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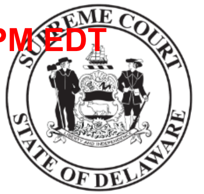

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEREK HOPKINS,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 102, 2022
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S CORRECTED ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

On June 8, 2020, a Superior Court grand jury indicted Derek Hopkins on three counts of drug dealing (cocaine and marijuana), disregarding a police officer's signal, conspiracy in the third degree, misdemeanor resisting arrest, two counts of illegal possession of a controlled substance (cocaine and heroin), driving while suspended or revoked, reckless driving, failure to transfer title and registration, possession of marijuana (civil violation), unreasonable speed, failure to stop at a stop sign, and conspiracy in the second degree.[1] Hopkins did not accept a plea agreement by the plea-by-appointment ("PBA") deadline of October 14, 2021, and the Superior Court denied trial counsel's request to postpone Hopkins' trial.[2] Accordingly, Hopkins' jury trial was scheduled to begin on October 18, 2021.[3]

The parties renegotiated during the weekend before trial, and the State revised its plea offer, which Hopkins wished to accept.[4] However, on the morning of October 18, 2021, the Superior Court declined to accept the untimely plea agreement, and Hopkins' case proceeded to a jury trial.[5] The State severed two of

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[1] D.I. 3. "D.I.__" refers to item numbers on the Delaware Superior Court Criminal Docket in *State v. Derek Hopkins*, I.D. #2001012867. A-1 to 7.

[2] D.I. 31; A-169, A-176.

[3] D.I. 32.

[4] A-176 to 79.

[5] D.I. 33, 35, 37.

the three charges of drug dealing (marijuana and cocaine) and the conspiracy in the second degree charge.[6] At the end of the State's case, Hopkins moved for a judgment of acquittal on the remaining drug dealing (cocaine) charge, which the Superior Court denied.[7] On October 19, 2021, the jury found Hopkins guilty of all charges.[8] On March 14, 2022, the Superior Court sentenced Hopkins to a total of 12 years and 40 days of Level V imprisonment, suspended after six years and 30 days for decreasing levels of supervision.[9]

On March 22, 2022, Hopkins timely filed his Notice of Appeal, and he filed his opening brief on July 29, 2022. This is the State's answering brief.

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[6] A-37 to 38, A-253 to 54.

[7] A-297 to 99.

[8] D.I. 37.

[9] A-218 to 22.

SUMMARY OF THE ARGUMENT

I. Hopkins' argument is denied. The Superior Court's rejection of the untimely plea agreement did not constitute an abuse of discretion. The court did not act arbitrarily but provided the parties with ample opportunities to establish good cause for the untimely agreement. The court acted within its discretion in concluding that the parties had failed to do so.

II. Hopkins' argument is denied. Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found Hopkins guilty of drug dealing.

III. Hopkins' argument is denied. The cumulative error doctrine is inapplicable because Hopkins has failed to demonstrate that any of his claims amounted to error in his proceedings.

STATEMENT OF FACTS

Around 10 p.m. on January 21, 2020, Delaware State Police Officers Brian Holl and Lloyd McCann were patrolling Frederica in an unmarked SUV.[10] While traveling on Bowers Beach Road, Officer McCann ran the tag number of a Ford Crown Victoria, driven by Hopkins, and discovered that the vehicle's title and registration had not been properly transferred.[11] Officer Holl activated the SUV's emergency lights to conduct a traffic stop.[12] Hopkins did not pull over, but turned into a neighborhood.[13] Officer Holl activated the SUV's siren, but Hopkins fled at a high rate of speed and failed to stop at several stop signs.[14] Hopkins subsequently turned onto Old Bowers Beach Road where he lost control of the Crown Victoria and crashed into the cement porch of a residence.[15] The officers approached the Crown Victoria, and, while Hopkins tried to reverse the vehicle, Officer Holl broke its driver's door window with his baton.[16] Officer McCann unlocked the driver's door and removed Hopkins from the vehicle.[17] Hopkins resisted Officer McCann's

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[10] A-272 to 73.

[11] A-273 to 74.

[12] A-273.

[13] A-273, A-276.

[14] *Id.*

[15] *Id.*

[16] A-273 to 74, A-276.

[17] A-274, A-276.

efforts to handcuff him.[18] A passenger in the Crown Victoria, Lauren Melton, was arrested and transported to prison in the SUV.[19]

Officer McCann searched Hopkins after his arrest and, in his hooded sweatshirt, found two bags containing a green leafy substance and a prescription pill bottle with a white rock substance.[20] Hopkins admitted to Officer McCann that these substances belonged to him.[21] Officer McCann also seized $573 in cash in various denominations from Hopkins' pants pocket.[22] However, Hopkins denied ownership of the cash on the police's property forfeiture form.[23] Police searched the Crown Victoria and found nine bags of suspected heroin, or a bundle, on the rear passenger floorboard stamped "ArmanyAX."[24] The following day, Officer Holl searched the SUV and located 38 bags, or three bundles, of suspected heroin stamped, "Hell Cat."[25] The officers did not find any drug paraphernalia to weigh or consume the controlled substances.[26]

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[18] A-274, A-277.

