogation that calls for giving no warnings of the rights to silence and counsel until
24 interrogation has produced a confession." 542 U.S. at 604 (plurality opinion). The "manifest

1 purpose” of such a protocol, a plurality of the Court explained, is to get a confession at the
2 outset, because “with one confession in hand before the warnings, the interrogator can count on
3 getting its duplicate, with trifling additional trouble.” *Id.* at 613. This technique, according to
4 the plurality, evinced a police strategy adapted to undermine the effectiveness of the warnings
5 when given. *Id.* at 616, 613. To determine whether such “warnings delivered midstream” could
6 be effective, the *Seibert* plurality cited to five factors:

7 [1] the completeness and detail of the questions and answers in the first
8 round of interrogation, [2] the overlapping content of the two statements,
9 [3] the timing and setting of the first and the second, [4] the continuity of
10 police personnel, and [5] the degree to which the interrogator’s questions
11 treated the second round as continuous with the first.

12
13 *Id.* at 615.

14 While concurring in the judgment, Justice Kennedy believed the plurality’s “objective
15 inquiry from the perspective of the suspect” – which “applies in the case of both intentional and
16 unintentional two-stage interrogations” – cut too broadly. *Id.* at 621-22. He advanced a
17 narrower test applicable only in the “infrequent case . . . in which the two-step interrogation
18 technique was used in a calculated way to undermine the *Miranda* warning” and no curative
19 measures were taken to ensure that a reasonable person in the suspect’s situation would
20 understand the import and effect of the *Miranda* warning and of the *Miranda* waiver. *Id.* at 622.
21 Describing the circumstances in which it would be “extravagant” to conclude that a deliberate
22 two-step technique had been used, he explained that

23 [a]n officer may not realize that a suspect is in custody and warnings are
24 required. *The officer may not plan to question the suspect or may be*
25 *waiting for a more appropriate time.* Skilled investigators often interview
26 suspects multiple times, and good police work may involve referring to
27 prior statements to test their veracity or to refresh recollection.

1 *Id.* at 620 (emphasis added). In the absence of a finding of deliberateness, Justice Kennedy
2 believed, the admissibility of any subsequent statement should continue to be governed by the
3 principles of *Oregon v. Elstad*, 470 U.S. 298 (1985), which looks solely to whether the
4 statements were knowingly and voluntarily made, *see id.* at 309.³ *Seibert*, 542 U.S. at 622.

5 In *United States v. Carter*, 489 F.3d 528 (2d Cir. 2007), we joined our sister circuits in
6 regarding Justice Kennedy’s concurrence in *Seibert* as controlling. We concluded that *Seibert*
7 lays out an exception to *Elstad* for cases in which a deliberate, two-step strategy was used to
8 obtain the postwarning confession. *Id.* at 536. In *Capers*, we further joined our sister circuits in
9 concluding that a court should review “the totality of the objective and subjective evidence
10 surrounding the interrogations in order to determine deliberateness.” 627 F.3d at 479. Finally,
11 we held that the Government bears the burden of disproving by a preponderance of the evidence
12 that it employed a deliberate two-step strategy. *Id.* at 480.

13 Applying these principles, we hold that the Government has established, in light of the
14 objective and subjective evidence, that D’Antonio did not engage in a deliberate two-step
15 interrogation. There is no subjective evidence that D’Antonio asked Williams about the
16 ownership of the guns, or the location of the missing guns or third gun trafficker, in a way
17 calculated to undermine the *Miranda* warning given later at the station house. Crucially, the
18 district court, which credited D’Antonio’s testimony, reached the same conclusion prior to our

³ *Elstad* involved an accidental or mistaken interrogation in violation of *Miranda*. *See* 470 U.S. at 314. Under *Elstad*, “[a] subsequent administration of *Miranda* warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement.” *Id.*; *see also id.* at 318 (“[T]here is no warrant for presuming coercive effect where the suspect’s initial inculpatory statement, though technically in violation of *Miranda*, was voluntary.”).

1 opinion in *Capers*. See J.A. at 436 (“I don’t think the record would support a finding that []
2 D’Antonio pursued a deliberate strategy of trying to elicit incriminating statements that he could
3 then use later to cross-examine the defendant after administering *Miranda* warnings.”).

