

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-830

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

STATE OF NORTH CAROLINA

v.

Wake County  
Nos. 04CRS076582-85

LAWRENCE CLAY McGEE

Appeal by defendant from judgments entered 10 November 2005 by Judge Carl R. Fox in Wake County Superior Court. Heard in the Court of Appeals 12 March 2007.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Steven A. Armstrong, for the State.*

*Stubbs, Cole, Breedlove, Prentis & Biggs, PLLC, by C. Scott Holmes, for defendant-appellant.*

HUNTER, Judge.

On 4 November 2004, the Wake County grand jury indicted defendant on charges of trafficking in cocaine by transportation, trafficking in cocaine by possession, trafficking in cocaine by delivery, and conspiracy to traffic in cocaine by possession, delivery and transportation. The conspiracy indictment alleged that defendant "did conspire with Alexander Edward Stancil and others to commit the felony of trafficking by possession, delivery, transportation [of] 400 grams or more of cocaine." On 8 November 2004, Alexander Stancil was also indicted on a charge of conspiring

with defendant and others to traffic in cocaine by possession, sale and delivery.

On 10 November 2005, a jury found defendant guilty of the three trafficking charges and the conspiracy charge. The trial court consolidated the three trafficking convictions for judgment and imposed a sentence of 175 to 219 months imprisonment. For the conspiracy conviction, the trial court imposed a consecutive sentence of 175 to 219 months imprisonment. At the conclusion of a separate trial on 5 May 2006, a jury found Alexander Stancil to be not guilty of the conspiracy charge. From the trial court's judgments, defendant appeals.

In his sole argument on appeal, defendant contends that his conspiracy conviction must be set aside because the only other person (Alexander Stancil) charged with the conspiracy was acquitted. Since the remaining persons involved in the drug transaction were law enforcement officers and a confidential informant, defendant argues he cannot be convicted of conspiring with himself. Defendant's argument is not persuasive.

"The general rule is that if all participants charged in a conspiracy have been legally acquitted, except the defendant, then the inconsistent charge or conviction against the sole remaining defendant must be set aside." *State v. Gibson*, 333 N.C. 29, 51, 424 S.E.2d 95, 107 (1992), *overruled on other grounds by State v. Lynch*, 334 N.C. 402, 432 S.E.2d 349 (1993). Although defendant correctly cites this general rule, he fails to cite or address the exception created by *State v. Soles*: "[T]he conviction of one

defendant in a conspiracy prosecution will be upheld where all alleged coconspirators are acquitted in a separate subsequent trial." *Soles*, 119 N.C. App. 375, 380, 459 S.E.2d 4, 8, *appeal dismissed and discretionary review denied*, 341 N.C. 655, 462 S.E.2d 523 (1995). Because the alleged coconspirator, Alexander Stancil, was acquitted in a separate subsequent trial, the general rule of consistency is inapplicable to defendant's conspiracy conviction. Defendant's argument is overruled, and his conspiracy conviction shall not be disturbed.

Defendant failed to set out his remaining assignment of error in his brief. Because he has neither cited any authority nor stated any reason or argument in support of that assignment of error, it is deemed abandoned. See N.C.R. App. P. 28(b)(6). Defendant received a fair trial, free from prejudicial error.

No error.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).