[19] A-281.

[20] A-277 to 78, A-286.

[21] A-286.

[22] A-278 to 79.

[23] A-279 to 80.

[24] A-280.

[25] A-280, A-285.

[26] A-281.

At trial, the parties stipulated to the admissibility of a controlled substances lab report, dated February 21, 2020, and that Hopkins' driver's license was suspended or revoked on the date of the stop.[27] According to the lab report, the white rock tested positive for cocaine and weighed 1.3 grams, and the green leafy substance was marijuana and weighed 28 grams.[28] The report also confirmed that the suspected heroin was a mixture of heroin and fentanyl and weighed approximately 0.4 grams.[29] None of the controlled substances weighed enough to be on a tier schedule.[30] Officer McCann testified without objection in the State's case-in-chief about his expert conclusion that Hopkins intended to sell the cocaine.[31]

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[27] A-282 to 83.

[28] A-283, A-288.

[29] A-288.

[30] *Id.*

[31] A-275, A-282 to 83, A-287, A-297.

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY REJECTING THE UNTIMELY PLEA AGREEMENT.

Question Presented

Whether the Superior Court abused its discretion by rejecting the untimely plea agreement.

Standard and Scope of Review

This Court reviews a trial court's decision regarding the management of a case or acceptance or rejection of a plea agreement for abuse of discretion.[32] "Under an abuse of discretion standard, this Court will disturb a discretionary ruling of the trial court only when the ruling is based upon unreasonable or capricious grounds."[33]

Merits of the Argument

Hopkins claims on appeal that the trial judge abused its discretion by rejecting the untimely plea agreement in his case.[34] He contends that the State's extension of a revised plea offer after the PBA deadline established good cause for the Superior Court to excuse his noncompliance with the deadline.[35] According to Hopkins, although the Superior Court was concerned about taking precautions based on the

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[32] *Washington v. State*, 844 A.2d 293, 295 (Del. 2004).

[33] *Zimmerman v. State*, 628 A.2d 62, 65 (Del. 1993).

[34] Opening Br. at 15, 21.

[35] *Id.* at 16.

COVID-19 pandemic, it would have been safer for jurors to have been sent home after Hopkins pleaded guilty versus requiring them to sit through his trial.[36] He argues that the Superior Court improperly focused on changed circumstances rather than on whether good cause existed for the untimely plea agreement.[37] Hopkins asserts that the Superior Court, "impermissibly infringed on prosecutorial discretion to offer a plea" and "denied [him] a fundamentally fair proceeding."[38] He complains that he suffered prejudice because "he was convicted on all counts and sentenced to six years at Level V."[39] Hopkins' arguments are unavailing.

The instant drug case was indicted in June 2020, during the public health and judicial emergencies caused by the pandemic.[40] Although the emergency declarations were officially lifted on July 13, 2021, the pandemic created a backlog of cases awaiting resolution.[41] To address this backlog, "special rules [were adopted] for cases delayed by the COVID-19 pandemic to hear those cases in a

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[36] *Id.* at 18.

[37] *Id.* at 16.

[38] *Id.* at 21.

[39] *Id.*

[40] D.I. 3; B3. Hopkins' indictment combined two Superior Court criminal cases (ID Nos. 2001012867 and 2001017383) based on separate incidents on January 21 and 28, 2020. The charges in ID 2001017383 were severed at Hopkins' trial. A-253 to 54.

[41] B5.

timely manner."[42] In resuming Superior Court jury trials, this Court noted that priority would be given "to all pandemic-delayed criminal cases" and that "[t]he Delaware Courts plan a robust scheduling effort throughout the rest of [2021]."[43] This Court's administrative order lifting the judicial emergency incorporated policy guidelines for speedy trials, which provided that "[t]he Superior Court may prioritize such cases as it determines to be in the best interests of justice and of allowing for the prompt and efficient management of the caseload resulting from the COVID-19 pandemic."[44] Moreover, lifting the judicial emergency did not curtail the Superior Court's efforts in taking precautions to prevent the spread of the coronavirus.[45]

In the instant case, the Superior Court established a PBA deadline of October 14, 2021.[46] Hopkins had two other Superior Court cases pending, which included drug charges in ID No. 2001017383 and drug and weapons charges in ID No. 2008000836.[47] All of Hopkins' cases were initially scheduled for trial on October 18, 2021.[48]

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[42] B1.

[43] *Id.*

[44] B7-11.

[45] B6.

[46] A-169, A-176.

[47] A-104, A-106.

[48] A-103, A-105, A-107.

During plea negotiations, the State offered Hopkins a plea bargain that would have resolved his three cases with a sentence recommendation of three years of imprisonment.[49] Hopkins rejected the plea offer and did not resolve this drug case by the PBA deadline. At a pretrial conference on October 15, 2021, the Superior Court afforded this case priority for a jury trial on October 18, 2021, and determined that new trial dates would be assigned in ID Nos. 2001017383 and 2008000836.[50] The parties renegotiated during the following weekend, and the State extended a revised plea offer that Hopkins was prepared to accept.[51] The revised offer excluded the weapons case (ID No. 2001017383), but resolved Hopkins' other two cases with a sentence recommendation of probation.[52]

On the morning of Hopkins' trial, the parties discussed these developments with the trial calendar judge, who pressed the State about "why an updated plea offer was not addressed before the PBA deadline" and noted that he had "115 jurors out here ready to go for a trial and to pick this morning."[53] The State responded that removing the weapons case "never came to the attention of the parties."[54] The judge

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[49] A-176 to 77.

[50] A-108, A-178, A-197.

[51] A-176.

[52] A-176 to 77.

[53] A-177.

[54] *Id.*

did not find extraordinary circumstances to allow the untimely plea agreement, although he would consider accepting a plea bargain that resolved all three of Hopkins' cases.[55] The judge noted that "[t]his is the type of matter that needs to be discussed during the calendar conference on Friday so we can prioritize these things and not have a hundred something jurors out here ready to [serve] then get sent home because the parties didn't do what the Court required them to do."[56] The judge further admonished the parties that "again, in the COVID scenario, I've had a hundred something jurors get thrown in today. And the parties need to come to grips with that and they need to understand that and they need to take that seriously when we're handling these matters."[57] The judge noted that he had "to worry about the State's concerns, the defendant's concerns the jurors and the court system's concerns as a whole."[58]

A different judge presided over Hopkins' trial.[59] The judge permitted the parties to supplement the record on the issue, and the judge wanted to hear specifically from the State because it had extended the untimely plea offer.[60] The

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[55] A-180.

[56] *Id.*

[57] A-182.

[58] *Id.*

[59] A-183.

[60] A-192.

State advised that the parties had negotiated during the weekend and that the updated plea offer would resolve all but one of Hopkins' cases and thereby require only one trial.[61] The State was informed that the Superior Court was selecting a jury in another case during the afternoon, although the State believed it was better to allow the case to resolve under a plea agreement and to possibly send the jurors home early versus requiring the jurors to remain for Hopkins' trial.[62] The judge declined to allow the untimely plea agreement:

> And just let me make this clear. The case is regarding the Court's discretion to accept a late plea, and based on the principle that the Court has to manage its docket, and the Court cannot effectively manage its docket if counsel do not follow the directives of the Court. The Court has made it clear countless times to counsel that we have a plea-by-appointment deadline that has been in effect now for a number of months, and, particularly, in the context of the pandemic, and requiring jurors to expose themselves to danger by coming out and serving, which they have been doing, that we must abide by that plea-by-appointment deadline. If the Court begins to allow that deadline just to be disregarded, and then plea negotiations continue after the plea-by-appointment deadline, then the Court loses control over its docket. A plea, the acceptance of a plea, and the contexts of acceptance of a plea is governed by contract principles because the cases makes that clear, again, that the Court is not obligated to accept a plea, particularly one that's offered after the plea-by-appointment deadline. Again, the Court would lose control of its docket if it made a practice of doing so without a change in circumstances.
>
> So I realize, [trial counsel], in a sense, you did not have this offer before this weekend. So again, I look to the State, and unless it can be shown to the Court that there was some change in circumstances that

[61] A-193.

[62] *Id.*

> prevented the State from making this offer before the plea-by-appointment deadline, I don't see any basis to reconsider [the calendar judge's] ruling of this situation.[63]

The State reiterated that the parties had developed a different idea for resolving Hopkins' cases over the weekend.[64] Trial counsel interjected, citing the "natural ebb and flow of negotiations" and noting his successful efforts in resolving several cases during a recent final case review calendar.[65] Counsel also advised that Hopkins had absconded for a lengthy period of time and that "these court dates were scheduled in pretty quick succession."[66] The judge found "no basis to change the Court's previous ruling."[67] The judge determined that Hopkins could proceed to trial, the State could dismiss most of Hopkins' cases, or Hopkins could plead guilty to all of his pending charges.[68]

The Superior Court did not abuse its discretion by rejecting the belated plea agreement. "A defendant has no constitutional right to a plea bargain,"[69] nor does a defendant have a "constitutional right to have the court accept a plea agreement."[70]

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[63] A-194 to 95.

[64] A-195.

[65] A-196.

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Dickson v. State*, 2011 WL 5868352, at *2 (Del. Nov. 22, 2011).

[70] *Slade v. State*, 2000 WL 140039, at *1 (Del. Jan. 24, 2000).

This Court has recognized that "[t]rial courts have significant control over and discretion in the management of their dockets and the scheduling of cases."[71]

In accordance with this discretion, the Superior Court has imposed guidelines regarding the acceptance of plea offers. Superior Court Criminal Rule 11(e)(3) permits the Superior Court to fix a deadline for the parties to notify it about a plea agreement and to adhere to the deadline except where good cause is shown.[72] This Court has refused to find an abuse of discretion where the Superior Court has concluded that a defendant failed to show changed circumstances and thereby good cause to deviate from the court's case management procedures requiring the State "to make its best offer and the defendant to accept or reject the offer no later than the date of the final case review."[73] A last-minute change of heart has been held insufficient to demonstrate good cause.[74] "'[G]enerally, good cause must be something more than a mere change of mind or a renegotiation by the parties.'"[75]

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[71] *Washington*, 844 A.2d at 295.

[72] *Id.* The rule provides, "Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court." Super. Ct. Crim. R. 11(e)(3).

[73] *See Slade*, 2000 WL 140039, at *1.

[74] *See id.* (defendant's desire to accept the State's plea offer after jury selection began did not amount to good cause).

[75] *Berryman v. State*, 2006 WL 954242, at *2 n.19 (Del. Apr. 11, 2006) (quoting *People v. Jasper*, 17 P.3d 807, 814 (Colo. 2001)).

By allowing the parties to demonstrate good cause, Rule 11(e)(3) prevents a trial court from arbitrarily refusing to consider an untimely plea. The Colorado Supreme Court's decision in *Jasper*[76] is instructive on this point because, in upholding the trial court's enforcement of a plea cutoff deadline, it adopted the good cause exception under Superior Court Criminal Rule 11.

In *Jasper*, the trial court held a pretrial hearing a few days before the defendant's trial where the parties did not inform the court about a plea agreement.[77] On the morning of the defendant's trial, the prosecutor announced that the parties had reached a plea bargain.[78] The trial court responded that "[t]here won't be any pleas" and that "[w]hat [the trial court] would take right now is dismissal by the [government] or guilty as to all charges."[79] Otherwise, the prosecutor was forced to proceed to trial.[80] The prosecutor opted to proceed to trial, and the defendant was convicted.[81] At sentencing, the defendant recounted the plea negotiations and advised that the prosecutor had updated the plea offer at trial by offering to dismiss

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[76] 17 P.3d at 810, 814.

[77] *Id.* at 810.

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *Id.*

one of the charges.[82] On appeal, the court of appeals reversed the trial court's rejection of the untimely plea bargain.[83]

In reversing the court of appeals and upholding the trial court's decision to reject the untimely plea agreement, the Colorado Supreme Court considered "the procedural issue of the authority of the trial court to impose plea deadlines in criminal cases, and what limitations exist on this authority."[84] The court "disagree[d] . . . that a trial court acting pursuant to its case management authority acts arbitrarily by enforcing a plea cutoff date" and that "it is not an abuse of discretion for the trial court to reject a plea bargain solely for failure to tender it before a court-imposed plea deadline."[85]

However, to avoid the risk that trial courts will militaristically adhere to plea cutoff deadlines and arbitrarily reject untimely plea agreements, *Jasper* limited a trial court's discretion to enforce a plea cutoff date with two measures.[86] The Colorado Supreme Court ruled that parties must have had adequate notice of the cutoff date,[87] and it required "the [trial] court [to] consider the merits of the actual

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[82] *Id.*

[83] *Id.* at 809.

[84] *Id.* at 810-11.

[85] *Id.* at 814.

[86] *Id.* at 810.

[87] *Id.* at 814.

proposal if there exists a good cause explanation why the parties failed to tender it in a timely manner."[88] The court noted that some jurisdictions, including Delaware, allow trial courts to enforce plea deadlines but also provide an exception for good cause.[89] In adopting this framework, the court placed the burden on the parties to establish good cause.[90] The court found that the parties had not demonstrated good cause because the untimely plea agreement was the result of the parties' renegotiation or change of mind.[91] Finally, *Jasper* concluded that "if a trial court rejects a plea for failure to conform to a plea cutoff deadline, then the court need not necessarily consider the terms of the plea agreement proffered by the parties."[92]

Here, the Superior Court required the parties to resolve Hopkins' case by the PBA deadline, and the State was admittedly remiss in extending the revised plea offer after that date. The Superior Court did not act arbitrarily in denying the untimely plea agreement or base its denial on unreasonable or capricious grounds. The court provided the parties with ample opportunities to provide their reasons for the untimely plea agreement, but the court determined that they had not established

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[88] *Id.*

[89] *Id.* (citing Del. Super. Ct. Crim. R. 11(e)(5)). Delaware's rule was subsequently amended, and the requirement for parties to show good cause for an untimely plea is now under subsection (e)(3).

[90] *Id.*

[91] *Id.* at 816.

[92] *Id.* at 817.

good cause. Rather than resulting from changed circumstances or unforeseen events, the untimely plea bargain was reached after the parties renegotiated during the weekend before Hopkins' trial.[93] The Superior Court reasonably concluded that allowing the untimely plea agreement would interfere with its efforts to effectively manage its docket despite the pandemic.[94] Relaxing the deadline would have potentially encouraged the practice of delaying the resolution of cases until the eve of trial. This practice would result in the Superior Court unnecessarily devoting resources to assembling and managing jury pools and in jurors needlessly expending resources in appearing for jury duty and risking possible exposure to the coronavirus. Accordingly, the Superior Court acted within its discretion by rejecting the untimely plea agreement.

Even if Delaware did not expressly provide for a good cause exception under Rule 11(e)(3), the court's strict adherence to a plea deadline would not automatically lead to the conclusion that it abused its discretion. Although jurisdictions are split on the issue, persuasive authority from multiple courts have upheld the strict enforcement of plea deadlines.[95] Such courts have concluded that the "prerogative

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[93] A-178, A-195.

[94] A-182, A-194.

