

kept trying to calm the defendant down by telling him to relax, and by explaining what the charges would be.

After about an hour and a half, the defendant started to become calm, and explained that he got into an argument with his wife. There was pushing and shoving and he and his wife were injured with a knife. The conversation lasted, on and off, for about two hours.

CONCLUSIONS OF LAW

In Miranda v Arizona, (384 US 436), the Supreme Court held that once a defendant is in custody, he may not be interrogated without first being advised of his Constitutional rights. If the defendant was interrogated without being given Miranda warnings, any statements made by him may not be used against him at trial. Since the defendant was not given warnings in this case, it must be determined whether the defendant was being interrogated when he made the statement.

If the actions and statements by Office McManus at the hospital constituted interrogation or its functional equivalent then defendant's statement must be suppressed. Interrogation refers not only to express questioning. It also refers to "words or actions on the part of the police * * * that the police should know are reasonably likely to elicit an incriminating response * * * from the suspect" (Rhode Island v Innis, 446 US 291, 301).

However, volunteered statements were specifically exempted from the requirement that incriminating statements be preceded by warnings and a waiver of rights in order for them to be used against a defendant (Miranda v Arizona, supra). In order to be admissible a volunteered statement has to be genuinely spontaneous "and not the result of inducement, provocation, encouragement or acquiescence, no matter how subtly employed" (People v Maerling, 46 NY2d 289, 302-303; People v Damiano, 87 NY2d 477; People v Gonzales, 75 NY2d 938; People v Rivers, 56 NY2d 476). The court should consider the totality of circumstances in determining whether or not a statement was involuntarily made (see, People v Anderson, 42 NY2d 35).

In People v Lynes (49 NY2d 286), the Court held that the trial court must determine whether the defendant's statement was triggered by the conduct of the police which should reasonably have been anticipated to evoke defendant's declaration.

In the case at bar, the defendant was in custody for a few hours when he was talking to Officer McManus. The Officer, employed by the New York City Police Department for more than twelve years, was not inexperienced. He had a prolonged conversation as to the different criminal charges, and explained that he believed the defendant would be charged with a felony, assault in the second degree, since a knife was involved. In

addition the officer told the defendant that it was not a big deal that his wife would probably calm down and change her situation. The fact that the officer emphasized the seriousness of the offense and also that he thought that the complainant may eventually drop the charges may be regarded as the equivalent of interrogation, intended to lessen the seriousness of defendant's participation, and therefore, cause the defendant to make an incriminating statement. The conversation was such that it was reasonably foreseeable that the defendant would respond in any incriminating manner (see, People v Winship, 78 AD2d 514).

Considering the totality of circumstances, Officer McManus should have known that the discussion which took place over a four hour period was likely to elicit an incriminating response from the defendant (see, People v Chambers, 184 AD2d 716). Although defendant's declaration was not based on blatantly coercive techniques, the defendant's statement was the result of a subtle form of interrogation (see, People v Lynes, supra).

Based on the foregoing, defendant's motion to suppress his statement is granted.

ROBERT CHARLES KOHM, J.S.C.