4 Instead, “public safety considerations plausibly account” for D’Antonio’s limited
5 questioning of Williams at the apartment “in a way that militates against finding that the first
6 interview was a premeditated attempt to *evade Miranda*.” *Moore*, 670 F.3d at 231. D’Antonio
7 asked Williams three questions within a minute of entering an apartment that had only moments
8 earlier been secured by NYPD personnel. Observing only four guns on the floor when he
9 expected to find somewhere closer to nine or ten, and only two men handcuffed when he
10 expected to find three, D’Antonio asked (somewhat imprecise) questions to determine the
11 location of the missing guns and the third trafficker. In this context, his question about who
12 owned the guns is most plausibly understood as an attempt to ascertain which man was
13 “Alabama” – the primary target of the search warrant and the man whom law enforcement agents
14 had been investigating for a year and a half. Had Williams denied his (or Walker’s) ownership
15 of the guns, D’Antonio may have been able to conclude that neither man was his target, and that
16 his search for “Alabama” should continue. Instead, Williams claimed ownership of the guns,
17 leading to the logical inference that *he* might be “Alabama,” and prompting reasonable followup
18 questions about the location of the other guns and the third trafficker.

19 We are not required to decide whether the public safety exception actually excused this
20 line of questioning. The point is that none of it evinced “a deliberate strategy of trying to elicit
21 incriminating statements that [D’Antonio] could then use later to cross-examine the defendant
22 after administering *Miranda* warnings,” as the district court properly found. J.A. at 436; *see also*

1 *United States v. Estrada*, 430 F.3d 606, 612 (2d Cir. 2005) (noting that “precision crafting
2 cannot be expected in the circumstances of a tense and dangerous arrest” (quotation marks and
3 brackets omitted)); *cf. Capers*, 627 F.3d at 481 (finding postal inspector’s proffered reasons for
4 questioning defendant incredible where arrest followed a full day of surveillance during which
5 the inspector “had time to think through what procedural steps he would need to take following
6 arrest in order to build his case for prosecution”). Instead, it suggests that D’Antonio was simply
7 “waiting for a more appropriate time” formally to question Williams. *See Seibert*, 542 U.S. at
8 620. This is especially so where, after questioning Williams, D’Antonio immediately turned his
9 attention to another public safety concern, the health of one of the women in the apartment.

10 In concluding that Williams’s station house confession must nonetheless be suppressed,
11 the district court relied on the mistaken belief that *Capers* changed the focus of the *Seibert*
12 inquiry from whether law enforcement officers acted with premeditation to undermine a
13 *Miranda* warning they planned to give later, to whether the decision to forego *Miranda* warnings
14 was “legally justifiable.” *See Williams*, 758 F. Supp. 2d at 310. In *Capers*, the defendant was
15 caught in a sting operation stealing money orders from Express Mail envelopes. 627 F.3d at
16 472-73. After *Capers* and another individual were handcuffed, arrested, and separated, a postal
17 inspector instructed *Capers* to follow him into a supervisor’s office and said

18 something like, look, you know, talk to me or don’t talk to me, I don’t care
19 but I’m telling you right now or I’ll tell you that I’m going to do my best
20 to make you go away, and I just want you to know. And I’ve been
21 watching you all day. I know everything that you did tonight.
22

23 *Id.* at 472 (quotation marks omitted). Without issuing *Miranda* warnings, the inspector
24 continued to question *Capers* for around five minutes. *Capers* incriminated himself and, after

1 being transported to another facility where he was advised of his rights and interviewed again by
2 the same postal inspector, incriminated himself again. At a subsequent suppression hearing, the
3 inspector testified that he did not issue *Miranda* warnings in the supervisor's office because he
4 was in a hurry to track down the missing money orders so that they did not
5 get lost in the large mail-sorting facility and . . . needed to question [the
6 other individual], who was held handcuffed outside the supervisor's
7 office, to determine his level of involvement in the crime.

8
9 *Id.* at 473.

10 We affirmed the district court's suppression of both sets of statements. We observed that
11 neither of these reasons justified delaying a *Miranda* warning once it is obvious that a suspect is
12 in custody. In addition, we found the inspector's proffered reasons for delaying the *Miranda*
13 warnings not credible. *Capers*, however, does not stand for the proposition that the Government
14 must show that a delay in issuing *Miranda* warnings was for a "legitimate" reason, as the district
15 court erroneously concluded. Rather, after expressly adopting Justice Kennedy's concurrence in
16 *Seibert*, *Capers* sets forth the general test that in order to determine deliberateness "a court
17 should review the totality of the objective and subjective evidence surrounding the
18 interrogations." *Id.* at 479. *Capers* simply counsels that, in reviewing the subjective evidence,
19 "closer scrutiny" should be given to an "investigator's testimony . . . when the proffered
20 rationale is not a 'legitimate' reason to delay or where it 'inherently lacks credibility' in view of
21 the 'totality of the circumstances.'" *Moore*, 670 F.3d at 229 (quoting *Capers*, 627 F.3d at 484
22 n.5). As we clarified in *Moore*,

