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Self Incrimination: People v. Tankleff

SELF INCRIMINATION

N.Y. CONST. art. I, § 6:

No person shall . . . be compelled in any criminal case to be a witness against himself . . . .

U. S. CONST. amend. V:

No person shall . . . be compelled in any criminal case to be a witness against himself . . . .

SUPREME COURT, APPELLATE DIVISION

SECOND DEPARTMENT

People v. Tankleff[3118]
(decided December 27, 1993)

The defendant appealed his murder conviction for killing his parents, on the grounds that the admission of inculpatory statements he made to the police before he was given *Miranda* warnings violated his privilege against self-incrimination and due process.[3119] The Appellate Division, Second Department, held that because he was not in "custodial interrogation" when his statements were made, *Miranda* warnings were unnecessary and the resulting admission was therefore constitutional.[3120]

On September 17, 1988, the police responded to a call which led to the discovery of a dual murder at the defendant's parents home.[3121] While Arlene Tankleff, the defendant's mother, was

3118. ___ A.D.2d ___, 606 N.Y.S.2d 707 (2d Dep't 1993).

3119. *Tankleff*, ___ A.D.2d at ___, 606 N.Y.S.2d at 709-10. *See* N.Y. CONST. art. I, § 6 ("No person shall . . . be compelled in any criminal case to be a witness against himself . . . ."); U.S. CONST. amend V ("No person shall . . . be compelled in any criminal case to be a witness against himself . . . ."); U.S. CONST. amend XIV, § 1 ("[N]or shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

3120. *Tankleff*, ___ A.D.2d at ___, 606 N.Y.S.2d at 709-10.

3121. *Id.* at ___, 606 N.Y.S.2d at 708-09.

already dead when the police arrived, his father, Seymour Tankleff, although severely beaten and stabbed, did not die until he was taken to the hospital.[3122] At police headquarters later that day, two detectives questioned the defendant as to his knowledge of what had transpired.[3123] At 9:40 in the morning, when the questioning at the police station began, the defendant attempted to exculpate himself by accusing somebody else of killing his parents.[3124] After approximately two hours of questioning, Detective McCready, one of the questioning detectives, devised a plan to test the truth of the exculpatory statements.[3125] Before being given his *Miranda* warnings,[3126] the defendant attempted to rectify the conflicting account of what happened.[3127] After further prodding from another detective,[3128] the defendant asked

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3122. *Id.* at ___, 606 N.Y.S.2d at 709.

3123. *Id.* at ___, 606 N.Y.S.2d at 709.

3124. *Id.* at ___, 606 N.Y.S.2d at 709.

3125. *Id.* at ___, 606 N.Y.S.2d at 709. Seymour Tankleff's initial survival enabled the following to occur:

> At 11:45 A.M., Detective McCready staged a telephone call to the hospital and pretended to be party to a nonexistent telephone conversation, during the course of which he said, in a voice loud enough to be overheard, 'Yeah John, yeah. You're kidding? No kidding, he came out. Okay. Thanks a lot.' McCready then advised the defendant that [his father] had come out of a coma and had accused [him] of being the assailant. McCready testified, 'I told him that his father told Detective Pfalzgraf [stationed at the hospital] that he, [the defendant], was the one who did this to his father; that he beat and stabbed his father.'

Id. at ___, 606 N.Y.S.2d at 709.

3126. *See* Miranda v. Arizona, 384 U.S. 436 (1966) (holding that prosecution may not use any statements resulting from the "custodial interrogation" of a suspect absent procedural safeguards designed to ensure and protect Fifth amendment privilege against self-incrimination). Specifically, the interrogating officer must 1) warn the suspect that he has the right to remain silent, 2) advise him that any statement he makes can be used as evidence against him, and 3) advise him of his right to counsel. *Id.* at 444. These rights may only be waived if done voluntarily and in a knowing and intelligent manner. *Id.*

3127. *Tankleff*, ___ A.D.2d at ___, 606 N.Y.S.2d at 709. The defendant said "If my father said that, that's because I'm the last person he saw." *Id.*

if he could "have blacked out and done it."[3129] When the detective asked him whether this was what happened, he responded that it "wasn't him, but it was like another Marty Tankleff that killed them."[3130] Upon hearing the defendant's statement "it's coming to me," Detective McCready administered the *Miranda* warnings.[3131] Shortly thereafter, a full confession was obtained from the defendant and his conviction followed.[3132]

After being convicted, the defendant argued that the admission of his pre-*Miranda* statements violated his privilege against self-incrimination.[3133] The court, however, held that defendant was not subjected to a "custodial interrogation" before the full confession was given.[3134] Therefore, the court ruled that there was no need to read the defendant the *Miranda* warnings.[3135]

3128. The other detective intimated to the defendant that "maybe your father conscious when you came in and stabbed him." *Id.* at ___, 606 N.Y.S.2d at 709. After refusing the defendant's request to take a lie detector test, the detective asked, "What do you think we should do to the person who did this to your mother and father?" *Id.* at ___, 606 N.Y.S.2d at 709. He responded, "Whoever did this needs psychological help." *Id.* at ___, 606 N.Y.S.2d at 709.

