

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

FADIA MOHAMAD KLAIT,

Defendant-Appellee.

UNPUBLISHED

September 13, 2007

No. 271887

Wayne Circuit Court

LC No. 06-000399-01

Before: Markey, P.J., and Saad and Wilder, JJ.

MEMORANDUM.

Defendant was charged with arson, MCL 750.72. The circuit court dismissed the charge after granting defendant's motion to suppress her statement. The prosecutor appeals as of right. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

"A statement obtained from a defendant during a custodial interrogation is admissible only if the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003). A formal advice of rights is only required when the defendant is subject to custodial interrogation. *People v Hill*, 429 Mich 382; 415 NW2d 193 (1987). A custodial interrogation is questioning initiated by law enforcement officers after the defendant has been taken into custody or otherwise deprived of his freedom of action in any significant way. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). Whether the defendant was in custody depends on the totality of the circumstances. *Id.* The key question is whether the defendant "reasonably could have believed that [s]he was not free to leave." *Id.* "The determination of custody depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned." *Id.* Whether the defendant was in custody is a mixed question of law and fact reviewed de novo on appeal, *Id.*, but the trial court's factual findings are reviewed for clear error. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997). The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

In this case, defendant voluntarily appeared at the station for questioning. A defendant is not in custody simply because she is questioned by police officers at a police station. *Mendez*, *supra* at 383-384. Although defendant was not told that she was free to leave, she was told it

was her decision whether to answer questions. Further, defendant was not placed under arrest or physically restrained in any way. Two or three officers questioned her for approximately 2½ hours, during which time she did not try or ask to leave. When the interview concluded, defendant was allowed to leave. Therefore, the trial court erred in finding that defendant was in custody and thus required to be advised of her rights before being questioned.

Reversed and remanded for reinstatement of the charge. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Kurtis T. Wilder