ZARELLA, J., with whom NORCOTT and McLACHLAN, Js., join, concurring in part and dissenting in part. I agree with the majority's conclusion that the conviction of the defendant, Harry Gonzalez, must be reversed on the basis of a violation of the requirements of *Miranda* v. *Arizona*, 384 U.S. 436, 444–45, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). I further agree with the majority that the defendant's constitutional right against double jeopardy was not violated. I dissent from the majority opinion, however, insofar as the majority concludes that the police failed to honor the defendant's invocation of his rights to remain silent and to counsel, that the initial interrogation of the defendant did not cease when he invoked his rights, and that all of the defendant's statements to the police were a product of that interrogation. In my view, when a suspect invokes his rights, and the police acknowledge the invocation, stop questioning him, and instruct him to "be quiet" when he attempts to speak, the facts are sufficient to demonstrate that the interrogation has ceased. To the extent that the majority reaches a contrary conclusion, such a conclusion is belied by the facts and the law, and represents an unwarranted extension of the principles of *Miranda* such that its decision will inject confusion into our case law. The policy behind *Miranda* is to shield a suspect from unwanted questioning rather than to suppress voluntary statements that are not a direct result of improper questioning by the police. For these reasons, I dissent in part from the majority opinion.

Because the facts of the present case are important to the analysis of the defendant's claim under *Miranda*, I review them briefly. According to the trial court's decision and the testimony at the suppression hearing, the defendant was brought to an interview room at the Stamford police department, and, when he got to the door of the room, he directed an expletive at Sergeant Paul Guzda, one of several police officers in the vicinity, and initially refused to enter the room. Guzda and Officer Timothy Dolan had been waiting in the room for the defendant. Once the defendant was seated in the room, he was handcuffed to a chair. Guzda then informed the defendant that he was going to be booked on charges including felony murder and that Guzda wanted to give him an opportunity to tell his side of the story. Although the defendant had not been advised of his *Miranda* rights, the defendant responded to Guzda by stating that he did not want to say anything and that he wanted an attorney. In response, Guzda told the defendant to sit there and that he would be booked shortly. Guzda and Dolan ended their conversation with the defendant at that point. Neither Guzda nor Dolan asked the defendant any further questions,

and the two officers and the defendant sat in the interview room in silence while waiting to be notified that the booking area was available. After approximately one minute, the defendant broke the silence by making a statement (first statement), explaining that he may be many things but that he was not a murderer. In response, Guzda told the defendant to "be quiet," that the officers could not speak to him and that there would be no conversation. After another minute of silence, the defendant made a second statement (second statement), reiterating that he was not a murderer and explaining that he and his accomplice, Jennifer Kos, had gone to Stamford only to look for work. Guzda again stopped the defendant from speaking, reminded him that he had asked for an attorney and told him that the officers could not speak to him. Guzda further informed the defendant that they would like to talk to him but that the only way they could was if he chose to waive his rights to remain silent and to consult with an attorney. Guzda then asked the defendant if he wanted to waive those rights. The defendant answered that he did want to waive his rights, and Guzda asked if the defendant would mind if Guzda took notes while the defendant spoke. The defendant again agreed and began narrating his activities on the day of the murder (narrative statement).

I begin my analysis by noting the portions of the majority opinion with which I agree. First, in light of the state's concession at oral argument that Guzda's initial statement amounted to interrogation, I do not contest the majority's conclusion that Guzda's initial statement was "interrogation" within the meaning of that term as defined in *Rhode Island* v. *Innis*, 446 U.S. 291, 300–301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980).[1] Second, I agree that, because that statement constituted interrogation, Guzda was required to read the defendant *Miranda* warnings before making the statement to the defendant.

I disagree, however, with the majority's conclusion that the interrogation did not cease when the defendant invoked his rights to remain silent and to counsel, and its conclusion that the officers did not honor the suspect's invocation.[2] In my view, the facts of the present case demonstrate that the initial interrogation, consisting only of Guzda's statement that the officers wanted to give the defendant an opportunity to tell his side of the story, ended when the defendant invoked his rights and Guzda stopped questioning him. For this reason, I disagree with the majority's decision to exclude all of the challenged statements on the ground that they all were a product of an improper and ongoing interrogation. Instead, I would conclude that the initial interrogation ended when the defendant invoked his rights and that the defendant's first and second statements to the police after he invoked his rights were voluntary and not the product of interrogation. Because

I would conclude that the police improperly sought to have the defendant waive his rights after the defendant's first and second statements but before the defendant made his narrative statement, however, I agree with the majority that the trial court should have suppressed the narrative statement.

