

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALESIA BERRYMAN,	§	
	§	No. 463, 2005
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware
v.	§	in and for New Castle
	§	
STATE OF DELAWARE,	§	No. 0412021910
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 21, 2006

Decided: April 11, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 11th day of April 2006, upon consideration of the briefs and the parties it appears to the Court that:

1) Defendant-Appellant, Alesia Berryman appeals her conviction of identity theft, unlawful use of a credit card, and theft.¹ Defendant makes two claims. First, she claims that the Superior Court abused its discretion by denying her the opportunity to plea to lesser included offenses after final case review. Second, she claims that the Superior Court denied her a fair trial when it refused to instruct the jury on lesser included charges of identity theft, unlawful use of a credit card, and theft. We find no

¹ In violation of 11 Del. C. §§ 854, 903, and 841, respectively.

merit to either claim and affirm.

2) Consistent with Criminal Rule 50, the Superior Court has adopted a Criminal Case Management Plan for each county. Prior to a trial of a criminal case there is an initial case review (ICR) and final case review (FCR). Under the New Castle County Plan, the prosecutor is expected to have made a substantive plea offer before initial case review to defense counsel “who shall inform the defendant of the offer.”² The Superior Court requires defense counsel “to discuss the status of the case with a client and the plea offer that has been tendered by the Attorney General.”³ If the parties do not resolve the case by a plea agreement, the parties are expected to address the status of discovery, any particular or unique problems requiring judicial assistance, and any outstanding motions. Under the Plan, “[i]f a matter is not resolved at the ICR, the defendant will be required to sign a notice to appear for a FCR, and will be advised to come to the FCR prepared to make final decisions about the case, since after FCR significant limitations will be placed on what plea offers will be accepted by the Court.”⁴

3) The final case review “is the final courtroom event prior to setting the

² New Castle County Criminal Case Management Plan at p. 4.

³ *Id.*

⁴ *Id.* at p. 5.

case for trial.”⁵ Defense counsel is expected to have “thoroughly reviewed with the client the plea offer extended by the Deputy Attorney General (DAG) and the consequences of accepting or rejecting that plea.”⁶ If the case is not resolved, the judges tell the defendant in open court that if the defendant desires to enter a guilty plea on the day of trial, the only plea the Court will accept is one to all of the charges in the indictment or information. The case review judge has the discretion at FCR to order a second FCR if counsel provides reasonable justification “to warrant additional time to attempt to resolve the case.”⁷

4) In this case, the prosecution offered a plea to two misdemeanors at the initial case review. Berryman rejected the offer. Later, at the final case review, the prosecution renewed its same plea offer. Berryman again rejected the misdemeanor plea offer. Defense counsel requested permission to accept the plea offer three months later. The Superior Court inquired whether additional time after final case review had been authorized. After defense counsel responded he did not know, the Superior Court denied the request as untimely and the case proceeded to trial. On the morning of trial, the request was renewed, but it was denied by the trial judge because the administrative judge had done so.

⁵ *Id.* at p. 6. *See also* In re *Hillis*, 858 A.2d 325, 327 (Del. 2004) (“Case reviews are an attempt to exhaust every opportunity to dispose of cases before valuable trial dates are set aside. They are an important mechanism in the criminal case management process...”).

⁶ *Id.*

5) At trial, Ms. Vera Weaver testified that in December of 2004 and January of 2005, she noticed several unauthorized purchases on her MBNA credit card. Specifically, there were purchases made to “Dr.Jays.com,” a clothing retail store in California.⁸ Additionally, there were charges for “Nextel phones...and some calling cards.”⁹ The clothing ordered from Dr.Jays.com was shipped to 54 Rose Lane, New Castle, Delaware.¹⁰ Defendant resided at 54 Rose Lane, New Castle, Delaware.¹¹

6) MBNA subsequently contacted Ms. Weaver regarding a suspicious application for an additional credit card. This application stated that the applicant’s place of employment was at Rite-Aid. Defendant was employed as a pharmacy cashier at the Rite-Aid on New Castle Avenue, New Castle County.¹² She conducted financial transactions among her regular duties.¹³ Ms. Weaver testified that she had seen Defendant working at Rite-Aid during her four or five monthly trips there.¹⁴ She also testified that she was 72 years old at the time of the incident.¹⁵

7) “A defendant has no constitutional right to have the court accept a plea

⁷ *Id.*

⁸ A-79; 119-23.

⁹ A-79.

¹⁰ A-121.

¹¹ A-83; 91. Defendant was also arrested at 54 Rose Lane.

¹² A-80; 83.

¹³ A-83.

¹⁴ A-80.

¹⁵ A-79. When a victim’s age exceeds 62 years, it is an element for a crime with higher available penalties.

agreement.”¹⁶ “Trial courts have significant control over and discretion in the management of their dockets and the scheduling of cases.”¹⁷ “The decision to accept or refuse a plea is committed to the discretion of the trial court and this Court, therefore, reviews for abuse of discretion.”¹⁸

8) We find no abuse of discretion by the Superior Court because Berryman twice rejected the plea offer she ultimately wished to accept, both at initial case review and at final case review and she provided no good cause for excusing the timing of her decision.¹⁹

9) Berryman’s second claim is that the Superior Court abused its discretion when it refused to instruct the jury on lesser included charges of identity theft, unlawful use of a credit card, and theft. The defense appears to have requested that the jury be instructed on the lesser crimes for the same conduct but without the element of a victim over the age of 62. The Superior Court refused to so instruct the jury, because the testimony of the victim was that she was 72 at the time of the crime.

10) Berryman contends that such a fact-based element of a crime is properly

¹⁶ *Slade v. State*, Del. Supr., 746 A.2d 277, ¶4 (2000) (Order) (quoted by *Washington v. State*, Del. Supr., No. 435, 2003, Veasey, CJ, 844 A.2d 293, 297 n.5 (2004)).

¹⁷ *Washington v. State*, Del. Supr., No. 435, 2003, Veasey, CJ, 844 A.2d 293, 295 (2004).

¹⁸ *Id.* (quoted by *Washington*, 844 A.2d at 295 n.1).

¹⁹ *Compare People v. Jasper*, 17 P.3d 807, 814 (Colo. 2001) (“generally, good cause must be something more than a mere change of mind or a renegotiation by the parties.”).

the exclusive province of the jury. She has failed to meet her burden of showing any evidence to rebut the testimony of the victim about her age. Nor has she shown any reason why any rational juror could have found that the victim was in fact under the age of 62.

NOW THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice