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VI

Vickers next assigns as error the trial court's admission of the extra-judicial statement of his co-defendant, Mettrick, and the trial court's failure to instruct the jury that Mettrick's extra-judicial statements could be considered against Mettrick but could not be considered as evidence against Vickers. Over objections, the trial court admitted testimony from law enforcement officers as to statements made to them by Mettrick. Indeed, the only evidence in the record as to the nature and content of the airplane's cargo were the statements made by Mettrick to these law enforcement officials. Vickers was not present at any time when Mettrick made the various statements to law enforcement officials.

The general rule, set forth in Bruton v. United States, 391 U.S. 123, 20 L.Ed.2d 476, 88 S.Ct. 1620 (1968), and approved by our court in State v. Slate, 38 N.C. App. 209, 212, 247 S.E.2d 430, 432-33 (1978), was stated as follows:

> When two defendants are jointly tried, the extra-judicial confession of one may be received in evidence over the objection of the other only when the trial court instructs the jury that the confession is admitted as evidence against the defendant who made it but is not evidence and may not be considered by the jury in any way in determining the charges against his codefendant. State v. Lynch, 266 N.C. 584, 146 S.E.2d 677 (1966); State v. Bennett, 237 N.C. 749, 76 S.E.2d 42 (1953); 2 Stansbury's N.C. Evidence, 188 (Brandis rev. 1973). Failure to give the required instruction will necessitate a new trial in Slate's case. . . .

We are not unmindful of the fact that Mettrick testified in his own defense and did not in any way implicate Vickers. Consequently, Vickers' rights under the confrontation clause of the Sixth Amendment to the Constitution were not violated. The admission against Vickers, however,

> remained a violation of long established principles of law controlling in this jurisdiction. As to [Vickers], the extra-judicial statement of [Mettrick] was inadmissible hearsay. The extra-judicial statement of [Mettrick] did not become exceptionally admissible as corroborative evidence solely by virtue of the fact that [Mettrick] took the stand and testified.

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38 N.C. App. at 212, 247 S.E.2d at 432.

We are also cognizant that the rules regarding admissibility of statements made by co-conspirators vary from rules regarding statements of co-defendants in non-conspiracy cases.

> According to the general rule, when the State has introduced prima facie evidence of a conspiracy, the acts and declarations of each party to it in furtherance of its objectives are admissible against the other members regardless of their presence or absence at the time the acts and declarations were done or uttered. [Citations omitted.]

State v. Tilley, 292 N.C. 132, 138, 232 S.E.2d 433, 438 (1977). **The** ordinary rules relating to conspiracy cases do not apply in this case because the conspiracy was over at the time Mettrick made his extra-judicial statements. Success or failure or abandonment terminates a conspiracy. Krulewitch v. United States, 336 U.S. 440, 93 L.Ed. 790, 69 S.Ct. 716 (1949). Here, the cargo had been delivered, the airplane had been locked, Mettrick had been in Ashe County a day and had been questioned by law enforcement officers.

> Before the acts or declarations of one conspirator can be considered as evidence against his co-conspirators, there must be a showing that "(1) a conspiracy existed; (2) the acts or declarations were made by a party to it and in pursuance of its objectives; and (3) while it was active, that is, after it was formed and before it ended." [Citation omitted.]

292 N.C. at 138, 232 S.E.2d at 438. (Emphasis added.)

On the facts of this case, the ordinary rules governing hearsay evidence control, and Vickers was entitled to an instruction that Mettrick's statements were admissible only against Mettrick and could not be considered against Vickers.