

[Cite as *State v. Martin*, 2015-Ohio-761.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100753

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROOSEVELT MARTIN

DEFENDANT-APPELLANT

JUDGMENT:
VACATED AND DISCHARGED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-572966-B

BEFORE: E.T. Gallagher, J., Celebrezze, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: March 5, 2015

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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Roosevelt Martin (“Martin”), appeals his rape conviction and sentence. We find merit to the appeal and vacate Martin’s conviction.

{¶2} On March 29, 2013, Martin and codefendant Quandrell Porter (“Porter”) were each charged with one count of rape and one count kidnaping. The indictment alleged that the rape and kidnaping offenses occurred on March 19, 1993. At that time, Martin, Porter, and the victim, M.L., were students at Cleveland Job Corps, a residential education and vocational training program for economically disadvantaged youth.

{¶3} Prior to trial, Martin filed a motion to dismiss the charges as barred by the statute of limitations and because he was prejudiced by the 20-year delay before indictment. The court heard arguments from both sides, but did not hold an evidentiary hearing.¹ The facts were largely undisputed. The court denied the motion, and the case proceeded to trial.

{¶4} The facts giving rise to this case are as follows: On March 19, 1993, M.L. and several other students were drinking 40-ounce bottles of beer at a park located near the Job Corps campus. M.L., who was highly intoxicated, told her friend Augustine Gayton (“Gayton”) that she was going to use the restroom. Gayton testified that a student named Joe Ford (“Ford”) escorted M.L. to the bathroom because she was having difficulty walking due to her intoxication. Gayton watched Ford enter the women’s restroom with M.L.

{¶5} After some time passed and M.L. did not return, Gayton went to the restroom to check on her friend. As she approached the entrance, several male students walked out of the bathroom laughing. According to a Cleveland police report, Gayton asked Ford what happened and he replied: “Roosevelt Martin, * * * and I got her drunk and bumped her.” Gayton entered

¹ Although the trial court was not required to hold an evidentiary hearing, as a practical matter, sworn testimony and other evidence develops the record with reliable facts upon which to make a determination. Where evidence is absent from the record, we are forced to accept the uncontested factual assertions of both sides as true.

the restroom and found M.L. lying unconscious on the floor with her pants and underwear pulled off. At Gayton's request, Ford helped Gayton dress M.L. and get her back to the Job Corps campus.

{¶6} Gayton reported M.L.'s condition to Job Corps staff, who assisted M.L. into the building. Shortly thereafter, Gayton accompanied M.L. to Mount Sinai Hospital, where a nurse collected evidence of the rape in a rape kit, including seminal fluid from a condom found inside M.L.'s vagina. The hospital immediately provided the evidence to the Cleveland Police Department.

{¶7} The crime was reported to Cleveland police on March 20, 1993. Officers in the sex crimes unit left messages at Job Corps for M.L. to call sex crime detectives to discuss the rape. However, because M.L. did not return their phone calls, the detectives closed the case without having interviewed either the victim or the two named suspects. (Tr. 12). The last notation in the 1993 police report states, in its entirety:

On 3/21/93 while assigned to the sex crime unit car 8174, received an assignment to do a follow-up investigation c/w the above mentioned crime. The following are the results of that investigation.

Numerous attempts and messages have been left for the victim to call c/w this case. The victim has not returned any calls. No further investigative leads.

The state concedes that the Cleveland police sex crimes unit closed the case on March 31, 1993. (Tr. 12).

{¶8} A few weeks later, Martin, who was a resident of Illinois, returned home for Easter break without restraint. Job Corps personnel telephoned his grandmother on April 15, 1993 to ascertain his whereabouts because he was "AWOL," which simply meant he was absent. Martin's grandmother told Job Corps that he would return to Cleveland after Easter. However, Job Corps terminated Martin's enrollment on April 26, 1993 due to "excessive AWOL," and

Martin never returned. It is undisputed that Martin's separation from Job Corps was not a disciplinary discharge.

{¶9} Twenty years later, scientists at the Ohio Bureau of Criminal Investigation ("BCI") tested the rape kit taken from M.L. and found DNA that matched Martin's DNA. Consequently, on March 29, 2013, the Cuyahoga County Prosecutor indicted Martin for the rape and kidnaping of M.L. that occurred on March 19, 1993. On April 24, 2013, a detainer was sent to the Champaign County Sheriff in Urbana, Illinois. The state of Illinois took Martin into custody on May 19, 2013, and returned him to the state of Ohio for arraignment that same day.

