

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO,	)	CASE NO. CR 595183-A
	)	
Plaintiff,	)	
	)	JUDGE BRENDAN J. SHEEHAN
v.	)	
	)	
VAN PATTERSON	)	
	)	
Defendant.	)	<b>OPINION AND JUDGMENT</b>
	)	<b>ENTRY</b>

I. FACTS AND ISSUES PRESENTED.

This matter is before the Court on Defendant's Motion to Dismiss for Preindictment Delay and Constitutional Due Process and Equal Protection Violations. The issues have been fully briefed and argued to the Court.

Defendant Van Patterson was indicted on 13 counts but only Counts 1, 2, and 3 (rape, kidnapping and felonious sexual penetration) are at issue in the current motion. Those counts relate to the alleged crimes committed on December 28, 1995 against Jane Doe 1. Ms. Doe, a 16-year-old female was walking alone in the area of 3616 E. 131st Street in the Mount Pleasant neighborhood of Cleveland, Ohio when a black Chevy Blazer approached her. The driver, a single male identifying himself as "Apples", offered to give her a ride to her friend's house on East 71st Street. When they arrived near the friend's house, the driver restrained Ms. Doe in the car and allegedly raped her. Ms. Doe reported the rape to her mother and went to Mt. Sinai Hospital where a sexual assault kit was collected. The DNA collected was subsequently matched to Defendant Van Patterson and the indictment issued shortly thereafter.

The police report of the incident incorrectly notes that no sexual assault kit was collected. Supplemental narrative to the report states: "THE VICTIM'S MOTHER STATED THAT THE VICTIM KNOWS THE SUSPECT AND THAT THE VICTIM IN THIS CRIME IS LYING. THEY DID NOT COME IN FOR INTERVIEW. THIS CASE IS A [sic] UNFOUNDED COMPLAINT."

The victim's mother passed away in 2013. Defendant was indicted on April 22, 2015. Defendant maintains that the delay in indicting him has harmed his ability to defend himself by denying his right to secure witnesses to verify his employment, whereabouts, and interactions with the alleged victim.

## II. LAW AND ANALYSIS.

### A. Applicable Law.

The Eighth District Court of Appeals recently stated:

The statute of limitations for a criminal offense is a defendant's primary protection against overly stale criminal charges. *United States v. Marion*, 404 U.S. 307, 322, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971). In some circumstances, however, the Due Process Clause of the Fifth Amendment has been applied to provide additional protection against egregious delay in instituting prosecutions. *United States v. Lovasco*, 431 U.S. 783, 97 S.Ct. 2044, 52 L.Ed.2d 752 (1977). To establish that preindictment delay violated the Due Process Clause, a defendant must first show that the delay caused actual and substantial prejudice to his right to a fair trial and, second, that the state delayed prosecution to gain a tactical advantage or slowed the process down for some other impermissible reason. *United States v. Gouveia*, 467 U.S. 180, 192, 104 S.Ct. 2292, 81 L.Ed.2d 146 (1984), citing *Lovasco* at 789; *State v. Luck*, 15 Ohio St.3d 150, 15 Ohio B. 296, 472 N.E.2d 1097 (1984), paragraph two of the syllabus. In *State v. Whiting*, 84 Ohio St.3d 215, 1998-Ohio-575, 702 N.E.2d 1199, the Ohio Supreme Court held that the second element of the test requires the state to produce evidence of a justifiable reason for the delay. *Id.* at 217. Decisions granting or denying a motion to dismiss for

preindictment delay are reviewed for an abuse of discretion. *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 33, citing *State v. Parson*, 6 Ohio St.3d 442, 445, 6 Ohio B. 485, 453 N.E.2d 689 (1983).

*State v. Owens*, 8th Dist. No. 102276, 2015-Ohio-3881, P2.

