

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION**

2014 NOV 26 P 12:58

STATE OF OHIO

Plaintiff

vs.

STEVEN DIXON

Defendant

CASE NO.: 573583

CLERK OF COURTS
CUYAHOGA COUNTY

JUDGE C. COLLIER-WILLIAMS

OPINION AND ORDER

JUDGE C. COLLIER-WILLIAMS:

This matter is before the Court pursuant to Defendant's Motion for Dismissal Based on Pre-Indictment Delay. For the reasons set forth below, this Court finds Defendant's Motion to be well taken, and consequently the indictment against Defendant is hereby dismissed.

Statement of the Case:

The underlying facts of this case are not in dispute. Defendant Steven Dixon was arraigned on May 1, 2013, on a two (2) count indictment charging one (1) count of rape and one (1) count of kidnapping. The incident that forms the basis for these charges allegedly occurred on or about April 20, 1993.

On October 8, 1992, Defendant Dixon was released from prison on an unrelated charge and placed on parole supervision. On April 20, 1993, the Defendant had sexual relations with the alleged victim. The victim called the police and stated that the Defendant raped her. A rape kit was taken, and a few days later Defendant Dixon was arrested. The alleged victim signed a "no prosecution" form, and the Defendant was released from jail. The Defendant was then brought before the parole authorities in two (2) separate hearings relative to these charges.

On May 10, 1993, at his Pre-revocation On-Site Parole Hearing, probable cause was found to exist regarding the subject charges. At that hearing Cleveland Police Officers testified along with the alleged victim and the Defendant's employer. On June 23, 1993, a Formal Parole Revocation Hearing was held. Once again, the police officers testified, the alleged victim testified, witnesses for the defense testified, and the Defendant testified. During this hearing, the Defendant admitted to having sexual intercourse with the alleged

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Sheriff Signature

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11-26-14

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victim. However, while she testified it was rape, the Defendant testified that the sexual intercourse was consensual.

As a result of this hearing, the panel found Defendant Dixon guilty. His parole was revoked, and he was sent back to prison for another two (2) years.

On April 10, 2013, the Cleveland Police Department received a CODIS hit confirmation from the Federal Bureau of Criminal Investigation that they had made a preliminary association between a submitted rape kit and the Defendant. Upon receiving this "new" evidence the State proceeded to indict the Defendant prior to the expiration of the 20-year statute of limitations.

On June 28, 2013, Defendant Dixon filed his Motion for Dismissal Based on Pre-Indictment Delay. After reviewing the Motion and the State of Ohio's Brief in Opposition, this Court granted Defendant's Motion to Dismiss on August 5, 2013, without a hearing. The State of Ohio appealed the dismissal and on May 22, 2014, the Court of Appeals reversed the dismissal and remanded the case. The Court of Appeals instructed this court to conduct a hearing on Defendant's Motion.

On November 6, 2014, the hearing was held. Based upon that hearing and the evidence presented, the Court grants Defendant's Motion for Dismissal Based on Pre-Indictment Delay.

Law and Analysis:

When determining whether to dismiss an indictment based upon pre-indictment delay, the Court must determine if the delay resulted in actual prejudice to the Defendant. "Pre-indictment delay resulting in actual prejudice to a Defendant 'makes a due process claim concrete and ripe for adjudication.'" *State v. Luck*, 15 Ohio St.3d 150, citing *United States v. Marion*, 404 U.S. 307, at 324, and *United States v. Lovasco* (1977), 431 U.S. 783 at 789. If it is established that the Defendant suffered actual prejudice, the Court is to turn to the second part of the test set forth in *United States v. Lovasco, supra*, which requires that there be no justifiable reason for the delay in prosecution that caused this prejudice. *Id.*

In the instant case, Defendant Dixon argues that he suffered substantial prejudice due to this nearly 20-year pre-indictment delay. He argues that he is unable to locate critical witnesses. The Defendant presented evidence of the following: Eloise Battista is the Defendant's ex-girlfriend, and the mother of his child. Ms. Battista testified on behalf of the Defendant during his Parole Revocation Hearing. The defense represented that they have been unable to locate Ms. Battista.

The defense then called Randall Diamond to testify that his father was a friend of the Defendant; and that the father, Norman Diamond, died on November 30, 2013. The deceased, Mr. Diamond, testified on behalf of the defendant at the Parole Revocation Hearing. He is no longer available for the defense.

Another witness, who testified during the Parole Revocation Hearing and indicated contradictory statements made by the alleged victim, was also not located by the Defendant.

Finally, the Defendant further argues that his own memory has faded which will prevent him in assisting his counsel during the pendency of this matter.

Therefore, the court finds that the Defendant Steven Dixon suffered actual and substantial prejudice as a result of the pre-indictment delay in this case because of the following: 1) the defense has been unable to locate his ex-girlfriend and mother of his child, Eloise Battista; 2) Norman Diamond died on November 30, 2013; 3) another witness was not located by the Defendant; and 4) the Defendant's memory has diminished over the last 20 years and therefore he is unable to fully assist his attorney in defending these charges.

Once the Defendant has established substantial prejudice, then the State has the burden of producing evidence of a justifiable reason for the delay. *State v. Mack*, 2014-Ohio-4817.

Any delay in the commencement of prosecution by the State would be found to be unjustified if it is done in an attempt to gain a tactical advantage over the Defendant. *State v. Luck*, 15 Ohio St.3d 150 (1984). There is no allegation that the State was attempting to gain a tactical advantage over the Defendant in this case.

