



LGIT'S ROLL CALL REPORTER **JANUARY 2010**

Absent other circumstances, simply greeting a suspect in custody by asking “What’s up?” will not be deemed to be the functional equivalent of interrogation and the suspect’s response will not be suppressed because *Miranda* warnings were not given.

QUESTION: Is asking a suspect in custody, “What’s up?” considered the functional equivalent of interrogation?

ANSWER: No. Greeting a suspect in custody with the question or salutation, “What’s up?” will not, absent circumstances showing that the officer was attempting to elicit an incriminating response, be seen as the functional equivalent of interrogation.

**CASE: *Maurice Darryl Prioleau v. State of Maryland*
Court of Appeals of Maryland, Decided December 9, 2009**

In this case, the Court of Appeals was called upon to review the legal principles governing interrogation and the functional equivalent of interrogation. The facts established that, on March 28, 2005, Baltimore City Police Detective Timothy Stach and his partner were conducting surveillance of the 1600 block of Regester Street. At about 6:00 p.m., they observed a car pull to the curb. A man got out and jogged to 1614 Regester Street. Det. Stach recognized the man as Maurice Prioleau. Prioleau tossed a clear plastic bag onto the front steps of the house. From his position, Det. Stach could see small vials inside the plastic bag. Det. Stach, who had extensive training in the packaging, distribution, and identification of controlled dangerous substances, was certain that the bag contained cocaine. Det. Stach then saw Prioleau walk around the corner. Next, he saw a man, later identified as Keith Evans, walk up to the same house and retrieve the bag. Evans then distributed the contents of the bag to several individuals who had followed him. These individuals walked away as soon as the transactions were completed. Evans continued to distribute items from the bag to individuals on Regester Street. A short time later, Prioleau appeared and walked with Evans toward Federal Street. Prioleau turned on Federal Street, while Evans continued to distribute items from the bag to individuals who approached him. Prioleau circled back to Regester Street, this time entering the residence at 1610. After a minute, he came out with another bag of suspected cocaine. Prioleau gave the bag to Evans, who resumed his hand to hand transactions. Based on these observations, Det. Stach radioed that he had witnessed narcotics activity and that Prioleau and Evans were working together.

Officer Crites responded to the scene and arrested Evans. Det. Stach then joined Officer Crites, and instructed him to locate and arrest Prioleau. Det. Stach then escorted Evans into the residence at 1610 Regester Street. Once inside, he saw torn plastic bags on the floor, indicating drug activity. Officer Crites arrested Prioleau and brought him to the house. As Prioleau entered the house, Det. Stach, who was standing near the entrance, said to him, “What’s up, Maurice?” Prioleau replied, “I’m not going in that house. I’ve never been in that house.” The police recovered a handgun with live rounds in the house as well as plastic bags containing 25 vials of cocaine, all of which had been stashed above the ceiling tiles. Prioleau was searched incident to arrest and officers found \$210.00 in his pockets.

Prioleau was charged with conspiracy to distribute cocaine and related violations. He moved to suppress the evidence, including his statement to Det. Stach. The motion was denied and Prioleau was convicted. He appealed. The Court of Special Appeals affirmed his conviction and the Court of Appeals agreed to review the case.

The Court of Appeals upheld the conviction. The Court concluded that the question, “What’s up, Maurice?” did not constitute actual interrogation or the functional equivalent of actual interrogation. In reaching its conclusion, the Court observed that not every question put to a suspect in custody can be seen as custodial interrogation. In this regard, actual “interrogation” is the process of questioning by officers which is designed to elicit an incriminating statement. Obviously, *Miranda* warnings must precede any actual interrogation of a suspect. If a question asked of or a statement made to a suspect in custody is not part of an actual interrogation, the issue then becomes whether the question or statement can be deemed to be the functional equivalent of interrogation. To make this determination, the question or statement made must be viewed in context. For example, routine booking questions are an exception to the *Miranda* requirements. The critical inquiry is whether, based on the totality of the circumstances, the officer knew or should have known that his question or statement was likely to elicit an incriminating response. In this case, Det. Stach’s “question,” “What’s up, Maurice?” could be viewed as a question or a greeting. Either way, the Court concluded that Det. Stach did not intend to elicit an incriminating response. For this reason, Prioleau’s response was nothing more than a classic “blurt,” to which *Miranda* did not apply.

NOTE: Officers must be aware that incriminating statements made in response to what a court deems to be the functional equivalent of interrogation will be suppressed if *Miranda* warnings were not given. The functional equivalent of interrogation can be found even if the suspect is not asked a single question. Courts will scrutinize the words and actions of the police to determine if the police engaged in the functional equivalent of interrogation. **If the words or actions were reasonably likely to elicit an incriminating response, suppression of evidence will follow if the *Miranda* warnings were not given.** For example, in one case, a suspect who had been picked up for questioning was placed in an interrogation room. Although the suspect was not read his *Miranda* rights, officers placed pieces of incriminating evidence in the room and told the suspect that the items were about to be fingerprinted. In response, the suspect made an incriminating statement. The court found that the officers’ actions were the functional equivalent of

interrogation and the incriminating statement should have been suppressed. In another case, however, the court held that merely handing a Statement of Charges to a suspect who had been read his *Miranda* rights and who had requested an attorney was not the functional equivalent of interrogation. With criminal defense attorneys urging courts to find that officers engaged in the functional equivalent of interrogation, officers must be aware that words and actions unrelated to actual interrogation may be sufficient to require compliance with *Miranda*. As such, officers must be very careful in using compelling influences or psychological ploys against suspects who have not been read their *Miranda* rights.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.