The Eighth District specifically cautioned:

While the use of the actual prejudice standard sets a high bar to proving preindictment delay, the bar is set high because the statute of limitations unquestionably gives the state 20 years in which to commence a rape prosecution. See R.C. 2901.13(A)(3)(a). It is for this reason that the concept of preindictment delay is designed to protect defendants only from government abuses of the statute of limitations; hence the notion that preindictment delay exists not only when the defendant can show actual prejudice, but that the state has, in addition, purposely delayed bringing a prosecution to obtain a tactical advantage or for some other "impermissible" reason. The law requires a defendant to do more than offer mere speculation as to how he was prejudiced by any delay because requiring less would undermine the statute of limitations.

*Id.* at ¶ 5.

B. Actual Prejudice.

Defendant argues that he has been prejudiced because he cannot present witnesses to verify his employment, whereabouts, and interactions with the alleged victim. The primary difficulty with Defendant's argument is that it does not demonstrate actual prejudice. He must counter the facts that his DNA was collected in a sexual assault kit from the victim and there are no witnesses of the acts at issue other than the victim and Defendant. While Defendant relies heavily on *State v. Jones*, 35 N.E.3d 606, 613, 2015-Ohio-2853 (8th Dist.), the facts in *Jones* are simply not present in the current case. In *Jones*, the victim reported that two other people were present in the home at the time of the attack — the defendant's mother and brother — and that she knew the defendant by name. It appeared that neither witness was available for trial 20 years later. The court found that actual prejudice existed because two witnesses who were

present at the scene of the alleged attack were no longer available. Critically, those witnesses were not merely witnesses to a claimed relationship between the victim and the defendant but were witnesses to events in and around the scene of the alleged attack.

Even if it is assumed that Ms. Doe's mother could have testified that Ms. Doe knew Defendant, Ms. Doe's mother was not a witness to the alleged attack and could not testify concerning the events that occurred in Defendant's car that night.

Further, the statement recorded in the police notes is ambiguous. It is similarly plausible that Ms. Doe's mother was stating that she believed that someone other than "Apples" was the assailant, again a question of identity not supported by the DNA evidence in this case.

Based on the foregoing, the Court finds that Defendant has failed to establish actual prejudice due to the preindictment delay.

C. Purposeful Delay.

Affording Defendant every benefit and assuming Ms. Doe's mother's testimony would have been exculpatory, Defendant must still demonstrate that the state delayed prosecuting him to gain a tactical advantage or it slowed the process for some other impermissible reason. The state must produce evidence of a justifiable reason for the delay.

Again, Defendant relies heavily on *Jones*, where the victim identified the defendant by name at the time of the incident. The defendant was interviewed in 1993 and stated that he and the victim had engaged in consensual sex. DNA matching nearly twenty years later merely confirmed the identity of the already known suspect.

In the current case, Defendant's identity was unknown. Investigators had a general description of his vehicle and knew that he identified himself as "Apples". The investigation was

stopped and the complaint was deemed unfounded based on the statements of Ms. Doe's mother. The identity of "Apples" was not discovered until a CODIS hit matched the DNA from the victim with Defendant. Defendant was indicted within a reasonable time thereafter. Unlike in *Jones*, the identity of the suspect was unknown and the CODIS hit was instrumental in identifying a suspect. The DNA match was a critical piece of evidence, recently obtained, that provided a sufficient basis for the indictment at issue.

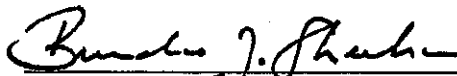
Accordingly, the Court finds that there is no purposeful delay in indicting Defendant for the crimes at issue.

III. CONCLUSION.

For the foregoing reasons, **DEFENDANT'S MOTION TO DISMISS FOR PREINDICTMENT DELAY AND CONSTITUTIONAL DUE PROCESS AND EQUAL PROTECTION VIOLATIONS IS DENIED.**

IT IS SO ORDERED.

Dated: 12/14/15

  
JUDGE BRENDAN J. SHEEHAN