3129. *Id.* at ___, 606 N.Y.S.2d at 709.

3130. *Id.* at ___, 606 N.Y.S.2d at 709.

3131. *Id.* at ___, 606 N.Y.S.2d at 709.

3132. *Id.* at ___, 606 N.Y.S.2d at 709.

3133. *Id.* at ___, 606 N.Y.S.2d at 709. The defendant's second constitutional argument, that the use of deceit in eliciting his confession violated his due process rights, was flatly rejected. *Id.* at ___, 606 N.Y.S.2d at 710. The court held that though it was this "deceptive report" that prompted the defendant's statements, it was not so unfair that it would deprive him of his due process rights. *Id.* at ___, 606 N.Y.S.2d at 710. In fact, the court found the ploy actually enhanced the reliability of the confession. *Id.* at ___, 606 N.Y.S.2d at 710.

3134. *Id.* at ___, 606 N.Y.S.2d at 710. *Miranda* rights need only be administered when a suspect is in police custody. *Id.* at ___, 606 N.Y.S.2d at 709. In New York, "police custody" is determined by asking what "a reasonable man, innocent of any crime, would have thought had he been in the defendant's position." People v. Yukl, 25 N.Y.2d 585, 589, 256 N.E.2d 172, 174, 307 N.Y.S.2d 857, 860 (1969).

3135. *Tankleff*, ___ A.D.2d at ___, 606 N.Y.S.2d at 709. The court said that defendant was not in police custody when he went to the police station since any "ordinary person, innocent of any crime, would, in the defendant's

Accordingly, the appellate division sustained the defendant's conviction.[3136]

The landmark federal case of *Miranda v. Arizona*[3137] is controlling. In *Miranda*, the Court held that statements made by a defendant during "custodial interrogation" could not be used by the prosecution unless safeguards were taken to protect the defendant's Fifth Amendment privilege against self-incrimination.[3138] Custodial interrogation was defined by the Court as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[3139] A police officer must protect the defendant's Fifth Amendment rights by advising him of his constitutional rights.[3140] In the subsequent decision of *Oregon v. Mathison*,[3141] the Court clarified *Miranda* by stating that when an individual voluntarily subjects himself to questioning by law enforcement, and his freedom to leave is in no way restricted, then that person is not in custody for *Miranda* purposes.[3142] The Court noted that the police are not required to give warnings to every individual they question.[3143] Furthermore, warnings are not required simply because an

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position, think that he was free to leave. *Tankleff*, ___ A.D.2d at ___, 606 N.Y.S.2d at 709. The court further said that he was likely to have believed he was being questioned because he was a "crucial witness" and not a suspect. *Id.* at ___, 606 N.Y.S.2d at 710. The trick the police used to encourage the defendant to talk was unrelated to whether he was in custody for *Miranda*. *Id.* at ___, 606 N.Y.S.2d at 710. *See* Oregon v. Mathison, 429 U.S. 496 (1977) (holding defendant who voluntarily went to police headquarters was not in custody for purposes of the *Miranda* warnings). However, the dissent argued that, based on totality of the circumstances, the defendant was in custody at the time of his questioning and therefore the pre-Miranda statements should have been suppressed. *Tankleff*, ___ A.D.2d at ___, 606 N.Y.S.2d at 711 (O'Brien, J., dissenting).

3136. *Id.* at ___, 606 N.Y.S.2d at 708.

3137. 384 U.S. 436 (1966).

3138. *Id.* at 444.

3139. *Id.*

3140. *Id.*

3141. 429 U.S. 492 (1977).

3142. *Id.* at 495.

3143. *Id.*

individual may be a suspect or is questioned at the police station.[3144] *Miranda* warnings are only necessary when a person's freedom has been so restricted as to place him "in custody."[3145]

In conclusion, under Federal law and New York law, *Miranda* warnings are required only when there is police custody. Furthermore, the mere fact that a person is questioned at police headquarters is not necessarily indicative of police custody. Therefore, since defendant was not in police custody, his constitutional right against self-incrimination was not violated.

3144. *Id.*
3145. *Id.*