I

WHETHER THE INITIAL, IMPROPER INTERROGATION CEASED

Miranda and subsequent cases make it clear that the police must immediately stop interrogating a suspect if he invokes his right to remain silent. *Miranda* v. *Arizona*, supra, 384 U.S. 473–74 ("Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease."); see also *Michigan* v. *Mosley*, 423 U.S. 96, 104, 96 S. Ct. 321, 46 L. Ed. 2d 313 (1975) (when suspect invokes right to remain silent, statements in response to further interrogation are admissible only if suspect's request to remain silent was "scrupulously honored" [internal quotation marks omitted]). Furthermore, if a suspect invokes his right to an attorney, the police may not engage in any further interrogation without an attorney present unless the suspect himself initiates the encounter and validly waives his constitutional rights. *Edwards* v. *Arizona*, 451 U.S. 477, 485, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981) ("it is inconsistent with *Miranda* and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel"); see also *Smith* v. *Illinois*, 469 U.S. 91, 98, 105 S. Ct. 490, 83 L. Ed. 2d 488 (1984) ("*Edwards* set forth a 'bright-line rule' that *all* questioning must cease after an accused requests counsel" [emphasis in original]). In the present case, there is no question that the defendant invoked his rights to remain silent and to counsel immediately after Guzda's improper statement. The question, therefore, is whether the interrogation terminated when the suspect invoked his rights to remain silent and to an attorney. I would conclude that it did.

Case law establishes that the cessation of questioning or its functional equivalent is all that is necessary to demonstrate that any interrogation has stopped once a suspect has invoked his rights. See, e.g., *State* v. *Canales*, 281 Conn. 572, 587–89, 916 A.2d 767 (2007) (concluding that interrogation ceased when suspect invoked her rights to remain silent and to counsel and police did not ask further questions about alleged murder); see also *Simpson* v. *Jackson*, 615 F.3d 421, 430–31 (6th Cir. 2010) (upon invocation of rights, police officers need only stop questioning suspect); *United States* v. *Muhammad*, 196 Fed. Appx. 882, 886 (11th Cir. 2006) (police "scrupulously honored" suspect's rights simply

by ceasing questioning about crime), cert. denied, 549 U.S. 1235, 127 S. Ct. 1315, 167 L. Ed. 2d 126 (2007). The police need not exit an interrogation room after the suspect invokes his rights in order for an interrogation to cease. See, e.g., *Simpson* v. *Jackson*, supra, 431 ("[I]t is permissible for the officers still to be in the same room with the [suspect] for at least some period of time after he invokes his right to remain silent. The officers need not immediately leave the room; they simply may not continue questioning or badgering the suspect."); see also *United States* v. *Muhammad*, supra, 885–86 (presence of police in interview room after suspect invoked his right to remain silent did not render statements subsequently volunteered by suspect inadmissible). Nor must they explicitly inform the suspect that the interrogation is over. See, e.g., *State* v. *Canales*, supra, 589 (rejecting defendant's argument that police officer was required to "indicate explicitly that the interview was over"). Finally, there is no requirement that the police actually obtain or take steps to obtain a lawyer when the suspect has requested one, as long as the police do not interrogate the suspect further. See *Edwards* v. *Arizona*, supra, 451 U.S. 484–85 (suspect may not be interrogated further after invoking right to counsel unless counsel is present); see also *Davis* v. *United States*, 512 U.S. 452, 458, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994) (*Edwards* rule only prohibits further interrogation after suspect has requested counsel); *Miranda* v. *Arizona*, supra, 384 U.S. 474 (police need not "have a 'station house lawyer' present at all times to advise [suspects]" but need only cease questioning after suspect invokes right to counsel).

Applying the foregoing principles to the present case, I would conclude that the initial interrogation had ceased when the defendant invoked his rights to remain silent and to counsel and that the officers were honoring the defendant's invocation of his rights at the time the defendant made his first and second statements. The facts demonstrate that, when the defendant invoked his rights to remain silent and to consult with an attorney, Guzda (1) acknowledged the invocation, (2) responded by telling the defendant what was expected of him at that point and what would happen next, (3) ceased any questioning, (4) went so far as to attempt to silence the defendant when he tried to speak, and (5) specifically told the defendant that any conversation had ended. Although Guzda initially stated to the defendant that he wanted to give the defendant an opportunity to tell his side of the story, and the defendant had not been read his *Miranda* warnings, the defendant immediately responded by stating that he did not want to say anything to the police and that he wanted to speak with an attorney. In response to this statement, Guzda told the defendant to "just . . . sit there" and that he would be "booked in a little while." The police therefore not only cut off any questioning about the alleged murder

