

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	NO. 00-11,809
	:	
	:	
vs.	:	
	:	CRIMINAL DIVISION
DENNIS LOCKCUFF,	:	Motion to Suppress
Defendant	:	

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress, filed January 8, 2001. Hearings on the Motion were held March 28, 2001 and May 15, 2001.

Defendant has been charged with arson, risking a catastrophe, criminal mischief and insurance fraud in connection with a fire which destroyed business property owned by him. Defendant seeks to suppress statements made by him to Sargent Rexford Lowmiller in an interview conducted by Sargent Lowmiller the day after the fire.

Defendant contends he was in custody at the time of the interview and therefore should have been given Miranda warnings. While the Court agrees that a custodial interrogation would have called for Miranda warnings, considering the evidence offered at the suppression hearing, the Court finds that Defendant was not in custody at the time of the interview. Sargent Lowmiller testified that he asked Defendant if he would come down to the station to discuss the fire and that Defendant indicated that he would. Defendant then went in his own vehicle, following Sargent Lowmiller in the police vehicle, to the police station. They both went into the police station and Sargent Lowmiller sat behind his desk while Defendant sat in front of the desk. Sargent Lowmiller testified that Defendant was told that he was free to leave the station and that if he were asked a question he did not want to answer that he did not have to answer it. Sargent Lowmiller also testified that at the scene of the fire,

he told Defendant he did not have to come to the station to answer questions, it was up to him. While Defendant testified that Sargent Lowmiller told him to get back in his car that he wanted to see him over at the station and was never told that he didn't have to talk to him or that he was free to leave and didn't have to answer any questions, the Court resolves this credibility issue in favor of the Commonwealth.

A suspect is considered "in custody" whenever he is physically deprived of his freedom or placed in a situation where he reasonably believes movement or freedom of action is restricted. The standard is objective but due consideration must be given to the reasonable impression conveyed to the suspect. The crucial test is whether the police conduct would communicate to a reasonable person that he was not at liberty to ignore the police presence and go about his business. Commonwealth v Oppel, 754 A.2d 711 (Pa. Super. 2000). In the instant matter, considering all of the circumstances, the Court believes a reasonable person would not have felt his movement or freedom of action to be restricted by Sargent Lowmiller's request to answer questions, combined with his advice that the interview need not take place and the questions need not be answered. The Court finds that Defendant was not in custody at the time of the interview and thus not entitled to Miranda warnings; consequently, the statements given in the interview need not be suppressed.

ORDER

AND NOW, this 18<sup>th</sup> day of May, 2001, for the foregoing reasons, Defendant's Motion to Suppress is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA  
Kyle Rude, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson