

IN THE MATTER OF : IN THE COURT OF COMMON PLEAS  
JOSEPH T. AMES, : OF ERIE COUNTY, PENNSYLVANIA  
 : JUVENILE DIVISION  
 :  
A MINOR : Docket No. 555 of 2004

MOTION TO SUPPRESS EVIDENCE

AND NOW, comes the above name juvenile by and through his attorney, Ines M. Massella, Assistant Public Defender, and moves that the Master suppress evidence gathered by the City of Erie Bureau of Police, and in support thereof represents as follows:

1. Joseph T. Ames, is a juvenile, thirteen years of age, with a date of birth of July 2, 1991.

2. On March 11, 2004, the Commonwealth filed the following allegations of delinquency against the juvenile: two allegations of involuntary deviate sexual intercourse (F-1) 18 Pa.C.S.A. § 3123(6), and two allegations of indecent assault (M-1) 18 Pa.C.S.A. § 3126(a) (1 and 7).

3. On February 24, 2004, the juvenile appeared at the Erie police station to undergo a voice stress analyzer test to be conducted by Detective Kenneth Merchant. On that date the juvenile was twelve years and five months old.

4. Although no test was conducted, the juvenile was interviewed by Detective Merchant for approximately one half hour. The juvenile's mother signed a release to allow the interview. The undersigned believes and avers that no attorney or interested adult reviewed or signed a rights waiver.

5. After approximately 21 minutes of questioning, the juvenile confessed to the factual basis of the allegations.

6. During the videotaped interview, Detective Merchant told the juvenile: to tell the truth before the test so he would not be in the position of telling a lie; that he would know if the juvenile lied to him; that everyone makes mistakes, especially at 12 years old; a two-year-old has no reason to lie or make this up; you're making this a bigger deal than it really is; and you can tell me the truth now or during the test.

7. During the videotaped interview, Detective Merchant asked the juvenile questions the answers to which could tend to incriminate him, such as: where would you have learned this kind of behavior; did you ever do this with anyone else; who taught you this; who showed your bad movies and magazines; do you think a 12 year-old is interested in sex; and there is curiosity, but you have to learn what is appropriate and what is not.

8. The entire interview was conducted outside the presence of an attorney or other interested adult.

9. At the time of the interview, as previously stated, the juvenile was 12 years of age. His experience with the juvenile system was limited to an allegation of arson filed September 3, 2002, when he was eleven years old.

10. The juvenile believes and avers that the videotaped interview was conducted in violation of his constitutional rights as protected by the Fifth and

Sixth Amendments to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution.

11. A totality of the circumstances analysis must be applied to all questions involving the waiver of rights and the voluntariness of confessions made by juveniles. All surrounding facts and circumstances must be considered and weighted in determining whether a juvenile's confession was knowingly and freely given. Among the factors to be considered are the juvenile's youth, experience, comprehension, and the presence or absence of an interested adult. ***Commonwealth v. Williams***, 475 A.2d 1283, 1288 (Pa. 1984); ***Commonwealth v. Morningwake***, 595 A.2d 158, 160 (Pa.Super. 160 (Pa. Super. 1991), *alloc. den.*, 600 A.2d 535 (Pa. 1991).

12. The juvenile and his counsel believe and aver that the totality of the circumstances herein argue in favor of suppression of the juvenile's video taped statement. The circumstances of the videotaping fall squarely within the factors that must be considered in evaluating the voluntariness of a juvenile's confessions - - his youth, experience, comprehension, and absence of the presence of an interested adult.

13. Given the totality of the circumstances herein, it should be apparent that the juvenile was being subjected to a custodial interrogation, or its functional equivalent. For the Commonwealth to allege that the juvenile was not being interviewed as a suspect is belied by the questions posed by Detective Merchant. (see, e.g., paragraph 7, *supra*).

14. The videotape clearly indicates that the Detective's questioning was designed to elicit that the juvenile had lied when he denied the allegations and that he had, in fact, assaulted the alleged victim. Thus, that the juvenile was not under arrest at the time of the questioning does not alter the character of the interrogation.

