

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE P. YOUNG,	§	
	§	No. 203, 2000
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. Nos. IN98-10-0477,
Plaintiff Below,	§	IN98-10-0480 and
Appellee.	§	IN98-10-0481

Submitted: October 24, 2000

Decided: December 6, 2000

Before **WALSH, HOLLAND** and **BERGER**, Justices.

O R D E R

This 6th day of December, 2000, on consideration of the briefs of the parties, it appears to the Court that:

1) Tyrone P. Young appeals from his conviction, following a jury trial, of two counts of felony theft and one count of home improvement fraud. Young argues that the State engaged in improper cross-examination by asking him about aspects of his plea negotiations. The Superior Court denied Young's motion for a new trial and we affirm.

2) Young, a self-employed contractor, was charged with taking and retaining "deposits" for work he contracted to perform, but never did. During the course of

pre-trial discussions with Young's counsel, the State learned that Young had approximately \$48,000 in CDs. On the morning of trial, the State's information was confirmed when it overheard a conversation between Young and his counsel that included reference to the CDs.

3) Young testified at trial about the many reasons he was unable to perform his contracts. He admitted that he had not returned the victims' money, but claimed that he did not have the money to return. On cross-examination, the State questioned Young about the \$48,000 in CDs. After several questions on this subject, Young objected on the ground that the information about CDs was provided to the State in the course of plea negotiations. In response to the objection, the State withdrew its last question.

4) Superior Court Criminal Rule 11(e)(6)(D) provides that, "[a]ny statement made in the course of plea discussions with the attorney general which do not result in a plea of guilty..." shall be inadmissible in civil or criminal proceedings. The trial court found, however, that the statements about Young's CDs were not made in the course of plea discussions. Accordingly, the court held that Young was not entitled to a new trial.¹

¹*Cf. Williams v. State*, Del.Supr., 491 A.2d 1129 (1985).

5) The Superior Court's factual finding was based on the representations made by the State, which were not disputed by Young. Since the State did not learn about Young's CDs through plea discussions, it was a proper subject of cross-examination. Accordingly, the trial court did not commit plain error by failing to exclude the evidence and it acted well within its discretion in denying Young's motion for a new trial.²

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

²*Burke v. State*, Del.Supr., 484 A.2d 490 (1984).