

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 98-12,236; 98-12,237  
:   
vs. : CRIMINAL DIVISION  
:   
LEROY McDANIEL, : Motion to Suppress  
Defendant :

**ORDER**

AND NOW, this day of July 1999, upon consideration of the defendant's motion to suppress evidence, it is ORDERED and DIRECTED as follows: The Court GRANTS the Motion with respect to any statements the defendant made to the police since the defendant was not properly advised of his Miranda warnings.<sup>1</sup>

In all other respects, the Motion is DENIED. The Court notes that the evidence found in the defendant's girlfriend's apartment is not "fruit of the poisonous tree" because that doctrine does not apply to Miranda violations. Michigan v. Tucker, 417 U.S. 433, 94 S.Ct. 2357, 41 L.Ed.2d 182 (1974); Commonwealth v. Hess, 446 Pa.Super. 222, 666 A.2d 705 (1995), appeal denied, 544 Pa. 603, 674 A.2d 1067 (1996). Furthermore, the Court finds that the defendant's girlfriend knowingly and voluntarily consented to the search of her apartment. This consent was not the product of duress or coercion nor was it a result of the Miranda violation.

By The Court,

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Kenneth D. Brown, J.

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<sup>1</sup>When the defendant was arrested near Apartment 9G of Timberland Apartments, the police failed to inform the defendant that an attorney would be provided if he could not afford one.