

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2003-0808, State of NH v. David N. Matthews, the court on November 9, 2004, issued the following order:**

The defendant, David N. Matthews, appeals his conviction for driving while intoxicated, subsequent offense. See RSA 265:82-b (Supp. 2003). He contends that the trial court erred in denying his motion to suppress. We affirm.

The defendant first contends that his arrest violated his rights under the State and Federal Constitutions because the arresting officer lacked probable cause to believe he was impaired at the time he was operating his motor vehicle. “Probable cause to arrest exists when the arresting officer has knowledge and trustworthy information sufficient to warrant a person of reasonable caution and prudence in believing that the arrestee has committed an offense.” State v. Jaroma, 137 N.H. 562, 567 (1993) (quotations omitted). When determining whether probable cause to arrest exists, the trial court reviews “reasonable probabilities and not the amount of evidence required to sustain a conviction or to make out a prima facie case.” Id. (quotations omitted).

In this case, Officer Meyer heard a crash and then observed two vehicles emerging from the area from which the sound had originated. Concerned that they had not exchanged the requisite post-accident information, he followed them and first stopped the defendant and instructed him to remain with his vehicle. He then proceeded to stop the second driver. The defendant failed to remain with his vehicle and joined Officer Meyer with the second driver. When Officer Collopy arrived to assist at the scene, he observed the defendant to be off balance, that he smelled of alcohol and that he repeatedly interrupted Officer Meyer’s questioning of the other driver. Officer Collopy then placed the defendant under arrest. Based upon the record, we conclude that Officer Collopy had probable cause to believe that the defendant was impaired at the time he operated his motor vehicle. See State v. Maya, 126 N.H. 590, 594 (1985) (Federal Constitution provides no greater protection than State Constitution on this issue).

The defendant also argues that the arresting officer’s failure to comply with RSA 265:87, I-a ( 2004) barred admission of his post-arrest field sobriety tests. We disagree. RSA 265:87, I-a provides that before any post-arrest physical test is given, the law enforcement officer “shall inform the defendant of the consequences of the defendant’s refusal to comply with the law enforcement officer’s instructions for a post-arrest physical test.” See also RSA 265:87, II

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(2004) (law enforcement's failure to comply will result in inadmissibility of test in any court or administrative proceeding).

In this case, the record reflects that, after the defendant was placed under arrest, he asked whether he could take field sobriety tests. The police officer responded, "If you're willing to do them," and the defendant stated that he was. As the final arbiter of the legislature's intent, we decline to construe a statute so as to reach an absurd result. See State v. Kidder, 150 N.H. 600, 602 (2004) (goal of statutory interpretation is to apply statutes in light of legislature's intent in enacting them and in light of policy sought to be advanced by entire statutory scheme). Because the defendant requested the tests, Officer Collopy was not obligated to advise him of the consequences had he refused to take them. Accordingly, we find no error in the trial court's admission of the results.

Affirmed.

BRODERICK, C.J., and NADEAU and DALIANIS, JJ., concurred.

**Eileen Fox,  
Clerk**

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