when the defendant invoked his rights, but they explained to him the reason for remaining in the room. After Guzda's statement that the defendant would be booked shortly, the officers did not ask the defendant any further questions, and it was the defendant, not the officers, who spoke after he previously had stated that he wished to remain silent. Furthermore, when the defendant attempted to speak to the officers in making his first statement, Guzda immediately instructed the defendant to "be quiet," that they "[could not] talk" to him, and that "the conversation was over . . . ." It is hard to imagine a more direct way to inform the defendant that any interview had ceased and that he was not expected to say anything to the officers. Certainly, an instruction to "be quiet" cannot seriously be interpreted to be reasonably likely to elicit an incriminating response and therefore amount to interrogation. See *Rhode Island* v. *Innis*, supra, 446 U.S. 300–301 (police actions amount to interrogation only if reasonably likely to elicit incriminating response from suspect).[3] Far from demonstrating that the police failed to honor the defendant's rights, as the majority concludes, Guzda's statements demonstrated that the officers were doing more to end the interrogation and to honor the defendant's desire to remain silent than the defendant was doing.

The fact that the officers did not leave the room or did not attempt to get the defendant an attorney or tell him that they would obtain one for him does not indicate that the interrogation had not ceased or that the officers had failed to honor the defendant's invocation of his rights. Although these actions may be *sufficient* to terminate an interrogation, neither this court nor the United States Supreme Court ever has stated that such actions by the police are *necessary*. Indeed, this court previously has determined that an interrogation had ceased when the suspect invoked her rights to remain silent and to an attorney, and the officer, in response, simply ceased any questioning about the alleged crime. *State* v. *Canales*, supra, 281 Conn. 587–89.[4] This conclusion is consistent with case law from other jurisdictions. See, e.g., *Simpson* v. *Jackson*, supra, 615 F.3d 431 (police not required to leave interrogation room after suspect invokes right to remain silent); *McGowan* v. *Miller*, 109 F.3d 1168, 1170–71, 1175 (7th Cir. 1997) (fact that detective remained with suspect after suspect invoked his right to counsel did not amount to interrogation); *United States* v. *Avery*, 717 F.2d 1020, 1024–25 (6th Cir. 1983) (no *Miranda* violation when officer remained with suspect and asked routine booking questions after suspect invoked his right to remain silent), cert. denied, 466 U.S. 905, 104 S. Ct. 1683, 80 L. Ed. 2d 157 (1984); *State* v. *Brown*, 287 Ga. 473, 478–79, 697 S.E.2d 192 (2010) (rejecting argument that act of officers in remaining in room with suspect after he invoked his rights is interrogation and impermissible under *Miranda*). Finally, the fact that the officers continued

to look at the defendant while in the interview room certainly does not amount to continued interrogation. Indeed, the police would be remiss in their duties not to watch a suspect in their custody who is outside of a controlled detention area. For the foregoing reasons, I would conclude that the initial interrogation in the present case ceased when the defendant invoked his rights and that the police not only stopped their questioning but attempted to silence the defendant when he defied his previously expressed desire to remain silent. I therefore cannot agree with the majority's conclusion that the interrogation in the present case did not cease, that the officers did not honor the defendant's rights and that all of the defendant's statements therefore must be suppressed.[5]

II

WHETHER THE DEFENDANT'S STATEMENTS MUST BE SUPPRESSED

Although I would not exclude the statements from evidence for the reasons stated in the majority opinion, I must separately consider whether the statements are admissible or whether they must be suppressed on a different basis. Because the defendant's second statement—that he was not a murderer and that he and his accomplice went to Stamford on the day in question only to look for work—repeated everything that the defendant said in his first statement—that he was not a murderer—and because I would conclude that the second statement is admissible, it is unnecessary to analyze the defendant's first statement separately. I therefore analyze only the admissibility of the defendant's second statement and his narrative statement. For the reasons that follow, I would conclude that the defendant's second statement is admissible but that his narrative statement should be suppressed.

