IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARY E. PRITCHARD,	§	
	§	No. 280, 2003
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Kent County
	§	
Plaintiff Below,	§	Cr. I.D. No. 0208001459
Appellee.	§	

Submitted: November 12, 2003
Decided: February 4, 2004

Before **VEASEY**, Chief Justice, **BERGER** and **JACOBS**, Justices.

O R D E R

This 4th day of February, 2004, upon consideration of the briefs of the parties, it appears to the Court that:

1) Mary E. Pritchard appeals from her conviction, following a jury trial, of rape in the fourth degree. She argues that the Superior Court erred in: (i) denying her motion to suppress her confession; (ii) admitting John Brown's[1] birth certificate during the State's rebuttal case; and (iii) denying her request to defend on the basis that she reasonably believed Brown was over the age of sixteen.

[1]This name is a pseudonym adopted by the Court pursuant to Supreme Court Rule 7(d).

2) On July 30, 2002, Pritchard, who was then 23 years old, had sexual intercourse with Brown, who was then 15 years old, while Brown and two of his friends were visiting at Pritchard's home.

3) Pritchard gave a statement to the police on the same day as the incident. After he advised Pritchard of her Miranda rights, Delaware State Police Detective Thomas Disharoon asked whether she was willing to talk to him. There was a delay of 9-10 seconds, and Disharoon then said, "I need a verbal response." Pritchard responded, "Yeah." Following that colloquy, Pritchard admitted having had sexual relations with Brown at her house. She also said that she did not know Brown was 15 and that he always said he was 17 years old.

4) On appeal, Pritchard argues that her confession should have been suppressed because the 9-10 second pause before she agreed to speak to Detective Disharoon constituted an invocation of the right to remain silent. This claim lacks merit. Pritchard's brief pause, followed by an unequivocal affirmative response, is not even an ambiguous invocation of the right to remain silent. There is nothing in this record to suggest that her will was overcome or that her stated willingness to talk to the detective was in any way coerced.[2]

[2] *Norcross v. State*, 816 A.2d 757 (2003).

5) Pritchard also contends that the trial court abused its discretion in allowing Brown's birth certificate to be introduced into evidence during the rebuttal portion of the State's case. She says that the birth certificate was not "disclosed" during discovery and that, had she known that the State was going to rely on the birth certificate, she would not have defended on the "theory" that Brown was old enough to consent.

6) This argument also fails. Under the facts of this case, the crime of rape in the fourth degree has only two elements: 1) intentional sexual intercourse, 2) with a person under the age of 16.[3] Thus, Pritchard had to know that the State was going to provide evidence that Brown was under 16. Since a person's age is not easily disputable, the State apparently did not obtain a copy of Brown's birth certificate for its case in chief. There was no discovery violation, because the State neither possessed, nor intended to use, the birth certificate to prove its case.

7) Finally, Pritchard argues that, because 11 *Del.C.*§762 precludes a defense based on the defendant's reasonable belief that the victim had reached the age of consent, she was deprived of her constitutional right to due process. She offers no Delaware or Federal authority holding that a so-called "strict liability" rape statute is

[3]Del.Code Ann. tit. 11, §770(a)(1).

unconstitutional. In *Brown v. State,*[4] this Court held that ignorance or mistake as to the age of the victim constitutes no defense to a charge of statutory rape. Since that time, the vast majority of jurisdictions have upheld statutory rape laws that deny a mistake-of-age defense.[5] Section 762 constitutes a proper exercise of Delaware's police power to protect children from sexual predators.[6]

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

[4]74 A. 836 (Del. 1909).

[5]See: Colin Campbell, Annotation, *Mistake or Lack of Information as to Victim's Age as Defense to Statutory Rape*, 46 A.L.R. 5th (1997).

[6]See: *People v. Cash*, 351 N.W.2d 822 (Mich. 1984).