The second basis for a finding of an unjustified delay would be if the State, through negligence or error in judgment, effectively ceases the active investigation of a case, but later decides to commence prosecution upon the same evidence that was available to it at the time that its active investigation was ceased. *Id.*

In arguing that the delay was justified, the State presented the testimony of Detective Christine Cotton. Detective Cotton is a member of the Sex Crimes Unit of the Cleveland Police Department. She was not involved in the case when the crime allegedly occurred in 1993, nor is she currently involved in the case.

The alleged crime was committed and reported on or about April 20, 1993. The Defendant was arrested on suspicion of committing the rape on April 23, 1993. On April 24, 1993, the alleged victim indicated that she did not wish to prosecute Steven Dixon. She indicated that no member of the Cleveland Police department influenced her in her decision not to prosecute. She further indicated in her own handwriting that she "can't take time off from work. Just want him to stay away from and my family [sic]." On that same date, the prosecutor issued no papers on this case, thereby closing the file. The Defendant was then released from jail.

Detective Cotton testified that once the prosecutor issued no papers, this case was then processed for "exceptional cleanup", meaning there was no more work to be done on this case. In fact, no more work was done on the case. At the time of the exceptional cleanup, the following facts were known: 1) the alleged victim claimed the Defendant raped her; 2) the Defendant admitted to having intercourse with the alleged victim, but maintained that the intercourse was consensual; 3) the alleged victim signed a no prosecution form; and 4) the prosecutor reviewed the case and issued no papers primarily due to the fact that the alleged victim chose not to prosecute.

The State contends that this pre-indictment delay is justifiable because of the following: 1) DNA results show that the semen found in the alleged victim belongs to the Defendant; and 2) the alleged victim is now willing to cooperate with the prosecution.

This court does not find the State's arguments persuasive.

Pre-indictment delay may be found to be unjustifiable when the State effectively ceases the active investigation of a case, but later decides to commence prosecution upon the same evidence that was available to it at the time that its active investigation ceased. *State v. Mack, supra*. The question in this case is whether the CODIS hit is "new" evidence that is relevant to the prosecution of this matter.

The purpose of a CODIS hit is to identify the person who left their DNA or semen on or inside the victim. In this case, the identity of the person was already known. The police had questioned the Defendant, and he admitted to the police that he had sexual intercourse with the alleged victim. So the fact that 20 years later a CODIS hit indicated that the Defendant was the person who had intercourse with the alleged victim is not new relevant evidence. It is evidence of facts that were already known on April 23, 1993.

The Cleveland Police Department stopped investigating or pursuing this case when the alleged victim signed a "no prosecution" form. The case was closed. There was no work to be done on this case. Detective Cotton testified

that if a victim did not cooperate, the police did not pursue criminal charges. Additionally, Detective Cotton testified that the instant case was not a "cold" case. She defined a cold case as a case that has gone cold because there are no active leads in the case; and no suspect is identified. In this case an arrest was made, the victim indicated that she did not want to go forward, and defendant was released. This is a "closed" case.

This case was never one of "who did it." The Defendant always admitted that he had sex with the victim. The question was, 20 years ago, "was the sex consensual or not?" The "new" evidence obtained by the State still does not answer or address that question.

The fact that the police held the victim's rape kit for 20 years with their cold files, and submitted the kit to be tested, seems to be simple error. There was no need to check the DNA, because all parties agreed 20 years ago that sexual intercourse took place. This was not a "cold" case, it was a "closed" case. The only reason why this case did not go forth 20 years ago is because the victim chose not to prosecute. The fact that the victim now states that she will prosecute is irrelevant and certainly not "new" evidence.

The State of Ohio ceased all active investigation of this case in 1993, but now decided to commence prosecution upon the same evidence that was available to it at the time that its active investigation ceased. This court finds this pre-indictment delay unjustifiable. Therefore, Defendant's Motion for Dismissal Based on Pre-Indictment Delay, is GRANTED.

Conclusion and Order:

This Court finds that the pre-indictment delay in this case of 20 years has caused actual and substantial prejudice to the Defendant, and that there was no justifiable reason for the delay. Defendant's due process rights were violated. Consequently, Defendant's Motion for Dismissal Based on Pre-Indictment Delay is GRANTED and this case is hereby DISMISSED.

Defendant is ordered released from custody.

IT IS SO ORDERED.

11-26-2014
DATE


JUDGE CASSANDRA COLLIER-WILLIAMS



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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

2014 NOV 26 P 1:31

CLERK OF COURTS
CUYAHOGA COUNTY

Case No: CR-13-573583-A

Judge: CASSANDRA COLLIER-WILLIAMS

STEVEN D DIXON
Defendant

INDICT: 2907.02 RAPE
2905.01 KIDNAPPING

JOURNAL ENTRY

CORRECTED ENTRY THE COURT DID NOT RULE ON A MOTION TO SUPPRESS
DEFENDANT'S MOTION FOR DISMISSAL BASED ON PRE-INDICTMENT DELAY IS GRANTED AND THIS CASE IS
HEREBY DISMISSED.
OPINION AND ORDER IS SIGNED AND ORDERED RECORDED. OSJ.

11/26/2014
CPATP 11/26/2014 13:25:58

Judge Signature

Date

HEAR
11/26/2014



86921712

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

STEVEN D DIXON
Defendant

Case No: CR-13-573583-A

Judge: CASSANDRA COLLIER-WILLIAMS

INDICT: 2907.02 RAPE
2905.01 KIDNAPPING

JOURNAL ENTRY

DEFENDANT'S MOTION TO SUPPRESS IS GRANTED.
OPINION AND ORDER IS SIGNED AND ORDERED RECORDED. OSJ.

11/26/2014
CPATP 11/26/2014 12:30:17

Judge Signature

Date

HEAR
11/26/2014