

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-222
	:	(C.P.C. No. 09CR-5354)
Harry E. Peck, Jr.,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on January 13, 2011

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

W. Joseph Edwards, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Harry E. Peck, Jr., is appealing from his convictions on three charges of rape and one charge of abduction. He assigns a single error for our consideration:

APPELLANT DID NOT RECEIVE A FAIR TRIAL UNDER THE OHIO AND FEDERAL CONSTITUTIONS BECAUSE HIS RIGHT TO A SPEEDY TRIAL WAS DENIED.

{¶2} In April 1999, E.K. was raped by a man known to her as "Poppa." She made a police report of the incident, but her whereabouts were unknown until 2008. In

2008, she contacted police again. In the meantime, police had matched a swab of Peck's saliva to semen taken from E.K.'s vagina at the time of the rape.

{¶3} Before his jury trial on the charges, counsel for Peck had filed a motion asking that the charges be dismissed because of the extended delay between the incident and charges being actively pursued. The trial court judge overruled the motion to dismiss.

{¶4} For a criminal defendant to succeed in having criminal charges dismissed due to pretrial delays, and especially pre-indictment delays, the defendant must demonstrate that he or she has been prejudiced by the delay. See *United States v. Lovasco* (1977), 431 U.S. 783, 97 S.Ct. 2044. Peck has not succeeded in demonstrating such prejudice.

{¶5} E.K. was abducted and dragged down an alley to a vacant house where she was raped repeatedly. No one was involved or witnessed the event except E.K. and her abductor/rapist. No other witnesses were lost or had their memory fade. E.K. claimed no significant loss of memory.

{¶6} Peck denied involvement in the crime. The DNA evidence refuted his denial. The facts regarding the abduction and rape left little room for a defense case, other than an argument that E.K. was not to be believed.

{¶7} To that extent, the delay worked to Peck's benefit because it increased the possibility that E.K.'s memory of the events was less credible due to the 11 years which had elapsed between her report to police and the trial.

{¶8} Since no prejudice was demonstrated by Peck, the trial court was correct to refuse to dismiss the charges.

{¶9} The sole assignment of error is overruled and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and SADLER, JJ., concur.
