



## **911 CALL MADE FIVE MINUTES AFTER THE ASSAULT PROPERLY ADMITTED AS AN EXCITED UTTERANCE, AN EXCEPTION TO THE HEARSAY RULE (SECOND DEPT).**

The Second Department determined the victim's 911 call was properly admitted as an excited utterance, even though the call was made about five minutes after the assault with a butcher knife:

"A spontaneous declaration or excited utterance— made contemporaneously or immediately after a startling event—which asserts the circumstances of that occasion as observed by the declarant is an exception to the prohibition on hearsay" ... . The determination of admissibility of a statement as an excited utterance is entrusted in the first instance to the trial court, which "must assess not only the nature of the startling event and the amount of time which has elapsed between the occurrence and the statement, but also the activities of the declarant in the interim to ascertain if there was significant opportunity to deviate from the truth" ... . Here, the evidence demonstrated that the 911 calls qualified as excited utterances. First, the nature of the attack on the complainant was the type of startling event that would cause "physical shock or trauma" ... . Further, the 911 calls were made only approximately five minutes after the event, and in those intervening minutes, the complainant ran across the street from the scene of the incident to his apartment to bandage his wound. Under these circumstances, this short interval of time did not "detract[ ] from [the] spontaneity" of the statements ... . [People v Jaber, 2019 NY Slip Op 03988, Second Dept 5-22-19](#)