

Page 547

On direct examination, Larry Westall testified that he had told officers who were searching for defendant in Larry's trailer that they might find defendant at his father's house, but that the officers had seemed uninterested in the directions to his father's house. On cross-examination, the prosecutor asked Larry if he had told Detective

Page 548

Hollifield that defendant's father had said that defendant had come to his house around 10:30 p.m. and asked to borrow his car, that defendant's father had refused to give it to him, and that defendant had left. Larry Westall denied making any such statement. In rebuttal, Detective Hollifield testified that Larry had made such a statement in his presence. The trial court properly admitted the prior inconsistent statement for the non-hearsay purpose of impeaching Larry.

In State v. Green, 296 N.C. 183, 192-93, 250 S.E.2d 197, 203 (1978), our Supreme court addressed this exact issue.

A witness may be cross-examined by confronting him with prior statements inconsistent with any part of his testimony . . . . If the matters inquired about are collateral, but tend "to connect him directly with the cause or the parties" or show his bias toward either, the inquirer is not bound by the witness's answer and may prove the matter by other witnesses, but not before he has confronted the witness with his prior statement so that he may have an opportunity to admit, deny or explain it. (Citations omitted.)

The court further stated that impeachment of an alibi witness "respected the main subject matter in regard to which such witnesses were examined, namely, the whereabouts of the defendant at the time the offense is alleged to have been committed." Id. at 194, 250 S.E.2d at 204. Whether or not Larry's testimony can be considered an alibi, his "close connection" to the defendant allows for extrinsic evidence to be used in impeaching his testimony, despite being a collateral matter. Thus, it was not error to allow testimony concerning Larry's prior out-of-court statement.

The fact that Larry's statement itself contained a statement by defendant's father did not render Larry's statement inadmissible. The father's statement, relayed by Larry, explained why the deputies did not subsequently look for defendant at the father's house. Such use does not constitute hearsay. "[T]here was no hearsay - within - hearsay problem presented here because the statements of the third party declarants were not offered for their truth, but to explain the officer's conduct." State v. Harper, 96 N.C. App. 36, 40, 384 S.E.2d 297, 299 (1989). Statements of one person to another are admissible to explain the subsequent conduct of the person to whom the statement was made. State v. White, 298 N.C. 430, 259 S.E.2d 281 (1979). Larry's prior statement to the deputy was not offered to prove the

Page 549

truth of the matter asserted, but rather to explain the officers' actions, and was, therefore, not hearsay.