IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DYLAN J. MARTIN, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12618 Trial Court No. 3KN-15-00739 CR SUMMARY DISPOSITION No. 0036 — May 22, 2019

Appeal from the District Court, Third Judicial District, Kenai, Sharon A.S. Illsley, Judge.

Appearances: Jane B. Martinez, Law Office of Jane B. Martinez, LLC, Anchorage, under contract with the Office of Public Advocacy, for the Appellant. Paul S. Morin, Assistant District Attorney, Kenai, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and E. Smith, Senior Superior Court Judge.[*]

Dylan J. Martin appeals his conviction for driving under the influence on the ground that the district court improperly admitted a hearsay statement. For the reasons explained here, we conclude that any error was harmless.

[*] Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

On May 24, 2015, Martin was with friends and heard that his pregnant sister was involved in a car accident. He decided that he needed to ensure his sister's well-being, so he drove to the accident. According to an eyewitness report, Martin was speeding and tailgating on the way to the scene.

State Trooper Timothy Wolff responded to the dangerous driving report and made contact with Martin once Martin arrived at the scene. Trooper Wolff observed signs of intoxication in Martin, including bloodshot, watery eyes, thick speech, and an odor of alcohol. Trooper Wolff conducted field sobriety tests, which Martin failed. Trooper Wolff then arrested Martin for driving under the influence.

Trooper Wolff transported Martin to a pretrial holding facility. A breath test revealed that Martin had a blood alcohol content reading of .095, above the legal limit. During this process, Martin repeatedly admitted that he should not have been driving, although he did not explicitly state that he should not have been driving due to intoxication. At one point, Martin stated:

> I should never drive. They told me, Eli drive, Eli drive. I was, like, no, I got to go get my sister, make sure she's all right. That was so stupid of me, you know?

On appeal, Martin contends that the phrase "Eli drive, Eli drive" is inadmissible hearsay because it is an out-of-court statement offered to prove the truth of the matter asserted — *i.e.*, that Eli should have driven to the accident, instead of Martin.[1] He also contends that this error was not harmless and requires reversal of his conviction.

We disagree. Under Alaska Evidence Rule 801(d)(2)(B) "[a] statement is not hearsay if . . . [t]he statement is offered against a party and is . . . a statement of which the party has manifested an adoption or belief in its truth[.]" Here, the statement at issue was offered against Martin, and Martin expressed a belief in its truth when he

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[1] *See* Alaska Evid. R. 801(c) & 802.

stated, immediately before and after repeating the statement, "I should never drive" and "That was so stupid of me, you know?" We therefore conclude that the statement was properly admitted as an adoptive admission by a party-opponent.

Moreover, even assuming that the statement was inadmissible hearsay, we would still conclude that any error in admitting the statement was harmless, given the record in this case. As noted above, Martin admitted multiple times that he should not have been driving. These admissions, when combined with Martin's speeding and tailgating, his bloodshot, watery eyes, thick speech, and odor of alcohol, his failure of the field sobriety tests, and his breath test result convince us that the admission of the challenged statement, even if error, did not appreciably affect the jury's verdict.[2]

The judgment of the district court is AFFIRMED.

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[2] *See Love v. State*, 457 P.2d 622, 632 (Alaska 1969).