

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0334, State of New Hampshire v. Paul Rankins, the court on May 13, 2008, issued the following order:

The defendant, Paul Rankins, appeals his convictions for felony reckless conduct, driving while intoxicated, resisting arrest or detention and simple assault. He argues that the trial court erred in admitting a hearsay statement in violation of his Sixth Amendment right to confrontation. We affirm.

After a car crashed into his house, the owner observed the defendant helping his girlfriend out of the driver's side window of the car and heard the girlfriend say, "Tell them I was driving." The State was unable to locate the girlfriend at the time of the trial. On appeal, the defendant challenges the admission of the girlfriend's statement.

The admissibility of evidence is a matter left to the sound discretion of the trial court. State v. White, 155 N.H. 119, 123 (2007). Absent an unsustainable exercise of discretion, we will uphold its decision. *Id.*

We will assume without deciding that the challenged statement was inadmissible. Based upon the record before us, we conclude that any error was harmless. See State v. Wall, 154 N.H. 237, 245 (2006) (error harmless if State establishes beyond reasonable doubt that alternative evidence of defendant's guilt is of overwhelming nature, quantity or weight, and if inadmissible evidence is merely cumulative or inconsequential in relation to strength of State's evidence of guilt).

The evidence included that: (1) the defendant admitted to hospital staff that he had unintentionally driven the car into the house; (2) his blood alcohol level was .12 approximately three hours after the accident; (3) the only other person in the car passed field sobriety tests at the site of the accident; (4) the defendant was observed getting into the driver's side of the car before the accident; and (5) other witnesses observed the car being driven erratically down the road just prior to the accident. The defendant's attempts to avoid arrest provided further evidence of his guilt. See State v. Littlefield, 152 N.H. 331, 335 (2005) (evidence of consciousness of guilt includes resistance to arrest).

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**