

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

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

OPINION AND ORDER

Before the Court is Defendant's Motion in Limine, filed September 10, 2001. A hearing was held November 13, 2001.

Defendant has been charged with arson and related charges in connection with a fire which destroyed a building owned by him in August 1999. In his motion, Defendant seeks to exclude testimony proffered by the Commonwealth through a former tenant of the building (which contained an apartment as well as a restaurant), that on July 25, 1999 she returned home from a family reunion and found a pot on her stove with the burner left on, that she had not used the stove for several days and had not left the burner on that morning when she left, that the door was locked when she left and when she returned, and that Defendant was the only other person with a key to the apartment.<sup>1</sup> Defendant contends this evidence is not relevant and even if it is relevant, that it will tend only to confuse the jury and such confusion outweighs the probative value. The Commonwealth argues that the evidence is relevant to show a common scheme or plan.

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<sup>1</sup>The motion also seeks to exclude evidence of a fire at a trailer shared by Defendant, in New York several years ago. At argument the Commonwealth indicated that it will not seek to introduce this evidence.

Assuming for the sake of argument that the evidence offered by the Commonwealth sufficiently establishes a nexus between Defendant and the burner left on, thus bringing the incident under the umbrella of “other crimes”, such may be introduced to show a common scheme or plan only if the two crimes are so related to each other that proof of one tends to prove the others. Commonwealth v Blady, 444 A.2d 670 (Pa. Super. 1982). Further, even if admissible under this exception, the admissibility is further limited by an analysis of the probative value as compared to the tendency to prejudice the jury. Id.

In determining whether evidence of other crimes falls under the common scheme or plan exception, the Court must examine the circumstances of each crime to ensure the evidence reveals criminal conduct which is so distinctive and so nearly identical as to become the signature of the same perpetrator. Commonwealth v Gordon, 652 A.2d 317 (Pa. Super. 1994). In the instant case, the testimony at the preliminary hearing indicates that the fire in the building originated in a storage room and was caused by a combustible liquid having been poured onto the floor at the base of the wall and then ignited. Evidence of a burner having been left on, with an empty pot on the burner, is not even similar to the cause of the fire, let alone “distinctive and so nearly identical”. The Commonwealth argues that a coffee maker in the restaurant was found in the “on” position after the fire<sup>2</sup> but the testimony offered at the preliminary hearing from the fire investigators indicates that the coffee maker suffered no burns, flames or heat, just smoke damage, and was not the origin of the fire.

Since the two incidents are not sufficiently similar, the burner incident does not come within the common scheme or plan exception and therefore is not relevant and will be excluded at trial.

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<sup>2</sup>No evidence of such was introduced at the preliminary hearing but the Court will accept such as true for purposes of this motion, based upon the Commonwealth’s assertion of such.

ORDER

AND NOW, this 11<sup>th</sup> day of November, 2001, for the foregoing reasons, Defendant's Motion in Limine is hereby granted and the Commonwealth shall not be permitted to introduce the proffered evidence as outlined herein.

By the Court,

Dudley N. Anderson, Judge

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