

STATE OF MAINE

v.

KENNETH LARKIN

Submitted on Briefs November 21, 2001

Decided December 13, 2001

Panel: SAUFLEY, C.J., CLIFFORD, RUDMAN, DANA, ALEXANDER, and
CALKINS, JJ.

MEMORANDUM OF DECISION

Kenneth Larkin appeals from the judgment entered in the Superior Court (Washington County, *Marden, J.*) on a jury verdict finding him guilty of arson (Class A), 17-A M.R.S.A. § 802(1)(A) (1983), and reckless conduct with a dangerous weapon (Class C), 17-A M.R.S.A. § 211 and § 1252(4) (1983). Contrary to Larkin's contentions, because it is the crime rather than the evidence that must be established beyond a reasonable doubt, the court did not commit obvious error in its instructions to the jury regarding circumstantial evidence. Because Larkin claimed he was never an accomplice, the court did not commit an obvious error by its failure to instruct the jury regarding termination of accomplice liability. Furthermore, because Larkin's conviction for arson under section 802(1)(A) required proof of factual elements distinct from those required for his conviction for reckless conduct under section 211, the charges brought in the indictment

were not multiplicitous. *See State v. Poulliot*, 1999 ME 39, ¶ 11, 726 A.2d 210, 213.

The entry is:

Judgment affirmed.

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