[95] *See*, *e.g.*, *United States v. Gamboa*, 166 F.3d 1327, 1331 (11th Cir. 1999); *United States v. Ellis*, 547 F.2d 863, 868 (5th Cir. 1977); *People v. Grove*, 566 N.W.2d 547, 553-61 (Mich. 1997), *superseded on other grounds as stated in*, *People v. Franklin*, 813 N.W.2d 285, 285-86 (Mich. 2012) (court had discretion to reject untimely plea

of prosecutors and defendants to negotiate guilty pleas is 'outweighed by judicial discretion to control the scheduling of trial procedures in ongoing prosecutions, plus the broad interests of docket control and effective utilization of jurors and witnesses.'"[96]

In urging this Court to forbid a trial court from rejecting a plea agreement based on tardiness alone, Hopkins suggests this Court adopt the holding in *State v. Hager*.[97] Hopkins' reliance on *Hager* is misplaced. In that case, the defendant was charged with various felony offenses after incorrectly believing that her son had been kidnapped and shooting at a car she believed had her son in the trunk.[98] The defense

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agreement); *People v. Cobb*, 188 Cal. Rptr. 712, 713-17 (Cal. Ct. App. 1983) (affirming trial court's refusal to accept plea after deadline imposed by Fresno County Superior Court under a local practice rule); *Government of Virgin Islands v. Edwards*, 59 F. Appx. 470, 474 (3d Cir. 2003) ("While Edwards suggests the court may have rejected the plea agreement because it was untimely, he offers no reason why this was an abuse of discretion."); *State v. Brimage*, 638 A.2d 904, 905, 909 (N.J. Super. Ct. App. Div. 1994) (affirming trial judge's decision to strictly adhere to plea deadline and reject untimely plea agreement). *But see*, *e.g.*, *United States v. Moore*, 916 F.2d 1131, 1137 n.11 (6th Cir. 1990) (noting that the trial court's strict enforcement of a plea cutoff deadline where defendant accepts a plea bargain that was first offered on the morning of trial may amount to an abuse of discretion).

[96] *Gamboa*, 166 F.3d at 1331 (quoting *Ellis*, 547 F.2d at 868); *see Brimage*, 638 A.2d 904 at 909 ("Plea bargaining is not a right of a defendant or the prosecution. It is an accommodation which the judicial system is free to institute or reject."); *State v. Brown*, 689 N.W.2d 347, 352 (Neb. 2004) (recognizing the need "for enforceable efficiency in the trial court's management of its docket").

[97] Opening Br. at 19 (citing *State v. Hager*, 630 N.W.2d 828 (Iowa 2001)).

[98] *Hager*, 630 N.W.2d at 831.

raised the claim that the defendant had diminished capacity and was acting in self-defense.[99] The trial court warned the defendant at a final pretrial conference that, under the court's procedures, it was disinclined to take pleas to reduced charges on the date of trial.[100] After the defendant refused to take a plea offer, the court determined that the case would proceed to trial.[101] On the morning of trial, the parties advised the court that they were interested in resolving the case under a plea agreement, but the court ruled that the disposition was contrary to its policy and unacceptable.[102]

On appeal, the Iowa Supreme Court, in a split decision, held that the trial court's rejection of the plea agreement on the morning of trial solely because the agreement was untimely constituted an abuse of discretion.[103] The court concluded that "a fixed plea deadline is the very antitheses of discretionary decision-making" and that "[a] court abuses its discretion when it fails to exercise any discretion."[104] The *Hager* Court found that "[t]here must be additional reasons," and such reasons "are broad and fall within the ambit of the court's power over the administration of

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[99] *Id.*

[100] *Id.* at 832.

[101] *Id.*

[102] *Id.*

[103] *Id.* at 832, 837.

[104] *Id.* at 836-37.

justice."[105] The court determined that a good cause exception to enforcement of a plea deadline "was not broad enough to include a mere change of mind or a renegotiation of the plea bargain by the parties."[106] It criticized the trial court's "strict[] adhere[nce] to the deadline and refus[al] to consider the individual pressures and indecision faced by [the defendant]."[107]

The dissent noted that *Hager*'s ruling is a "distinctly minority view concerning modern court administration" and that "[t]hose courts that recognize the value of plea deadlines as part of sound trial management protect against arbitrary rejection of belated pleas by tempering deadlines with exceptions to permit relief from the rule for good cause."[108] According to the dissent, "[t]hose same courts recognize . . . that good cause implicates more than a mere change of mind or a renegotiation by the parties" and that "[b]y rejecting that sound caveat here, the majority permits a defendant's indecision to trump not only trial court discretion but sound administrative policy as well."[109]

This Court should decline to adopt *Hager*'s ruling. The Court has previously indicated that a change of mind or renegotiation by the parties is insufficient to

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[105] *Id.* at 837.

[106] *Id.* at 836.

[107] *Id.*

[108] *Id.* at 838.

[109] *Id.* (internal quotation and citation omitted).

constitute good cause to excuse an untimely plea bargain.[110] As *Hager*'s dissent noted, the good cause exception prevents courts from acting arbitrarily.[111] Here, the Superior Court afforded the parties ample opportunities to justify the untimely agreement. Ultimately, the parties were unable to provide good cause for the court to accept the untimely plea agreement. Accordingly, the Superior Court did not abuse its discretion by rejecting the plea bargain.

