

STATE OF MAINE

v.

LARRY W. SMITH JR.

Submitted on briefs November 21, 2000
Decided December 5, 2000

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

MEMORANDUM OF DECISION

Defendant Larry Smith appeals from a judgment entered in the Superior Court (Penobscot County, *Mead, J.*) after a jury trial finding him guilty of arson (Class A), 17-A M.R.S.A. § 802 (1983), burglary (Class B), 17-A M.R.S.A. § 401 (1983 & Supp. 1999), and theft (Class C), 17-A M.R.S.A. § 353 (1983). Contrary to defendant's contentions, the court did not err in allowing a statement to be used as an adoptive admission pursuant to M.R. Evid. 801(d)(2)(B). The court properly determined that the State introduced sufficient facts for the jury reasonably to conclude that the defendant adopted the admission of another. *See State v. Cookson*, 657 A.2d 1154, 1157 (Me. 1995). Nor did the court err in finding that the evidence generated an instruction on accomplice liability in general, as well as on the basis that arson was a reasonably foreseeable consequence of burglary. *See*

State v. Berry, 1998 ME 113, ¶ 11, 711 A.2d 142, 145; *State v. Kimball*, 424 A.2d 684, 693 n.4 (Me. 1981). Finally, the State's reference in its closing argument to the fire being set was not prejudicial to defendant. Viewed in context, the term "set" was used synonymously with "caused by human action" and supported by the evidence.

The entry is:

Judgment affirmed.

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