A

Second Statement

The admissibility of the defendant's second statement depends on whether the statement resulted from an improper interrogation and whether the statement was voluntarily made by the defendant. If the police engage in custodial interrogation of a suspect without first providing the warnings required by *Miranda*, a court must presume that any statement obtained from the suspect as a result of the unwarned interrogation was compelled, and the statement must be suppressed. See, e.g., *Oregon* v. *Elstad*, 470 U.S. 298, 307, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985); cf. *Miranda* v. *Arizona*, supra, 384 U.S. 475–76. If, however, a suspect makes a subsequent statement that is not in response to an improper interrogation but is, instead, voluntarily made after interrogation has ceased, the statement may be admissible notwithstanding the prior *Miranda* violation. See *Oregon* v. *Elstad*, supra, 309 ("[alt]hough *Miranda* requires

that the unwarned admission must be suppressed, the admissibility of any subsequent statement should turn . . . solely on whether it is knowingly and voluntarily made"); see also *Rhode Island* v. *Innis*, supra, 446 U.S. 299–300 ("Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. *The fundamental import of the privilege* [*against self-incrimination*] *while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated.* . . . Volunteered statements of any kind are not barred by the [f]ifth [a]mendment and their admissibility is not affected by [*Miranda*]." [Emphasis in original; internal quotation marks omitted.]), quoting *Miranda* v. *Arizona*, supra, 478.

The admissibility of a suspect's voluntary statements following statements taken in violation of *Miranda* is not "tainted" or affected by the prior, improper interrogation when the police do not actually coerce or compel the subsequent statements. See *Oregon* v. *Elstad*, supra, 470 U.S. 307–10; see also *Dickerson* v. *United States*, 530 U.S. 428, 441, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000). It is important to note that the exclusionary rule and the related "fruit of the poisonous tree" doctrine,[6] which generally are applied in the fourth amendment context, are not applicable to *Miranda* violations when the police do not actually compel the suspect's statements or engage in intentional misconduct. See *Oregon* v. *Elstad*, supra, 306 ("a procedural *Miranda* violation differs in significant respects from [a] [violation] of the [f]ourth [a]mendment, which ha[s] traditionally mandated a broad application of the 'fruits' doctrine"); see also *Missouri* v. *Seibert*, 542 U.S. 600, 618–19, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004) (Kennedy, J., concurring). The *Miranda* rule is prophylactic in nature, intended to protect the accused's right not to be compelled to be a witness against himself. E.g., *New York* v. *Quarles*, 467 U.S. 649, 654, 104 S. Ct. 2626, 81 L. Ed. 2d 550 (1984). In *Miranda*, the court recognized that, even in the absence of actual compulsion by the police, "the possibility of coercion inherent in custodial interrogations unacceptably raises the risk that a suspect's privilege against self-incrimination might be violated." *United States* v. *Patane*, 542 U.S. 630, 639, 124 S. Ct. 2620, 159 L. Ed. 2d 667 (2004) (opinion announcing judgment). To guard against this risk, *Miranda* requires that police comply with certain prophylactic procedures when interrogating a suspect such that the failure to comply creates a presumption of compulsion as to any statements obtained from the suspect during the improper interrogation, even if there is no evidence that the police actually compelled the suspect's statements. See *Oregon* v. *Elstad*, supra, 307. Because a *Miranda* violation may result in the suppression of statements that are otherwise voluntarily made by the suspect,

the presumption of compulsion extends *only* to those statements made during an improper interrogation and not to the suspect's subsequent, voluntary statements, as long as the police have not actually engaged in coercive or improper tactics. See id., 318 ("there is no warrant for presuming coercive effect [when] the suspect's initial inculpatory statement, [al]though technically in violation of *Miranda*, was voluntary"); *State* v. *Roseboro*, 221 Conn. 430, 444, 604 A.2d 1286 (1992) ("Having concluded that the defendant's initial statements to the police were voluntary, although procured in violation of his *Miranda* rights, the trial court was justified in concluding that the *Miranda* violations did not taint the admissibility of his subsequent statements. As long as all of the statements were voluntarily made, the fact that the police procured those statements in violation of the defendant's *Miranda* rights does not create a presumption that the police acted coercively."). But cf. *Missouri* v. *Seibert*, supra, 542 U.S. 604–605, 617 (requiring suppression of subsequent, voluntary confession when police intentionally violated *Miranda* in obtaining initial confession).

