

No. 33900 *Mark Damron v. William Haines, Warden, Huttonsville Correctional Facility*

**FILED**

**January 9, 2009**

released at 3:00 p.m.

RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Benjamin, Justice concurring:

I concur because I believe that the issue of custodial interrogation was ultimately resolved correctly by the majority, although the issue was not as clear cut as the majority perceives. The fact that the Appellant was stopped by two fire marshals rather than police officers does not convince me that the Appellant should not have considered himself to be in custody at the time he made the incriminating statement at issue herein. It is indeed arguable that a reasonable person in the Appellant's position could believe that his freedom of action was curtailed to a degree associated with a formal arrest.

However, regardless of any concerns I may have regarding whether the Appellant considered himself to be in custody at the time the fire marshal questioned him, any doubt is still resolved against the Appellant in this case. The admission of the inculpatory statement made by the Appellant prior to being advised of his Miranda rights constitutes harmless error, to the extent that the statements later made by the Appellant after he was arrested and read his Miranda rights support the jury's verdict. Thus, even if the statement made by the Appellant to the fire marshal was the product of an improper custodial interrogation, the majority's decision should remain the same. Accordingly, I concur.