

free to resume his normal life activities after questioning.<sup>362</sup> Nevertheless, a break in custody may not end all *Miranda* implications for subsequent custodial interrogations.<sup>363</sup>

Second, *Miranda* warnings must precede custodial *interrogation*. It is not necessary under *Miranda* that the police squarely ask a question. The breadth of the interrogation concept is demonstrated in *Rhode Island v. Innis*.<sup>364</sup> There, police had apprehended the defendant as a murder suspect but had not found the weapon used. While he was being transported to police headquarters in a squad car, the defendant, who had been given the *Miranda* warnings and had asserted he wished to consult a lawyer before submitting to questioning, was not asked questions by the officers. However, the officers engaged in conversation among themselves, in which they indicated that a school for handicapped children was near the crime scene and that they hoped the weapon was found before a child discovered it and was injured. The defendant then took them to the weapon's hiding place.

Unanimously rejecting a contention that *Miranda* would have been violated only by express questioning, the Court said: "We conclude that the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the 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. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the *Miranda* safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police."<sup>365</sup> A divided Court then concluded that

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<sup>362</sup> This holds even in the case of convict who is released after interrogation back into the general population. *Maryland v. Shatzer*, 559 U.S. \_\_\_, No. 08-680, slip op. (2010).

<sup>363</sup> *Edwards v. Arizona*, 451 U.S. 477 (1981).

<sup>364</sup> 446 U.S. 291 (1980). A remarkably similar factual situation was presented in *Brewer v. Williams*, 430 U.S. 387 (1977), which was decided under the Sixth Amendment. In *Brewer*, and also in *Massiah v. United States*, 377 U.S. 201 (1964), and *United States v. Henry*, 447 U.S. 264 (1980), the Court has had difficulty in expounding on what constitutes interrogation for Sixth Amendment counsel purposes. The *Innis* Court indicated that the definitions are not the same for each Amendment. 446 U.S. at 300 n.4.

<sup>365</sup> *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980).