Furthermore, courts have declined to apply the "fruit of the poisonous tree" doctrine to *Miranda* violations when there is no evidence of actual coercion or intentional police misconduct because suppression of a suspect's subsequent, voluntary statements would not serve the two primary goals of the *Miranda* decision: to deter police misconduct and to ensure the trustworthiness of evidence at trial. See, e.g., *Oregon* v. *Elstad*, supra, 470 U.S. 308 ("the absence of any coercion or improper tactics undercuts the twin rationales—trustworthiness and deterrence—for a broader rule"); cf. *United States* v. *Pettigrew*, 468 F.3d 626, 635 (10th Cir. 2006) (concluding that goals of *Miranda* require that "[t]he unwarned confession taken in violation of *Miranda* . . . be suppressed" but that "it does not necessarily follow that every subsequent voluntary statement made by a suspect must be suppressed as well"), cert. denied, 549 U.S. 1242, 127 S. Ct. 1343, 167 L. Ed. 2d 138 (2007).

Applying these principles, courts deciding cases with facts similar to those of the present case have admitted unwarned statements made by a suspect after an improper interrogation when the government proves that (1) although the police violated the requirements of *Miranda*, the police did not engage in coercive behavior or improper interrogation techniques, (2) any initial statements made by the suspect during the improper interrogation were voluntary, and (3) the subsequent unwarned statements that the government seeks to admit were voluntarily made and not made during an improper interrogation. See, e.g., *United States* v. *Pettigrew*, supra, 468 F.3d 636 ("statements made without *Miranda* warnings but not in response to police interrogation are admissible even though they followed an

earlier voluntary statement made in violation of *Miranda*"); *United States* v. *Abdulla*, 294 F.3d 830, 834–37 (7th Cir. 2002) (*Miranda* violation does not taint subsequent, voluntary statements, and statements were admissible even though they were not preceded by *Miranda* warnings because they were voluntary); *Medeiros* v. *Shimoda*, 889 F.2d 819, 823–26 (9th Cir. 1989) (because subsequent statement was voluntary, it was admissible, notwithstanding voluntary but unwarned prior statement), cert. denied, 496 U.S. 938, 110 S. Ct. 3219, 110 L. Ed. 2d 666 (1990). In determining whether a suspect's subsequent statement was voluntary, the fact finder must consider the totality of the circumstances surrounding the encounter with the police. See, e.g., *Oregon* v. *Elstad*, supra, 470 U.S. 318; *United States* v. *Pettigrew*, supra, 637; *United States* v. *Abdulla*, supra, 836; *Medeiros* v. *Shimoda*, supra, 824. "[T]he test [for determining] voluntariness is whether an examination of all the circumstances discloses that the conduct of law enforcement officials was such as to overbear [the suspect's] will to resist and bring about confessions not freely self-determined . . . . Furthermore, the scope of review is plenary on the ultimate question of voluntariness, but the trial court's findings regarding the circumstances surrounding the [suspect's] questioning and confession are findings of fact that will not be overturned unless they are clearly erroneous." (Citation omitted; internal quotation marks omitted.) *State* v. *Azukas*, 278 Conn. 267, 290, 897 A.2d 554 (2006).

In light of these principles, I would conclude that the defendant's second statement is admissible. The trial court in the present case expressly found that (1) the officers were not "trying to . . . use any psychological ploys," (2) "[a]ll of the statements of the defendant were of his own mind and volition, and not the result of anything [the officers] did," and (3) "[t]here was no compulsion . . . ." The record adequately supports these findings, and the foregoing requirements are met in this case. First, although the officers violated *Miranda* by not giving the required warnings to the defendant, there is no evidence that the officers engaged in any coercive conduct or intentional misconduct when telling the defendant that they wanted to give him an opportunity to tell his side of the story. Second, the defendant's initial response to the improper interrogation, that is, that he wanted to remain silent and to consult with an attorney, was freely given and resulted from the defendant's own desire not to speak with the officers. Third, it is clear that when the defendant made his second statement, he was under no compulsion to speak, and, therefore, this statement was voluntary and not the product of any interrogation. By the time the defendant made his second statement, he had invoked his rights to remain silent and to consult with an attorney, the officers had acknowledged the defendant's invocation and told him that he would be

booked soon, and the officers had ceased questioning. Furthermore, the officers did not ask the defendant any further questions, and, when the defendant tried to speak by making his first statement, the officers specifically instructed him to "be quiet," that they could not talk to him, and that there would be no conversation. When a suspect is specifically told by the police to "be quiet," it would strain the bounds of reason to conclude that whatever the suspect says in defiance of that command is anything but a product of the suspect's own will. For these reasons, I would conclude that the trial court properly concluded that the police did not engage in any coercive behavior or intentional misconduct and that the defendant's second statement was the product of his own will. Therefore, I would conclude that the defendant's second statement was properly admitted at trial.

