

STATE OF MAINE

v.

SANDRA J. SANBORN

Submitted on Briefs February 3, 2005
Decided February 23, 2005

Panel: CLIFFORD, RUDMAN, DANA, ALEXANDER, CALKINS, and LEVY,
JJ.

MEMORANDUM OF DECISION

Sandra J. Sanborn appeals from a conviction for operating under the influence (Class D), 29-A M.R.S.A. § 2411 (1996), after a jury verdict in Superior Court (Kennebec County, *Mills, C.J.*). She also appeals from a conviction entered after a finding of guilty by the court for operating a vehicle without a license (Class E), 29-A M.R.S.A. § 1251(1) (Supp. 2002).¹ Sanborn contends that (1) the trial court acted outside its discretion when it refused to grant a mistrial after evidence

¹ Title 29-A M.R.S.A. § 2411 has since been amended, in part, and repealed and replaced, in part, by P.L. 2003, ch. 452, §§ Q-77 to Q-83, (effective July 1, 2004), *codified at* 29-A M.R.S.A. § 2411 (Supp. 2004). Title 29-A M.R.S.A. § 1251(1) has since been repealed and replaced by P.L. 2003, ch. 452, § Q-17, (effective July 1, 2004), *codified at* 29-A M.R.S.A. § 1251(1) (Supp. 2004).

subject to a suppression order came to the jury's attention; (2) there is insufficient evidence to support the verdict; and (3) the trial court erred in instructing the jury regarding Sanborn's failure to submit to a chemical test.

The refusal to grant a mistrial in this case constitutes a sustainable exercise of discretion, *see State v. Krieger*, 2002 ME 139, ¶ 14, 803 A.2d 1026, 1030-31; and there is sufficient evidence that Sanborn operated a motor vehicle while under the influence of intoxicants to sustain the convictions, *see State v. Melanson*, 2002 ME 145, ¶¶ 9-10, 804 A.2d 394, 397-98. Because Sanborn did not make a timely objection at trial to the jury instructions on failure to submit to a chemical test, we review the instruction only for obvious error. *State v. Knox*, 2003 ME 39, ¶ 5, 819 A.2d 1011, 1013. Reviewing the instructions "as a whole, taking into consideration the total effect created by all the instructions and the potential for juror misunderstanding[.]" *State v. Cormier*, 2003 ME 154, ¶ 21, 838 A.2d 356, 360 (quotation marks omitted), it does not appear that the instruction on failure to submit to a chemical test affected Sanborn's substantial rights, *see Knox*, 2003 ME 39, ¶ 5, 819 A.2d at 1013.

The entry is:

Judgments affirmed.

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