

[*1]

Decided on April 17, 2008

Supreme Court, Queens County

The People of the State of New York

against

Antoine Tucker, Defendant

1707/2007

The defendant is represented by Hettie Powell, Esq. The People are represented by Assistant District Attorney Anisha Abraham of the Queens District Attorney's Office.

Stephen A. Knopf, J.

The defendant moves to suppress his statements made to law enforcement authorities. The defendant is charged with robbery in the first degree (2 counts), assault in the first degree (1 count), robbery in the second degree (1 count) and assault in the second degree (2 counts). A suppression hearing was held before this Court on January 9, 2008 and March 10, 2008. The People presented one witness at this hearing: Police Officer Thomas Marrone. The defense did not present any witnesses. This Court determines that Police Officer Marrone gave credible testimony. This Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On May 18, 2007, Police Officer Marrone, an eight year veteran of the New York City Police Department, was assigned to the 100th Precinct Detective Squad, in plain clothes, handling a variety of detective-like cases. At approximately 12:00 midnight, the officer was downstairs in the precinct, by a desk, when Mr. Emmanuel Carmona (the complainant) walked in. Mr. Carmona had been stabbed and was bleeding from the chest and abdomen. He was accompanied by a female, Ms. Angie Quezaba. Officer Marrone first interviewed Mr. Carmona and called an ambulance for him.[*2]

Mr. Carmona told the police officer that he had received a telephone call from his friend Antoine, who asked Mr. Carmona to meet him in the vicinity of Beach 92nd Street and Shore Front Parkway, in Queens and that he would be in a white Lexus. When they arrived, they went over to a white Lexus vehicle. They did not see Antoine in the vehicle. His friend Angie then said to him, "I think we're being set up." He attempted to call Antoine but Antoine didn't answer his phone. They waited for a couple of seconds. Then two men jumped out from behind the bushes wearing ski masks and all black clothing. The shorter of the men said to him: "Give me all your shit". Thinking the men were joking, Mr. Carmona said: "Stop playing around, Angel". The man then said to him: "Give me the weed". Mr. Carmona said again: "Stop playing around". The man then stabbed him twice. Mr. Carmona proceeded to hand over his cell phone, a few bags of marijuana and a \$20 bill. The men then fled on foot. As he got stabbed, Mr. Carmona fell to the ground, grabbed his chest, and saw blood. Mr. Carmona proceeded to the 100th precinct, which was one block away.

Officer Marrone then separately interviewed Ms. Quezaba who told him that she had been with Mr. Carmona in Manhattan, when they took a train to the Hammels Housing projects in Rockaway. There, they met up with Andre to get some marijuana. They were supposed to meet Antoine to give him the marijuana. She then described the stabbing incident to the officer.

The officer took a written statement from Angie. He ran computer checks on Antoine (the defendant herein), Emanuel Carmona and Angie Quezaba.

At approximately 5:45 a.m. on May 19, 2007, Police Officer Marrone conducted a daylight search of the scene of the stabbing. At the scene, he found a broken Boost Mobile cellular phone and a small portion of a ripped \$20 bill. The phone was examined for forensic evidence by Officer Felman of the 100th Precinct Evidence Collection Unit, with negative results.

Later that day, Police Officer Marrone and Detective Angino, who was now assigned to the case, re-interviewed Mr. Carmona at Jamaica Hospital. When they got to Mr. Carmona's room, Antoine Tucker, the defendant herein was paying him a visit. Mr. Tucker left the room. Mr. Carmona related basically the same story. He also told the officer that he thought Antoine Tucker had set him up, identifying him as the person who had just left the room. At approximately 2:40p.m. that same day, after speaking with Mr. Carmona, Police Officer Marrone and Detective Angino saw Antoine Tucker, outside Jamaica Hospital, standing in front of the building. Detective Angino asked Mr. Tucker if he would be able to come by the precinct for an interview. Mr. Tucker agreed saying: "Yes, no problem".

