

# Judge denies request to suppress statements in murder case

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By Rich Bauer, Managing Editor

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A judge has agreed to suppress a statement made by a Loogootee teen in an ambulance shortly after he allegedly murdered a couple living a short distance from him. But, Judge Michael McHenry denied a motion by Clifford Baker's attorneys to suppress statements he made during a videotaped interview a few hours later. McHaney filed on Tuesday an eight-page docket entry that included his rulings on several motions argued during a hearing in Fayette County Circuit Court last Friday. Baker is charged with first-degree murder and home invasion for allegedly fatally shooting Mike Mahon and Deb Tish in the early-morning hours of Aug. 4. His trial is tentatively set to begin at the end of May. In addition to ruling on requests by defense attorneys Monroe McWard and Mark Wykoff to suppress statements made by Baker, McHaney denied their request to have the trial moved from Fayette County. The defense attorneys contended that pretrial publicity about the case would prevent Baker from receiving a fair and impartial trial. At an earlier hearing, McWard conceded that the motion for a change of venue would likely come up a number of times prior to trial, and that it would be argued during jury selection if there is difficulty in picking jurors. In his written ruling on the suppression of statements made by Baker, McHaney said that Fayette County State's Attorney Stephen Friedel conceded that Baker's statement to an Illinois State Police officer in an ambulance shortly after he was taken into custody should be suppressed, "and it is so ordered." Baker reportedly told the juvenile officer, "They are going to execute me." Suppressed was his response when the juvenile officer asked why he had said that. On the defense motion to suppress statements Baker made during a videotaped interview at Fayette County Hospital, which McHaney said included "incriminating statements, including ... a confession," the judge said that he had to consider "the totality of the circumstances." Factors to be considered, he said, include the "defendant's age, intelligence, background, experience, mental capacity, education and physical condition at the time of questioning; and any physical or mental abuse by the police, including the existence of threats or promises." He said that it must be determined that statements were made "freely and voluntarily. Because the taking of a juvenile's confession is a sensitive concern, the greatest care must be taken to assure that the confession was not coerced or suggested, and that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." Also to be considered, McHaney said, is whether the juvenile had an opportunity to consult with "an adult interested in his welfare." At court hearings in February and March, the judge said, Baker's father, Jeff

Goldman, testified that he had not been prevented to leave the scene of the crime to be with his son and that he never asked for an attorney for himself or his son. Also, McHaney said, Baker's father testified that he had given an officer consent to question his son, because, "I wanted to know what happened, too." The judge also noted a written report submitted by the defense's expert psychiatrist. In that report, the psychiatrist said, "It is my opinion with the necessary degree of psychiatric certainty that Clifford Baker gave a voluntary confession to the police." The psychiatrist noted in his report that during the interview, Baker appeared to be "awake and alert. He is seen to be responding lucidly and coherently." McHaney said that there was no evidence that police made any threats or promises to Baker and that he was prevented from consulting with an adult. "In fact, the parents made no effort or attempt to confer with the defendant before questioning," McHaney said, adding that police read the Miranda rights to Baker three different times. "This court specifically finds, considering the totality of the circumstances and having weighed the credibility of the witnesses, that the evidence overwhelming establishes that the defendant's statements were made freely, voluntarily and without compulsion or inducement of any sort," McHaney stated in his ruling. The judge did grant a defense motion for the appointment of a forensic pharmacologist, capping the fee for that expert witness at \$7,500. In making that ruling, the judge stated that the prosecutor is allowed to file a motion "to preclude any irrelevant or impermissible opinions/conclusions" that expert may make. McHaney also denied a defense motion to dismiss the charges filed against Baker and have the case remanded to juvenile court. Baker was 15 at the time of the incident, but he is being tried by an adult. Citing case law, McHaney said, "Juveniles have neither a common law nor constitutional right to adjudication under the Juvenile Court Act." In issuing his ruling, McHaney said, "This is a homicide case. Accordingly, the motion to dismiss and remand to juvenile court is denied." The judge also ruled on a defense motion for additional funds for an investigator. The court previously allowed up to \$1,500 for the expert witness, and that investigator submitted a bill for \$1,675, which include \$401.25 for mileage. The mileage rate on the bill was 75 cents per mile. McHaney said he would allow payment of 50 cents per mile, "which is the rate set by the state of Illinois. "This court is aware that it should not interject itself into what services the investigator should or should not perform," McHaney said. "The court is also cognizant of the fact that it is the gatekeeper of the county finances in this case. "Accordingly, the bill presented ... is adjusted to reflect mileage at the rate of 50 cents (per mile)," he said. McHaney allowed payment of \$1,541.25 to the investigator. "The court will not approve any future charges for services that could have been performed by (legal) counsel," the judge said.