23 [s]uch scrutiny is not ordinarily required when the reason for delay is
24 legitimate, such as officer or community safety or when delay is a product
25 of a "rookie mistake," miscommunication, or "a momentary lapse in
26 judgment." Moreover, if it is found, after weighing the investigator's

1 credibility, that the investigator’s intent was not “calculated . . . to
2 undermine *Miranda*,” delay will not require exclusion of the later, warned
3 statement *even if the court finds that the delay was for an illegitimate*
4 *reason and even in the absence of curative measures.*

5
6 *Id.* (emphasis added) (citations omitted) (quoting *Capers*, 627 F.3d at 482).

7 That is what happened here: The district court found D’Antonio’s reasons for
8 questioning Williams about ownership of the guns “illegitimate” under *Capers*, because the
9 questioning was neither justified by the public safety exception, nor explained by a “rookie
10 mistake.” *See Williams*, 758 F. Supp. 2d at 311 (observing that D’Antonio is “a highly
11 experienced law enforcement officer” who “did not contend that his failure to give *Miranda*
12 warnings was the result of mistake or inadvertence”). Nevertheless, the district court found
13 D’Antonio credible, and that he was not intentionally undermining *Miranda*. In these
14 circumstances, absent objective evidence of such an intention, D’Antonio’s delay in issuing
15 *Miranda* warnings does not require exclusion of the later, warned statement even if the public
16 safety exception did not excuse the delay.

17 On this point, *Moore* is instructive. There, we affirmed the district court’s denial of a
18 motion to suppress second-stage statements where an officer had previously asked a defendant –
19 known to have been involved in a shooting incident from which no gun was recovered – where
20 the gun was. As here, the district court ruled that the public safety exception did not excuse the
21 officer’s failure to give *Miranda* warnings at the initial interview. Nevertheless, we held,
22 “public safety considerations plausibly account[ed] for the conduct of the police in a way that
23 militates against finding that the first interview was a premeditated attempt to *evade Miranda*.”

1 670 F.3d at 231. In affirming the district court, we emphasized that its holding regarding the
2 public safety exception

3 rested on a lack of exigent circumstances, *not on any adverse credibility*
4 *finding regarding the testimony of [the officer]*. Although [the officer's]
5 stated public safety rationale was insufficient to render *Moore*'s first
6 statement admissible under the public safety exception to *Miranda*, it was
7 sufficient, "in light of the totality of the circumstances," to show that [the
8 officer] did not intend to circumvent *Miranda* with this unwarned
9 questioning. Under *Capers*, therefore – *even in the absence of one of the*
10 *recognized "legitimate" reasons for delaying Miranda warnings* – [the
11 officer's] rationale does not bar admission of the second warned,
12 statement, regardless of whether curative measures were undertaken.

13
14 *Id.* at 231 n.5 (emphasis added) (citations omitted) (quoting *Capers*, 627 F.3d at 484 n.5). The
15 same logic holds here.

16 The objective evidence also weighs against a finding of deliberateness. In reviewing that
17 evidence, we are guided by, but not limited to, the five factors identified by the plurality in
18 *Seibert*. *Id.* at 230. *First*, the questions and answers in the first round of interrogation were
19 neither complete nor detailed. D'Antonio asked a total of three questions to which Williams
20 responded with a sole incriminating response: that he owned the four guns. The two-stage
21 interrogation strategy described in *Seibert*, by contrast, was "systematic, exhaustive, and
22 managed with psychological skill," leaving "little, if anything, of incriminating potential left
23 unsaid." *Seibert*, 542 U.S. at 616. Here, the initial questioning was "brief and spare," focused
24 on locating the missing firearms and gun trafficker. *See Moore*, 670 F.3d at 231; *see also*
25 *Carter*, 489 F.3d at 536 (finding no deliberate two-step strategy where, half an hour after
26 executing search warrant, officer asked defendant "only one question" regarding contents of

1 recovered bag of narcotics and defendant’s response – that it was “[b]ad coke” – was “the only
2 incriminating statement” made by defendant before receiving *Miranda* warnings).