{¶10} A jury found Martin guilty of rape and not guilty of kidnaping. The court sentenced Martin to an indefinite prison sentence of 5 to 25 years. The court also classified him as a sexually oriented offender under Megan's law and a Tier III sex offender under the Adam Walsh Act. Martin now appeals and raises five assignments of error.

Statute of Limitations

{¶11} In the first assignment of error, which we find dispositive of this appeal, Martin argues the trial court erred in denying his motion to dismiss. He contends the trial court should have dismissed the indictment as barred by the statute of limitations.

{¶12} R.C. 2901.13(A)(1) provides that a prosecution shall be barred unless it is commenced within the applicable limitations period. R.C. 2901.13 is intended "to discourage inefficient or dilatory law enforcement rather than to give offenders the chance to avoid criminal responsibility for their conduct." *State v. Climaco, Climaco, Seminatore, Lefkowitz & Garofoli Co., L.P.A.*, 85 Ohio St.3d 582, 586, 709 N.E.3d 1192 (1999). "The rationale for limiting criminal prosecutions is that they should be based on reasonably fresh, and therefore more

trustworthy evidence.” *Id.*, quoting *State v. Hensley*, 59 Ohio St.3d 136, 138, 571 N.E.2d 711 (1991), quoting the Ohio Legislative Service Commission comment to R.C. 2901.13.

{¶13} R.C. 2901.13(A)(3)(a) provides that a 20-year statute of limitations applies to rape offenses.² The state bears the burden of establishing that prosecution was commenced within the applicable limitations period. *State v. King*, 103 Ohio App.2d 210, 212, 658 N.E.2d 1138 (10th Dist.1995). It is undisputed that the rape occurred on March 19, 1993, and that Martin was not indicted until March 29, 2013. Therefore, the state indicted Martin after the statute of limitations had expired.

{¶14} However, the 20-year statute of limitations is not absolute. R.C. 2901.13(G) provides:

The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused departed this state or concealed the accused’s identity or whereabouts is prima-facie evidence of the accused’s purpose to avoid prosecution.

In other words, evidence that the accused departed the state creates a presumption that he purposely left the state to avoid prosecution and tolls the statute of limitations. However, this presumption is rebuttable, and the accused may demonstrate that he had no intention of avoiding prosecution. *State v. Taylor*, 9th Dist. Lorain No. 97CA006804, 1998 Ohio App. LEXIS 2791 (June 24, 1998).

{¶15} Martin was a resident of Illinois when he became a student at Cleveland Job Corps.

It is undisputed that the state of Ohio, through the Cleveland Police Department, became immediately aware that Martin was a named suspect in the rape, and that he was living at the Job

² At the time of the incident in this case, the statute of limitations was only six years. However, in March 1999, the Ohio General Assembly amended the statute of limitations for rape (and other crimes, including other sexually-oriented offenses) from 6 years to 20 years, and made it retroactive so long as the 6-year limitation had not expired at the time of the amendment. See *State v. Herron*, 8th Dist. Cuyahoga No. 91362, 2009-Ohio-2128, ¶ 5.

Corps facility located at 10700 Carnegie Avenue in Cleveland. It is also undisputed that detectives were aware that the victim and all the potential known suspects were enrolled at Job Corps and also lived at that location.

{¶16} Yet, Cleveland detectives never came to the Job Corps facility to interview the victim, the two named suspects, or any other witness who was present at the scene. The police investigation consisted of several attempts to contact the victim by phone. The state conceded that “since the victim had not returned any calls, the Cleveland police sex crimes unit closed out the case as no further investigative leads.” (Tr. at 13).

{¶17} The state acknowledged that Job Corps conducted an investigation into the rape allegations, but it is not clear what the investigation entailed. (Tr. at 75, 82.) Nevertheless, it is undisputed that Martin continued to live at the Job Corps facility until he returned home to Illinois for Easter break,³ approximately four weeks after the rape. The police report indicates that the investigation of M.L.’s rape concluded on March 21, 1993, and, as previously stated, the state concedes that the Cleveland police closed M.L.’s rape investigation on or before March 31, 1993. (Tr. 12). Martin did not return home to Illinois for over two weeks after the police had concluded their investigation. Under these circumstances, his departure cannot be characterized as flight to avoid prosecution because the record is void of any attempt to contact him, let alone evidence of avoidance during the entire time the police conducted their investigation.