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[110] *See Berryman*, 2006 WL 954242 at *2 n.19.

[111] *See Hager*, 630 N.W.2d at 838.

II. THERE WAS SUFFICIENT EVIDENCE TO CONVICT HOPKINS OF DRUG DEALING.

Question Presented

Whether the State presented sufficient evidence for a rational trier of fact, viewing the evidence in the light most favorable to the State, to convict Hopkins of drug dealing.

Standard and Scope of Review

This Court reviews *de novo* a trial judge's denial of a motion for judgment of acquittal to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt of all the elements of the crime.[112] This Court does not distinguish between direct and circumstantial evidence in this inquiry.[113]

Merits of the Argument

At the close of the State's case, Hopkins moved for judgment of acquittal on the charge of drug dealing in cocaine, arguing that the evidence was insufficient to convict him.[114] Hopkins asserted that "there is decidedly insufficient amount of evidence to submit it to the jury on the issue of intent to deliver."[115] While

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[112] *Lum v. State*, 101 A.3d 970, 971 (Del. 2014).

[113] *Id*.

[114] A-297.

[115] *Id.*

acknowledging that Officer McCann "testified that [the cocaine] was for delivery," Hopkins alleged that "the facts and data he applied to that conclusion are grossly insufficient."[116] Hopkins asserted that Officer McCann could not "tell [him] what different amounts of crack cocaine costs," although he gave "some explanation on redirect with [the State] that pieces would be broken off to somebody who is going to be buying crack cocaine with like somebody's finger."[117] Hopkins cited the lack of scales or statements evidencing drug dealing, and argued that he could have possessed the cash to use at bars in the Town of Bowers.[118] Hopkins contended that the cocaine's weight was not on a tier schedule, and its packaging was consistent with personal use.[119] The Superior Court determined that the State had met its burden under Superior Court Criminal Rule 29(a) and denied the motion.[120] The court found that the State had presented sufficient evidence of Hopkins' guilt under *Laws v. State*.[121]

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[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] A-298 to 99. Superior Court Criminal Rule 29(a) provides that "[t]he court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses." Super. Ct. Crim. R. 29(a).

[121] A-299 (citing *Laws v. State*, 2003 WL 22998850 (Del. Dec. 18, 2003)).

On appeal, Hopkins contends that the evidence was insufficient to convict him of drug dealing because "there is no evidence to support a finding that [Hopkins] had the requisite state of mind—*intent* to deliver the cocaine found in his possession."[122] Hopkins argues that an intent to sell cocaine was not the only reasonable hypothesis based on the quantity of the drug involved.[123] Hopkins claims that Officer McCann's expert testimony contorted the facts to support his bias against Hopkins.[124] He argues that the cocaine did not weigh enough to be on a tier schedule, it was not packaged in multiple bags, police did not observe any drug sales, he did not admit to possessing the drug with an intent to deliver it, the marijuana was a civil violation, and his flight from police did not matter because he still possessed an illegal substance even if he did not intend to sell it.[125] Hopkins' arguments are meritless.

This Court's inquiry is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have concluded that the charge of drug dealing was proven beyond a reasonable doubt.[126] This Court defers to the factfinder's determinations of witness credibility, the resolution of any conflicting

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[122] Opening Br. at 23.

[123] *Id.* at 25.

[124] *Id.* at 26.

[125] *Id.*

[126] *Lum*, 101 A.3d at 971.

testimony, and rational inferences drawn from proven facts.[127] As such, this Court "will not substitute [its] judgment for the fact finder's assessments in these areas."[128]

Moreover, "[d]irect evidence is not necessary to establish guilt; circumstantial evidence is sufficient."[129] This Court also no longer vacates a conviction where "the evidence was purely circumstantial and there was an alternative explanation of innocence that was consistent with the evidence."[130] Therefore, "[a]n alternative explanation of the facts that is consistent with innocence does not mandate a finding of insufficient evidence."[131] In other words, "[t]he State need not produce evidence that is 'consistent *solely* with the reasonable hypothesis of guilt.'"[132]

To convict Hopkins of drug dealing, the State had to prove beyond a reasonable doubt that he knowingly delivered or possessed with the intent to deliver cocaine or a mixture with cocaine.[133] This Court has "long held that possession,

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[127] *Newman v. State*, 942 A.2d 588, 595 (Del. 2008); *Poon v. State*, 880 A.2d 236, 238 (Del. 2005).

[128] *Poon*, 880 A.2d at 238.

[129] *Wright v. State*, 2001 WL 433456, at *3 (Del. Apr. 25, 2001) (citing *Seward v. State*, 723 A.2d 365, 370 (Del. 1999)).

[130] *Williams v. State*, 539 A.2d 164, 167 (Del. 1988).

[131] *Morales v. State*, 696 A.2d 390, 394 (Del. 1997) (discussing the sufficiency of evidence for sustaining a conviction for possession with intent to distribute drugs) (quoting *Williams*, 539 A.2d at 167).