Although I recognize that the second statement was made in close temporal proximity to the improper interrogation, this fact does not alter my conclusion that the trial court properly found that the defendant's second statement was voluntary. Because an improper interrogation does not taint subsequent statements when there is no evidence of compulsion or intentional misconduct by the police, the passage of time between an improper interrogation and the subsequent statements is only one factor of many that a court may consider in reviewing the totality of the circumstances. In light of the other facts of the present case, including the absence of any coercion, the fact that the defendant readily invoked and then breached his desire to remain silent, and the fact that the police attempted to silence the defendant when he chose to forgo his right to remain silent, it was not clearly erroneous for the trial court to conclude that the defendant's second statement was voluntary and not a product of interrogation. See, e.g., *United States* v. *Daniels*, United States District Court, Docket No. 09-569-01 (E.D. Pa. May 27, 2010) (admitting subsequent, voluntary statements made only minutes after statements made in response to improper interrogation during continuous encounter with police); *United States* v. *Richardson*, 700 F. Sup. 2d 1040, 1053–54 (N.D. Ind. 2010) (admitting subsequent, voluntary statements made close in time to statement made in response to improper interrogation); *United States* v. *Mitchell*, United States District Court, Docket No. 06-20034-01-JWL (D. Kan. November 8, 2006) (admitting subsequent, voluntary statements made immediately after initial response to improper interrogation during police interview); cf. *Medeiros* v. *Shimoda*, supra, 889 F.2d 824–25 (short time between prior confession to police during improper interrogation and suspect's subsequent statements did not render subsequent statements involuntary). Finally, the fact that a suspect's subsequent statement is responsive to a prior, improper question by the police also does not render the suspect's subsequent

statement involuntary when the totality of the circumstances demonstrates that the suspect made the subsequent responsive statements voluntarily, without any compulsion by the police. See, e.g., *United States* v. *Abdulla*, supra, 294 F.3d 832, 836–37 (suspect's subsequent statements that mimicked his initial statement made in response to improper interrogation were voluntary); *United States* v. *Mitchell*, supra (suspect's subsequent statements were voluntary even though they were responsive to initial, improper interrogation because there was no indication that suspect had been compelled to make them).

B

Narrative Statement

I would conclude, however, that the defendant's narrative statement resulted from improper police conduct, in violation of *Miranda* and *Edwards*. For this reason, I agree with the majority's conclusion that the defendant's narrative statement must be suppressed. Because I disagree, however, with the majority's conclusion that the initial, improper interrogation never ceased, I reach my conclusion on a different basis. Although the initial, improper interrogation ended when the defendant invoked his rights to remain silent and to counsel, the defendant's narrative statement resulted from further, improper interrogation, and, therefore, it must be suppressed pursuant to *Edwards* v. *Arizona*, supra, 451 U.S. 484–85, which prohibits police from engaging in further interrogation of a suspect after the suspect has invoked his right to counsel.

The *Edwards* rule is implicated when the suspect (1) invokes his right to counsel, and (2) is subjected to "further interrogation" by the police. Id., 484. The defendant's narrative statement in the present case implicates this doctrine. By the time the defendant made his narrative statement, he previously had invoked his right to counsel. After the defendant made his first and second statements, the officers told the defendant that they would like to speak with him and asked whether he wanted to waive his rights and to speak with them without counsel. The police also asked whether the defendant minded if they wrote down what the defendant would say. The record demonstrates that these statements were posed to the defendant in a manner that indicated that the officers desired to question him to obtain a statement about the murder and conveyed their desire that he waive his rights. Because these questions were reasonably likely to elicit an incriminating response, I would conclude that the defendant made his narrative statement after further interrogation, which occurred after he had invoked his right to counsel. Therefore, to admit the defendant's narrative statement, the state must demonstrate that there was compliance with *Edwards*.[7]

Applying the requirements of *Edwards* to the facts of the present case, I am persuaded that the narrative statement should have been suppressed. In accordance with *Edwards*, if statements that the defendant made in response to further interrogation are to be admissible, the state must prove that the defendant (1) initiated, and did not merely continue, the discussion with police, and (2) knowingly and intelligently revoked his earlier invocation of his right to counsel. See, e.g., *Oregon* v. *Bradshaw*, 462 U.S. 1039, 1044–45, 103 S. Ct. 2830, 77 L. Ed. 2d 405 (1983) (opinion announcing judgment). The state cannot meet its burden of establishing that the defendant's waiver of his right to counsel was knowing and intelligent because the police never informed the defendant of his *Miranda* rights.[8] For this reason, I would conclude that the defendant's narrative statement resulted from further interrogation by the police in violation of *Edwards* and should have been suppressed.