15. Neither could the juvenile have realized he could end the interview at any time and leave to go home. Juveniles are not on a par with adults as to the "adequacy of their judgment, knowledge of the consequences of their admissions, and ability to resist overbearing police interrogations."

***Commonwealth v. Christmas***, 465 A.2d 989, 991 (Pa. 1983). Thus, their perspective and reaction to the type of situation to which this juvenile was subjected are different from those of an adult and should be addressed accordingly.

WHEREFORE, based on the forgoing, the above-names juvenile respectfully requests that the Master suppress the videotape statement given to the City of Erie Police Department on February 24, 2004.

Respectfully submitted,

Ines M. Massella,  
Assistant Public Defender  
Attorney for Juvenile  
509 Sassafras Street  
Erie, PA 16507  
(814) 451-7443

MASTER'S REPORT REGARDING ALLEGATION HEARING

JAN 12 2005

<u>DATE</u>	<u>TIME</u>
<u>JUVENILE J [REDACTED]</u>	<u>D.O.B. 7/2/91</u>
<u>ADDRESS 231 W. 26<sup>th</sup> St., Erie</u>	<u>DOCKET NO. 529-04</u>
<u>PARENT Tim Hughes, Dolores Holman</u>	<u>DEFENSE COUNSEL Massella</u>
<u>PROBATION OFFICER Hayes</u>	<u>DISTRICT ATTORNEY Vanstrom</u>

FINDINGS OF FACT

*[Handwritten initials]*

This matter was submitted to the Master on the defense's Motion to Suppress, the Response of the Commonwealth, and the videotape of the interrogation of [REDACTED] by Detective Merchant of the Erie Police Department.

On February 24, 2004, [REDACTED] and his mother went to the police station to discuss allegations which the Detectives Barber were investigating with regard to [REDACTED]. The Barbers had [REDACTED] and his mother execute a Miranda rights waiver, then got [REDACTED]'s version of the events in question. Presumably [REDACTED] denied complicity, because he and his mother were then asked if [REDACTED] was willing to undergo a computer voice stress analyzer (CVSA) test. They agreed, and were turned over to Detective Merchant, for whom they signed a voluntary consent form. Merchant then had the mother leave the room and proceeded to interrogate [REDACTED] for about one half hour, during which [REDACTED] initially denied criminal involvement, then gradually made statements which became self-incriminating. (See attached videotape.) No CVSA was ever done, but the process was repeatedly referred to by Merchant, warning [REDACTED] that he had better tell the truth, because once the test began he (Merchant) would know if [REDACTED] was lying.

In their motions both the Commonwealth and the defense refer to the "totality of circumstances" used to the courts to determine whether or not a confession made by a juvenile is voluntary, and whether or not he knowingly waived his Miranda rights. Here, in view of [REDACTED]'s age (12), his relative lack of experience, and the absence of an interested adult at the time of the interrogation, the Master believes that the circumstances were such that the incriminating statements, while skillfully elicited, were not voluntarily made, and should be suppressed.

RECOMMENDATION

The Master recommends that the Motion to Suppress the videotaped statement made by ██████████ to Detective Merchant of the Erie Police Department on February 24, 2004, be granted.

Date 1/11/05

Respectfully submitted,

Confirmed

John J. Trucilla  
Judge

By

[Signature]  
Master

This Court's confirmation of the Master's findings and recommendations shall be final unless a rehearing pursuant to 42 Pa.C.S.A. §6305(d) is requested.

Court Reporter \_\_\_\_\_

IN THE INTEREST OF

[REDACTED]

A MINOR

:  
:  
:  
:  
:

IN THE COURT OF COMMON PLEAS  
OF ERIE COUNTY, PENNSYLVANIA

Juvenile Division  
No. 2004-00529

ORDER

AND NOW, to-wit, this 11<sup>th</sup> day of January, 2005, after due consideration, the Master recommends that the Motion to Suppress the videotaped statement by this juvenile to Detective Merchant of the Erie Police Department on February 24, 2004, shall be granted.

The Court hereby adopts Master's recommendation.

\_\_\_\_\_  
*John J. Trucilla*  
Judge

pjr