[132] *Id.* (emphasis in original).

[133] 16 *Del. C.* § 4754(a); A-33.

quantity and packaging of drugs are not necessarily sufficient, standing along, to prove intent to deliver."[134] The State must prove an element beyond mere possession, and this element may include "expert testimony, an admission by the defendant, or some other credible evidence."[135] "Intent can, in most circumstances, be shown only by circumstantial evidence."[136]

Here, any rational juror could have found Hopkins guilty beyond a reasonable doubt of drug dealing. Police seized a variety of controlled substances during their investigation, including marijuana, four bundles of heroin, and a rock of crack cocaine.[137] The crack cocaine was found in Hopkins' hooded sweatshirt, and Hopkins admitted to possessing the drug.[138] Police also seized $573 in cash from Hopkins' pants pocket, which he denied owning, and the parties stipulated to the admissibility of the lab report establishing that the substance contained cocaine.[139]

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[134] *Cline v. State*, 720 A.2d 891, 892 (Del. 1998).

[135] *Id.* at 893.

[136] *Perry v. State*, 303 A.2d 658, 659 (Del. 1973).

[137] *See Arbolay v. State*, 2021 WL 5232345, at *5 (Del. Sept. 14, 2021) (in prosecution for operating a clandestine drug laboratory and drug dealing, citing multiple types of drugs found as supporting defendant's guilt).

[138] A-278, A-280, A-285 to 86.

[139] A-278 to 80, A-283.

Officers Holl and McCann testified about Hopkins' flight from the police and resisting arrest.[140]

The State also provided expert testimony that Hopkins intended to sell cocaine. Although Officer McCann was a fact witness in the case, without objection from the defense, he also testified as an expert witness about Hopkins' intent.[141] Trial counsel did not object to Officer McCann's expert qualifications because "he has got training and experience and all of that."[142]

Officer McCann testified that he had been working for the State Police for about 13 years and had received training in drug investigations.[143] Officer McCann represented that he had been involved in countless traffic stops where drugs were found.[144] Although Officer McCann noted that drug dealers typically have "larger quantity of narcotics" and "some sort of digital scale," he concluded that Hopkins intended to deal drugs based on the quantity of crack cocaine seized, the absence of drug paraphernalia, and the money found on him.[145] Officer McCann also noted that

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[140] A-273 to 74, A-276 to 77.

[141] *See Hardin v. State*, 844 A.2d 982, 988 (Del. 2004) (finding that the trial court had not abused its discretion in allowing an officer to testify as a fact witness and an expert witness about the defendant's intent to deliver drugs); A-297.

[142] A-297.

[143] A-275, A-282 to 83.

[144] A-286.

[145] A-282 to 83.

drug sellers typically have “multiple variants of narcotics,” but he did not specifically cite this factor in reaching his conclusion about Hopkins.[146] Officer McCann found that drug users commonly possess “drug paraphernalia or small quantities of whatever narcotic they choose to use.”[147] According to Officer McCann, the larger amount of currency Hopkins possessed was consistent with someone who was dealing drugs.[148] In opining about Hopkins denying ownership of the cash, Officer McCann stated that drug dealers often try to disassociate themselves from their drug dealing profits.[149] Officer McCann mentioned that crack cocaine is typically smoked, and he noted the absence of drug paraphernalia in the case.[150] Officer McCann admitted that he did not know all of the ways to ingest or use crack cocaine, but he had never encountered anyone who had used crack cocaine by eating or swallowing it.[151] While Officer McCann could not “testify to [Hopkins’] intent” because he was “not in [Hopkins’] head,” he inferred from the totality of circumstances that Hopkins intended to sell the drug.[152] Officer McCann

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[146] A-281.

[147] *Id.*

[148] *See id.*

[149] A-286.

[150] A-281 to 83.

[151] A-286.

[152] A-287.

acknowledged that the cocaine's weight was not on a tier schedule, and he could not opine about the street value of the drug.[153] However, Officer McCann testified that, from his experience in conducting traffic stops, users normally possess less than a gram of the drug, and Hopkins had more than "a user amount."[154] Officer McCann explained that drug sales involving a rock of crack cocaine are inconsistent and different than those concerning powder cocaine because dealers typically break off tiny pieces of the rock to sell, which "could be as small as a piece of sand."[155] Officer McCann's expert testimony was sufficient to support a jury concluding that Hopkins intended to sell the drug. Officer McCann relied on multiple factors in reaching his expert conclusion.

The State also presented other credible evidence that Hopkins intended to sell cocaine. Hopkins possessed no drug paraphernalia at the time of his arrest, and in denying ownership of the cash, evidenced his consciousness of guilt.[156] While Hopkins could have fled from police simply because he possessed an illegal substance, the jury could have also rationally concluded that he fled based on his

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[153] A-289.

[154] *Id.*

[155] A-290.

[156] A-279 to 81.

concern about possessing a large amount of cash and police investigating him for dealing drugs.