Finally, I agree with the majority's conclusion that the admission of the defendant's narrative statement constituted harmful error, and this is not altered by my previous conclusion that the defendant's second statement was properly admitted. Although the defendant admitted in his second statement that he had gone to Stamford, presumably on the day of the murder, to look for work, it did not contain the kind or degree of detailed information that the defendant provided in his narrative statement. Significantly, the second statement did not contain the specific admission by the defendant that he had gone to the victim's home on the day of the murder, as he had admitted in his narrative statement. In view of the fact that the state relied heavily on the admissions that were set forth exclusively in the defendant's narrative statement, I agree with the majority's conclusion that the admission of the defendant's narrative statement was not harmless beyond a reasonable doubt.

Accordingly, I concur in the majority opinion insofar as the majority reverses the defendant's conviction and remands the case for a new trial, concludes that the defendant's constitutional right against double jeopardy was not violated and concludes that the defendant's narrative statement should have been suppressed. I dissent from the majority opinion insofar as the majority concludes that the officers did not honor the defendant's invocation of his rights, that the improper interrogation never ceased, and that the defendant's first and second statements should have been suppressed.

[1] I note that not every situation in which an officer makes a similar prefatory statement necessarily must be construed as interrogation. Such a determination depends on the circumstances surrounding the inquiry. See *Rhode Island* v. *Innis*, supra, 446 U.S. 300–301. For example, if an officer says to the suspect: "In a moment, we are going to give you an opportunity to tell us your side of the story, but, first, we want to talk to you about your rights," then a court might be less inclined to interpret the statement as being reasonably likely to elicit an incriminating response. Indeed, the foregoing example is not a question and calls for no response from the suspect. If,

however, the officer were to say, instead: "Tell us your side of the story," and then stared at the suspect as if awaiting an answer, such an inquiry would certainly rise to the level of interrogation.

[2] I further disagree with the manner in which the majority characterized the claims of the state regarding the statements at issue. In its opinion, the majority describes the state's claims as being that the improper interrogation in the present case "produced no statements" and that the defendant's statements were made "independent[ly] of the improper interrogation." Footnote 11 of the majority opinion. The state is not claiming that the interrogation produced no statements. Indeed, the interrogation produced one statement: that the defendant did not want to speak to the officers and that he wanted an attorney. The state's argument is, more precisely, that the improper interrogation ended and that the contested statements were not a product of any interrogation by the police and, therefore, are admissible.

[3] The majority attempts to explain away Guzda's instruction to the defendant to "be quiet" by contending that this instruction was "meaningless to the defendant because he had not been advised that, pursuant to *Miranda*, anything further that he said could be used against him." Footnote 13 of the majority opinion. I cannot agree with this statement for two reasons. First, I strongly disagree that this instruction could have been meaningless to the defendant. Nothing in the record suggests that the defendant was unable to understand the English language or that he was in any way unable to hear or comprehend this instruction as a result of a mental or physical impairment. I cannot accept the majority's suggestion that an unimpaired, English speaking adult could not have understood the meaning of the command, "be quiet," simply because the police did not also explain his *Miranda* rights. A more reasonable reading of the record is that the defendant understood Guzda's command but nevertheless voluntarily chose to disobey it. When a suspect's voluntary statement results from his own will and not from interrogation, the fifth amendment, which bars only *compelled* self-incrimination, simply is not implicated. See *Miranda* v. *Arizona*, supra, 384 U.S. 478. Second, there is no requirement that the police warn a suspect that statements that he volunteers to the police may be used against him in court before those statements will be admissible. See id. If the police tell a suspect to "be quiet" and that any conversation is over, and the suspect chooses to speak anyway, there simply is no reason to exclude the suspect's statement from evidence, and doing so will not further any of the goals of the *Miranda* decision or the fifth amendment.

