

STATE OF MAINE

v.

JOHN A. WECKERLY

Submitted on Briefs October 27, 2014
Decided November 4, 2014

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, JABAR, and
HJELM, JJ.

MEMORANDUM OF DECISION

John A. Weckerly appeals from an order of the Unified Criminal Docket (Penobscot County, *Anderson, J.*) denying his motion to dismiss a charge of arson (Class A), 17-A M.R.S. § 802(1)(B)(2) (2013), based on double jeopardy grounds, after a jury deadlocked on that charge after trial and he agreed to a mistrial. *See State v. Nielsen*, 2000 ME 202, ¶ 1 n.1, 761 A.2d 876 (noting that the double jeopardy exception to the final judgment rule allows appeal from an order denying a motion to dismiss based on double jeopardy grounds). Contrary to Weckerly's contentions, the arson charge is a separate offense from the other offenses of which he was acquitted at trial. *Cf. Ashe v. Swenson*, 397 U.S. 436, 437-445 (1970). Therefore, his constitutional right to be free from being twice tried for the same offense will not be violated by a retrial only on the arson charge. *See State v. Labbe*, 2009 ME 94, ¶ 4, 979 A.2d 693 ("The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal.").

Weckerly also seeks our review of the trial court's denial of his motion in limine seeking to exclude, at the retrial of the arson charge, any evidence related to other offenses on which he was acquitted. Weckerly's contention that the trial court erred in denying his motion in limine is an interlocutory appeal of an issue

that cannot be reached by this Court until there is a final judgment in the retrial of the arson charge. *See State v. Brackett*, 2000 ME 54, ¶¶ 6-7, 754 A.2d 337 (dismissing interlocutory appeal of denial of motion in limine as premature).

The entry is:

The order denying the motion to dismiss is affirmed. The appeal of the order denying the motion in limine is dismissed as premature.

On the briefs:

Kirk D. Bloomer, Esq., Bangor, and John C. Sheldon, Esq., Westbrook, for appellant John Weckerly

R. Christopher Almy, District Attorney, Lauren Daley, Stud. Atty., and Tracy Collins Lacher, Asst. Dist. Atty., Prosecutorial District V, Bangor, for appellee State of Maine