

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**JAMES BRICKER,
Defendant**

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**No. 671-2008
CRIMINAL**

OPINION AND ORDER

Defendant filed a Motion in Limine on February 1, 2010 and an additional Motion in Limine on February 2, 2010. At the time set for the hearing, both Defense Counsel and the Commonwealth decided to submit a copy of the videotaped statement and transcript of the statement given by the Defendant on February 27, 2008 for purposes of the first Motion in Limine. As to the second Motion, Counsel agreed that decision should be deferred to the trial judge. Therefore, the only issue before the Court is whether the videotaped statement should be suppressed.

Defendant asserts that his videotaped statement should be suppressed as Defendant only made statements because of the officers' inappropriate comments regarding religion and that Defendant would receive help.

In order for a confession obtained from a custodial interrogation to be admissible, "the accused's Miranda rights must have been explained to him and he must have knowingly, voluntarily and intelligently waived these rights." Commonwealth v. Carter, 546 A.2d 1173, 1177 (Pa. Super. Ct. 1988). The Commonwealth must also "show by a preponderance of the evidence that the confession was voluntary." Id. A totality of the circumstances test is used in determining whether the confession was voluntary . . ." Id. When assessing the totality of the circumstances, the Court should consider the "following factors: the duration and means of the

interrogation; the physical and psychological state of the accused; the conditions attendant to the detention; the attitude of the interrogator; and any and all other factors that could drain a person's ability to withstand suggestion and coercion.” Commonwealth v. Nester, 709 A.2d 879, 882 (Pa. 1998) (and cases cited therein).

In the instant case, the Court finds the Defendant’s statement was coerced and not voluntary. Although the Defendant gave what appears to be a valid Miranda¹ waiver, the officers actions following that waiver made his confession involuntary. During the statement, the officers are heard telling Defendant that he is “lying” and that he “has a sickness” and “can help him.” Further, the Trooper stated in the interview to Defendant, “Do you want to go to hell? You got a long life to live in this lifetime then you got eternity after that. If you believe in God do you want to take a gamble that there isn’t a God because that’s what you’re doing right now.” N.T. 2/27/2008 pgs. 62-63. Due to the nature of the officers comments, the Court finds the statement was not voluntarily made, but the product of coercion. Therefore, based on the totality of the circumstances, the Court GRANTS the Defendant’s Motion in Limine to preclude the videotaped statement.

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

ORDER

AND NOW, this ____day of February, 2010, based on the foregoing Opinion, it is ORDERED and DIRECTED as follows:

1. Defendant's Motion in Limine filed February 1, 2010 is hereby GRANTED and the statement given by the Defendant on February 28, 2008 is hereby SUPPRESSED.
2. As to Defendant's Motion in Limine filed February 2, 2010, regarding the backpack and its contents, this Court defers ruling on that Motion to the trial judge.

By the Court,

Nancy L. Butts, P.J.

xc: DA (AMK)
William J. Miele, Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)