[4] The majority attempts to distinguish *Canales*, in which this court concluded that interrogation ended when the police stopped questioning a defendant about the crime; see *State* v. *Canales*, supra, 281 Conn. 587–89; from the present case on the basis that the defendant in *Canales* (1) was advised of her rights under *Miranda*, (2) initiated the discussion, and (3) waived her rights. See footnote 13 of the majority opinion. These factors, however, are irrelevant to an analysis of whether the police have interrogated a suspect. Whether the police are engaging in interrogation depends only on whether the actions or words of the police are reasonably likely to elicit an incriminating response from the suspect and does not depend on whether the suspect was aware of or waived his rights. See *Rhode Island* v. *Innis*, supra, 446 U.S. 300–301. The fact that the defendant in *Canales* was advised of her *Miranda* rights and subsequently waived them by making incriminating statements had nothing to do with our conclusion in that case that the interrogation had ceased. Instead, we concluded that the interrogation in *Canales* had ceased as soon as the defendant invoked her rights and the officer stopped questioning her about the alleged murder. See *State* v. *Canales*, supra, 587–89. We did not indicate that anything more was necessary to demonstrate that an interrogation had ended, and, in fact, this court rejected the claim of the defendant in *Canales* that the officer was required to tell her that the interrogation had ended. See id., 589–90. The factors that the majority cites to distinguish *Canales* simply are not relevant to determining whether police conduct amounts to interrogation. Therefore, the majority's reliance on these factors in distinguishing *Canales* is not only misplaced, but is misleading.

Furthermore, I note that *Miranda* does not require a suspect to waive his rights before making a voluntary statement that is not the product of interrogation because *Miranda* does not prohibit a suspect from making voluntary statements after invoking his rights; rather, it only prohibits the police from engaging in further interrogation of the suspect unless the suspect waives his rights. See *Miranda* v. *Arizona*, supra, 384 U.S. 473–74, 478. Because I would conclude that the defendant in the present case was

not being interrogated when he made his first and second statements, it is unnecessary for the state to show that the defendant waived his rights before making those voluntary statements.

[5] I respectfully note that, although the majority concludes that the interrogation in the present case never ceased, the majority cites no authority to support its conclusion, does not explain what is necessary to demonstrate that an interrogation has ended, and does not provide any rule or principle to guide courts when addressing this issue. The majority concludes that the defendant's "request to remain silent was not scrupulously honored because no steps were undertaken to conclude the interrogation or belatedly advise the defendant of his *Miranda* rights." Text accompanying footnote 12 of the majority opinion. The majority does not, however, explain how the actions of the officers after the defendant invoked his rights amounted to interrogation. Although the majority states that "the officers, in response to the defendant's attempt to invoke his right[s] to remain silent and [to] have counsel present, simply told the defendant to sit there and [to] wait to be booked, and then stared at the defendant in silence"; footnote 13 of the majority opinion; the majority does not explain how the fact that the officers continued to sit with the defendant in silence was something that the police should have reasonably known was likely to elicit an incriminating response.

Furthermore, although the majority concludes that the interrogation in the present case never ceased, the majority does not explain what the officers were required to do to end the interrogation. Moreover, the majority fails to explain or provide any authority to demonstrate why the cessation of questioning, together with the admonition to "be quiet" and the statement to the defendant that any conversation was over, was insufficient to demonstrate to the defendant that the interrogation had ended. It strains reason to conclude that Guzda's statements informing the defendant that he was not to speak and that the conversation was over were reasonably likely to elicit a response or somehow meant that the conversation was continuing. Instead, the case law previously discussed demonstrates that the police simply must cease any interrogation—and nothing more—to demonstrate that an interrogation has ended. Insofar as the majority departs from the case law on this issue, it gives no explanation for doing so. For these reasons, the majority, in my view, does not give adequate guidance to courts or to law enforcement officials as to what is required to end an interrogation and inserts unnecessary confusion into the jurisprudence on this subject.

[6] The exclusionary rule is intended to "make effective the fundamental constitutional guarantees of sanctity of the home and inviolability of the person . . . ." (Citation omitted.) *Wong Sun* v. *United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). To protect this interest, the exclusionary rule requires the suppression of all evidence obtained as a result of an illegal search and "is calculated to prevent, not to repair. Its purpose is to deter . . . by removing the incentive to disregard it." (Internal quotation marks omitted.) *Brown* v. *Illinois*, 422 U.S. 590, 599–600, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975).

[7] In reaching this conclusion, I am mindful of the prophylactic nature of the *Edwards* rule, which was intended to prevent the police from undermining or interfering with a suspect's invocation of his right to counsel by subsequently influencing him to change his mind. See *Smith* v. *Illinois*, supra, 469 U.S. 98 (explaining that *Edwards* rule was designed to prevent police from engaging in any " 'badger[ing]' or 'overreaching'—explicit or subtle, deliberate or unintentional—[that] might otherwise wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance"); see also *Oregon* v. *Bradshaw*, 462 U.S. 1039, 1044, 103 S. Ct. 2830, 77 L. Ed. 2d 405 (1983) (opinion announcing judgment).

[8] Because the state clearly cannot meet its burden on this issue, it is unnecessary to examine whether the defendant had reinitiated the discussion.