On June 6, 2007, at approximately 12:00 noon, Officer Marrone [*3] and Detective Angino re-interviewed the complainant, Mr. Carmona at his residence. He was with a female, Cyndia Castillo. Cyndia told the officer that on May 18, 2007, the night of the incident, she went over to Antoine Tucker's house and saw Antoine and a person known to her as "Angel" getting dressed in black clothing, getting black gloves and black ski masks together. Mr. Carmona said that he was positive that Antoine Tucker did this.

After this interview, the officer and detective were advised by Mr. Carmona that Antoine was probably in a nearby apartment, Apartment 9K, down the hall (There was no evidence presented at the suppression hearing that Mr. Tucker actually lived in this apartment.) They proceeded to apartment No.9K. They knocked on the door of the apartment, where loud music was playing. A male answered the door. Officer Marrone and Detective Angino asked him if Antoine was there and he said yes, he would be right back. The door closed and the officer and detective remained outside the apartment. Approximately a minute or two later, Antoine Tucker came to the door. Officer Marrone and Detective Angino asked him if it would be okay if he came to do the interview now. Mr. Tucker said: "sure" and he got his belongings and then accompanied the officer and detective back to the 100th precinct. (Prior to Mr. Tucker leaving the apartment, Officer Marrone and Detective Angino had remained outside the apartment at all times.) They traveled to the precinct in an unmarked police car. The defendant was not handcuffed at the time.

Upon reaching the precinct, Mr. Tucker and Officer Marrone proceeded to an interview room. The time was approximately 12:50p.m.. At about 1p.m., Officer Marrone asked Mr. Tucker what had happened that night. Antoine then told the officer that he called up Emmanuel (the complainant) and Emmanuel was going to bring weed to him and he would meet him up on the boardwalk and that Emmanuel never showed up. The officer asked Mr. Tucker: "That's it?" and Mr. Tucker replied: "Yeah, Kind of - I guess". Officer Marrone then left the interview room. No *Miranda* warnings were given to Mr. Tucker prior to him making these statements. Mr. Tucker was free to leave; he was not in custody or under arrest. Sometime between 1pm and 2:45pm, after Officer Marrone conferred with the assigned detective and a sergeant, a decision was made to place Mr. Tucker under arrest. (In the interim, Mr. Tucker's mother showed up at the precinct and she was advised that her son was going to be placed under arrest.)

At about 2:45p.m., the officer returned to the interview room. The officer advised Antoine of his *Miranda* rights from a pre-printed form. Antoine told him that he understood all of his rights and also indicated by signing the bottom of the *Miranda* warnings form. The officer then printed his name and shield number, as well as the date and time, to wit: 6/6/07, 2:45p.m.. (A copy of this form was admitted into evidence at this hearing).[*4]

The officer then asked Mr. Tucker what happened that night. Mr. Tucker then said that he didn't mean for this to happen, that he didn't know that he (Mr. Carmona) was going to get stabbed. Officer Marrone then told Mr. Tucker to write down his statement and to be as thorough as possible. Mr. Tucker then wrote out a short statement. (This written statement was entered into evidence at the hearing.) This statement was completed and signed by the defendant and Officer Marrone at 4:30p.m..

CONCLUSIONS OF LAW

This Court notes, at the outset, that the People withdrew CPL 710.30 (1)(a) notice as to an oral statement made by the defendant to Police Officer Marone. (The oral statement, in sum and substance was made by the defendant on June 6, 2007 at approximately 6p.m., and was "Angel was with me but I didn't write his name in my statement because I am afraid of him".)

This Court initially determines that there is no basis for any argument that suppression is warranted because the defendant was unlawfully arrested in his apartment without a warrant, See, *Payton v New York*, 445 US 573 (1980). There is no evidence that defendant lived in apartment #9K and indeed the police did not enter this apartment.