As the Superior Court noted in denying Hopkins' motion for judgment of acquittal, *Laws* demonstrates that the State presented sufficient evidence to convict him. In this decision, police saw Laws possibly engaging in a drug transaction, and Laws fled when police approached him.[157] During the police's pursuit, Laws discarded a handgun, and, after his arrest, he admitted that he possessed crack cocaine because he needed extra money.[158] This Court found that the cocaine's packaging and quantity, Laws' flight from police, and the location of the crime indicated either possession for personal use or an intent to deliver the drug.[159] However, this Court concluded that Laws' intent to distribute was supported by his admission to police and other credible evidence. This credible evidence included the fact that Laws possessed a handgun but no drug paraphernalia at the time of his arrest.[160] Similarly, besides expert testimony, the State presented other credible evidence that Hopkins intended to sell crack cocaine by highlighting the lack of drug paraphernalia found during the police's investigation.[161] Further, although the

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[157] *Laws*, 2003 WL 22998850, at *1.

[158] *Id.*

[159] *Id.* at *2.

[160] *Id.*

[161] A-281.

cocaine did not weigh enough to be on a tier schedule, *Laws* also shows that the packaging and quantity of the drug is not dispositive.[162]

In arguing that the State had not presented sufficient evidence of his guilt, Hopkins relies on *Farren v. State*[163] and *Redden v. State*.[164] Hopkins claims that drug dealing was not the only reasonable inference from the evidence at trial because Hopkins and Melton were driving toward the Town of Bowers.[165] On cross-examination, Officer McCann admitted that Bowers Beach Road led to the Town of Bowers, which had a restaurant with a bar, although he did not know how late the restaurant was open on the night of Hopkins' arrest.[166] Hopkins argues that "[i]t is reasonable to believe that a couple out at night to a bar would have money to spend at the bar and drugs to use themselves but not to sell."[167]

Hopkins is mistaken. These decisions do not assist Hopkins because they rely on an outdated standard for determining the sufficiency of evidence. In analyzing whether the State had sufficiently established the defendants' intent, these cases examined whether an intent to sell drugs was the only reasonable inference that could

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[162] A-289.

[163] 285 A.2d 411 (Del. 1971).

[164] 281 A.2d 490 (Del. 1971).

[165] Opening Br. at 27.

[166] A-285.

[167] Opening Br. at 27.

be drawn from the circumstantial evidence presented at trial.[168] However, this standard no longer applies, and an alternative, reasonable explanation of innocence does not mandate a finding that the evidence was insufficient to convict Hopkins.[169] Therefore, the Superior Court did not err because the evidence sufficiently sustains Hopkins' drug dealing conviction.

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[168] *See Farren*, 285 A.2d at 411; *Redden*, 281 A.2d at 491.

[169] *See Williams*, 539 A.2d at 167.

III. THE CUMULATIVE ERROR DOCTRINE IS INAPPLICABLE.

Question Presented

Whether there were multiple errors in Hopkins' proceedings that amounted to cumulative error.

Standard and Scope of Review

"[W]here there are several errors in a trial, a reviewing court must weigh the cumulative impact to determine whether there was plain error."[170]

Merits of the Argument

Hopkins argues that the combined effect of the errors in his case "was prejudicial to [his] substantial trial rights, eliminated the integrity of the trial and the trial was not fair."[171] He contends that he was not at fault for the State's delay in extending an updated plea offer to him or for the Superior Court "engag[ing] in a rigid and aggressive re-opening plan."[172] Hopkins claims that no reasonable juror could have found him guilty beyond a reasonable doubt of drug dealing and that "[h]e should have only been convicted of mere possession—a sentence for which he

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[170] *Wright v. State*, 405 A.2d 685, 690 (Del. 1979).

[171] Opening Br. at 29.

[172] *Id.*

would have received the probation sentenced offered to him too late."[173] Hopkins is incorrect.

"Cumulative error must derive from multiple errors that caused 'actual prejudice.'"[174] "[A] claim of cumulative error, in order to succeed, must involve 'matters determined to be error, not the cumulative effect of non-errors.'"[175] This Court has recognized that the cumulative impact of errors in extreme circumstances may be a basis for reversing a conviction, even when one trial error standing alone would be construed harmless error.[176] However, when the individual issues do not present valid claims of any error, the accumulation of those claims does not present a new claim warranting independent analysis.[177]

Here, Hopkins has failed to demonstrate that any of his claims amounts to error in his proceedings. The "cumulative error doctrine" therefore does not apply as there were no errors and no actual prejudice to Hopkins.

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[173] *Id.*

[174] *Michaels v. State*, 970 A.2d 223, 231 (Del. 2009) (citing *Fahy v. Horn*, 516 F.3d 169, 205 (3d. Cir. 2008)).

[175] *State v. Sykes*, 2014 WL 619503, *38 (Del. Super. Ct. Jan. 21, 2014) (citing *United States v. Rivera*, 900 F.2d 1462, 1471 (10th Cir. 1990)).

[176] *See Wright*, 405 A.2d at 690.

[177] *See Torres v. State*, 979 A.2d 1087, 1101-02 (Del. 2009); *Michaels*, 970 A.2d at 231-32.

CONCLUSION

The State respectfully requests that this Court affirm the judgment below for the foregoing reasons.

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Dated: September 7, 2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEREK HOPKINS,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 102, 2022
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

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Dated: September 7, 2022

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