{¶18} What is more, the state knew how to contact Martin in Illinois. They knew he was a resident of Job Corps and that Job Corps would have his contact information. Indeed Job Corps called Martin’s grandmother on April 15, 1993 because he was AWOL. This is not a case where

³ In 1993, Easter Sunday was on April 11.

Martin changed his name and moved to a different state to conceal his identity and whereabouts. Martin was not a fugitive.

{¶19} The state had no difficulty locating Martin after he was indicted on March 29, 2013. A summons was issued on April 1, 2013, after the indictment was returned. A detainer was sent to Illinois police to arrest Martin on April 24, 2013. Police took Martin into custody and delivered him to Cuyahoga County on May 19, 2013, less than two months after he was indicted. The police knew where Martin was and could have apprehended him during the limitations period if the police had properly followed-up with the investigation in 1993. As previously stated, the statute of limitations is intended “to discourage inefficient or dilatory law enforcement rather than to give offenders the chance to avoid criminal responsibility for their conduct.” *Climaco*, 85 Ohio St.3d 582 at 586, 709 N.E.2d 1192. In this case, it was dilatory law enforcement that caused the statute of limitations to expire, not Martin’s lawful return to his home state. Therefore, the trial court erred in determining the statute of limitations tolled when Martin returned to Illinois. The statute of limitations expired before the state indicted Martin, and the court should have dismissed the indictment accordingly.

{¶20} The first assignment of error is sustained.

Conviction vacated and trial court is ordered to carry this judgement into execution and discharge appellant.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

MELORY J. STEWART, J., CONCURS;

FRANK D. CELEBREZZE, JR., A.J., DISSENTS WITH SEPARATE OPINION

FRANK D. CELEBREZZE, JR., A.J., DISSENTING:

{¶21} I respectfully dissent from the majority's conclusion that the statute of limitations bars criminal prosecution in this case.

{¶22} The state relied on the presumption that appellant's return to Illinois was evidence of avoidance of prosecution. The state established that appellant left Ohio on or about April 15, 1993, with knowledge that the gang rape of an intoxicated girl had been reported to police and for which he was a suspect. Therefore, the state made a prima facie case showing that R.C. 2901.13(G) applied to the present situation. The statute applies to any activity for which the accused "acts to purposely avoid being prosecuted for any offense." *State v. Bess*, 126 Ohio St.3d 350, 2010-Ohio-3292, 933 N.E.2d 1076, ¶ 21. Also, "[i]mportantly, it is the actions of the accused in avoiding prosecution, not the actions of the state in commencing a prosecution, that triggers the tolling of the statute of limitations." *Id.* at ¶ 24.

{¶23} The majority recognizes that it is appellant's burden to rebut this presumption. The majority holds that appellant successfully did so, but there is no evidence in the record to support this conclusion.

{¶24} The state set forth the date of incident as March 19, 1993. A few weeks later, appellant left Ohio. He did not return to Cleveland even though he was supposed to, and went

on to commit egregious crimes in Illinois, including murder. It is clear from the record that appellant left in order to evade any investigation and prosecution that would result from the heinous crime he committed on March 19, 1993. Appellant's attempts to rebut this presumption fail in the face of his flight from the state soon after the incident and with knowledge that it had been reported to the police. Appellant's unsworn assertions made by his attorney without any support that his flight from Ohio was other than for evading prosecution are unavailing. Therefore, the statute of limitations was properly tolled during the time appellant was absent from the state, and the trial court did not err in overruling his motion to dismiss based on the expiration of the statute of limitations.

{¶25} Accordingly, I would affirm the decision of the trial court denying appellant's motion to dismiss and uphold his convictions and sentence for these terrible crimes. The state legislature has also recently taken to proposing legislation that will hopefully prevent numerous other individuals from escaping punishment for terrible sexual crimes. The Cleveland Plain Dealer Editorial Board, *Ohio rape legislation a step toward justice for survivors: editorial* (Feb.13,2015),TheClevelandPlainDealer, http://www.cleveland.com/opinion/index.ssf/2015/02/rape_legislation_needs_to_offe.html (accessed February 17, 2015).