As to the statements made by the defendant prior to him receiving *Miranda* warnings this Court must determine whether or not the defendant was in custody prior to the administration of such warnings. See, *People v Yukl*, 25 NY2d 585 (1969). See, also *People v Vidal*, 44 AD3d 802 (2nd Dept 2007). For defendant to prevail on this issue, it must demonstrate that there was custodial interrogation of the defendant that was not preceded by *Miranda* warnings. See, *Yukl, supra*; see, also *People v Dillhunt*, 41 AD3d 216 (1st Dept 2007). *People v DeJesus*, 32 AD3d 753 (1st Dept 2006).

The *Miranda* rule protects the privilege against self-incrimination and "because the privilege applies only when an accused is compelled' to testify, the safeguards required by *Miranda* are not triggered unless a suspect is subjected to custodial interrogation". *People v Paulman*, 5 NY3d 122 , 129 (2005), citing *People v Berg*, 92 NY2d 701, 704 (1999). The term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response. *Paulman, supra* at 129, citing *People v Ferro*, 63 NY2d 316, 322 (1984)cert denied 472 US 1007 (1985), quoting *Rhode Island v Innis*, 446 US 291,301 (1980).

The standard for demonstrating whether a defendant is in custody is "...what a reasonable man, innocent of any crime, would have thought had he been in the defendant's position." *Yukl, supra* at 589. Some of the factors to be considered in [*5]making such a determination are: did the defendant appear at the precinct voluntarily, was the atmosphere at the precinct coercive, was the questioning of the defendant investigative or accusatory, did the police treat the defendant as if he was in custody, was the defendant handcuffed or physically restrained, was the questioning continuous or interrupted, did the defendant protest the questions, was the defendant offered food or drink during the questioning, and what was the duration of the questioning. See *People v Centano*, 70 NY2d 837 (1990).

It is clear from the record that the defendant voluntarily accompanied the police to the precinct in an unmarked police car, and was not restrained in any way at the time. See eg *People v Williams*, 283 AD2d 998 (4th Dept 2001). The defendant was cooperative and the tone of the questions were initially investigatory. See *People v Murphy*, 43 AD3d 1276 (4th Dept 2007).The

defendant's initial interrogation was not custodial in nature and thus did not have to be preceded by *Miranda* warnings. See, *People v Rivera*, 7 AD3d 358 (1st Dept 2004). The defendant willingly accompanied the police to the precinct, was not handcuffed, was not placed in a cell, was left alone and unsupervised in an interview room, and interviewed in a non-accusatory manner. See, eg *People v Collazo*, 216 AD2d 98 (1st Dept. 1995). Far from being isolated, confined or confronted by numerous imposing police officers, the defendant found himself in a non-threatening environment, questioned in an investigatory, rather than an accusatory manner, in which a reasonable person would not have believed himself to be in custody. See, *Collazo* at 99. Accordingly, this Court determines that there is no basis for suppression of defendant's statements made prior to the administration of *Miranda* warnings.

As the defendant was not subjected to any improper custodial interrogation without *Miranda* warnings, attenuation is not an issue as to defendant's post - *Miranda* statements. However, there was, indeed, a break between the defendant's initial oral statements (close to two hours) and defendant's subsequent oral and written statements. See, *People v Samuels*, 11 AD3d 372 (1st Dept 2004). Such was a pronounced break in the questioning, which would have removed any taint from any earlier questioning, even if one was present. See, *People v James*, 253 AD 438 (2d Dept. 1998). See also, *People v White*, ___ NY 3rd ___, (decided March 20, 2008). As to the defendant's oral and written statements made after 2:45p.m., it is clear that such statements were made by the defendant after the defendant was fully advised of his *Miranda* rights and after he executed a knowing and intelligent waiver of his *Miranda* rights. This Court finds absolutely no grounds for suppression of such statements.

Furthermore, there is no basis for suppression of any statement made by the defendant as the fruit of the poisonous [*6]tree or the product of an unlawful arrest. See, *Dunaway v New York*, 442 US 200 (1979).

Accordingly, the defendant's motion to suppress his statements is denied in all respects.

The foregoing constitutes the order, opinion and decision of this court.

STEPHEN A. KNOFF, J.S.C.