3 *Second*, Williams’s statements at the apartment and at the station house did not
4 “appreciably overlap.” *Moore*, 670 F.3d at 231. Williams’s sole statement at the apartment tied
5 him to ownership of four guns. By contrast, his full confession at the station house explained in
6 detail the history, operation, and profit-sharing arrangements of his conspiracy with Smith, and
7 elaborated significantly on his earlier statement. *See Carter*, 489 F.3d at 536 (finding “almost no
8 overlap” between single incriminating statement and “full confession [defendant] gave after he
9 received the warnings”). As D’Antonio testified, the interview at the station house was the
10 formal interview with Williams and was aimed at giving him “the ability to express what
11 happened” and obtaining evidence against him. J.A. at 189. Williams was not led “to cover the
12 same ground a second time” – the type of objective evidence that raises *Seibert* deliberateness
13 concerns because it suggests a focused attempt to make the defendant feel locked into his
14 recently elicited inculpatory statements. *Seibert*, 542 U.S. at 604. That the station house
15 interrogation, like the questioning at the apartment, also focused on the location of the missing
16 guns and Smith’s whereabouts is unsurprising given that both Smith and the guns remained
17 missing.

18 *Third*, although there was some continuity of personnel between the apartment and the
19 station house – namely, D’Antonio, Kelly, and Santiago – the timing and setting of the first and
20 second statements do not suggest deliberate use of a two-step technique.⁴ The initial questioning

⁴ Compare *Seibert*, 542 U.S. at 605 (suppressing confession where the first- and second-stage confessions occurred in same place with only twenty minute break between), and *Capers*, 627 F.3d at 483 (affirming suppression where, although “the location of the interrogation sessions changed, . . . the

1 took place during the execution of a warrant in a residential setting and was spontaneous and
2 somewhat frenzied. D'Antonio questioned Williams almost immediately upon entry, just after it
3 had been secured by NYPD personnel. Moments later, D'Antonio requested an ambulance after
4 one of the women in the apartment was found shaking in the kitchen. An hour-long search of the
5 premises followed. The second interrogation took place in a small room at the station house
6 almost two hours later. In contrast to the atmosphere in the apartment, at the station house
7 Williams was calmly seated across a table from D'Antonio and Santiago, uncuffed, and
8 volunteered a full confession.

9 *Fourth*, none of D'Antonio's questions, and nothing in the record, indicates that he
10 treated the second round as continuous with the first. The quintessential two-step technique
11 involves a suspect's "hearing warnings only in the aftermath of interrogation and just after
12 making a confession," with the police "lead[ing] him over the same ground again." *Seibert*, 542
13 U.S. at 613. Here, almost two hours separated the two interviews. And nothing in the record
14 suggests that the latter session was essentially a cross-examination using information gained
15 during the first round of interrogation.

16 For these reasons, we conclude that the Government has met its burden of demonstrating
17 that it did not engage in a deliberate two-step process intended to undermine Williams's Fifth
18 Amendment rights.

inquisitorial environment of the questioning was consistent"), with *Elstad*, 470 U.S. at 302-03
(defendant's initial statement in his home did not "let the cat out of the bag" or "taint[]" his subsequent
station house confession), and *Carter*, 489 F.3d at 536 (rejecting suppression where "first remark was
made to [an officer] at [defendant's] store, while the full confession was made . . . at the ATF office over
an hour later").

1 Finally, we conclude that Williams’s statements were provided voluntarily and free of
2 coercion. *Elstad*, 470 U.S. at 318. “A confession is not voluntary when obtained under
3 circumstances that overbear the defendant’s will at the time it is given.” *United States v.*
4 *Anderson*, 929 F.2d 96, 99 (2d Cir. 1991). This record reflects no such circumstances. The
5 brevity and focus of D’Antonio’s initial questioning, the near two-hour passage of time between
6 interviews, and the contrast in setting between the apartment and the station house belie
7 coercion. More importantly, the parties do not dispute that Williams knowingly and voluntarily
8 waived his right to remain silent before the station house confession. These facts, especially the
9 waiver, are “highly probative” of voluntariness. *See Elstad*, 470 U.S. at 318. For these reasons,
10 we conclude that Williams’s statements to D’Antonio at the station house may be admitted at
11 trial.

12 CONCLUSION

13 The order of the district court suppressing defendant’s station house confession is
14 reversed and the case remanded for further proceedings consistent with this opinion.