

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

FEBRUARY 19, 2020

TESTIMONY OF S. FORREST THOMPSON, MEDINA COUNTY PROSECUTOR

Good morning Chairman Eklund and distinguished members of the Senate Judicial Committee.

I am Forrest Thompson. Since 2017 I have served as the elected Prosecutor of Medina County. I am here today to speak as a proponent for Senate Bill # 162.

One of the primary questions to be answered in passage of this bill is whether or not its passage decreases the due process and constitutional protections afforded to the citizens of Ohio in a criminal prosecution.

At the outset I want to state that I believe that rape is second only to murder in both the severity of the crime and the trauma caused to both the victim and society at large.

No State has a statute of limitations on murder because we believe as a society that the severity of the crime transcends all other concerns of society. We believe that the person committing murder must be brought to justice regardless of the passage of time. This position is in direct conflict with the purpose of statutes of limitation. But, again due to the severity of the crime we exempt it from the regular analysis of lesser crimes.

In Stogner v. California 539 U.S. 607 (2003). The court stated, “*Statute of limitations reflect a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns—for example, the concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.*”

The operative word here is **legislative judgment**.

In other words, it is the legislature that determines how long is “too long” when balancing the constitutional protections of citizens against unfair prosecution is weighed against society’s need for justice and the rights of victims of crime.

In murder cases, where there has been a lengthy passage of time the issue is whether or not the State can meet its legal burden of proof. It is a question of the *weight and sufficiency of the evidence*. Not whether or not the case should be prosecuted. That is a decision left to our courts.

Most rape case prosecutions are almost entirely based on forensic evidence at trial. The advancement of technology, DNA analysis, and advanced evidence gathering and preservation by law enforcement have provided us with the tools to provide those constitutional protections as well bring justice to victims and society and has virtually eliminated the chances of wrongful conviction in rape cases.

Consequently, the historical purposes behind the imposition of a statute of limitations in rape cases have eroded to a point that they serve no legitimate purpose in the analysis of prosecution of a rape case.

This, is well recognized by virtually all branches of government.

In 2013 then Attorney General Mike Dewine created a program whereby all stored rape kits collected by law enforcement were submitted to the Bureau of Criminal Investigation for analysis. There were thousands of such kits submitted.

In 2015 the Ohio legislature expanded the statute of limitations for rape from 20 to 25 years, and more importantly, crafted several exceptions to that limitation to further extend it making DIRECT reference to DNA.

In 2017, Marcie's law became an Ohio constitutional amendment.

All of these actions reflect both the increased awareness of the accuracy and advancements in the investigative, forensic and DNA sciences, as well as, advanced training of law enforcement and the increased awareness of the severity of the crime of rape and the lifelong impact it has on the victims who survive.

Please consider these two cases:

CASE #1

In the fall of 2018 I was contacted by representatives of BCI regarding a Medina County rape case from 1997 and possible preservation of DNA. My review of the case indicated the date of the incident was reported as September 8, 1997, that it involved allegations of forcible rape and manual strangulation,

The victim was a seventeen-year-old girl from Lexington, OH who had been hitch hiking from her home to Cleveland. She was able to identify the suspect by name, description and the Semi truck he drove,

Law enforcement located the suspect, interviewed him, where he admitted to having sex with the victim. Of course he claimed it was consensual. He was subsequently released during the pendency of the investigation. A short time later and before the conclusion of law enforcement's investigation, the case was rejected for prosecution and the case was closed.

Nothing more was done in the matter until I was contacted by BCI and advised that they were investigating possible links from that case based on familial DNA to other unsolved cases and needed a confirmed sample of the suspect's DNA. BCI had the suspect located at a specific address in Arizona and had already compiled a great deal of evidence but the Medina County case was the only pending case where a legal attempt to collect his DNA was possible.

My criminal division and I immediately reviewed the file and determined that while the SOL was 20 years at the time of the incident in 1997, it had not expired when the law was changed expanding the SOL to 25 years. We further determined that we were within months of that SOL expiring.

Within two weeks we, reviewed the case, identified and contacted witnesses, re-compiled all of the evidence, including speaking with the victim and determined there was sufficient evidence to present the case to the grand jury.

On January 23, 2019, I presented the case to the grand jury where a two count indictment for rape was issued. I immediately made arrangements to go to Arizona and along with detectives from the Medina County Sheriff Office, oversee the arrest and extradition of the suspect.

Subsequent to his arrest, the Defendant, Samuel Legg III was returned to the State of Ohio where his DNA was collected for analysis which resulted in connecting him to several unsolved murders both in Ohio and Illinois, at least one of which occurred after he was interviewed for the rape in Medina County.

CASE #2.

In 2019 I received notice from BCI that Medina County had one of about sixty cases in Ohio where the DNA kits submitted pursuant to A.G. Dewine's orders had generated a positive hit but had not been prosecuted. After reviewing the office records and finding nothing related to the matter I reached out to law enforcement and obtained a copy of their case file for review.

The incident giving rise to the case occurred on August 23, 1993.

Ms. Jeanette INTO had recently returned to civilian life after serving in the military. She stopped at a local bar on her way home from work and had a drink. As she was leaving the bar a young, clean cut, pleasant acting man approached her and asked if she would give him a ride a few miles down the road. She agreed to do so.

As she drove, he gave her directions and instructed her to turn down one of the many dark country roads that are, to this day, present in the area, and then instructed her to stop. She did so thinking there was a driveway she could not see in the darkness. The man immediately and violently, attacked Ms. INTO beating and strangling her. He dragged her out of the vehicle into a weedy and wet drainage ditch and sexually assaulted her while continuing to strangle her. She lost consciousness several times.

Fortunately, she was able to escape to her car after the rape and make her way to help. Reports were taken which corroborated all of the details of the attack and rape. Ms. INTO cloths were found in the ditch. The physical injuries she described were supported by the photographs, and a rape kit was collected and preserved, however, that kit never made its way to the BCI **until December 2013 and the case remained unsolved.**

Recall that the incident occurred on August 23, 1993 therefore, the rape test kit was submitted to **BCI almost four months AFTER the SOL expired.**

Within two weeks of submission, on December 27, 2013, BCI notified law enforcement of a positive hit. However, soon after that law enforcement, in conference with the prosecutor's

office, realized that they had missed the statute of limitations. The case was quietly closed shortly thereafter.

Most offensive in this case was the decision in 2013 NOT to tell the victim that the rapist had been identified even though they both lived in the same community.

I had the difficult duty to meet with that victim to tell her that the rapist was identified but could not be prosecuted.

CONCLUSION

The SOL applied in rape cases demonstrate an outdated, and arbitrary function of the law that serves no purpose. As illustrated in the Samuel Legg case, a delay of a few weeks would have precluded us from bringing a serial killer to justice. In contrast, in the Into case, sending a rape kit to BCI a few weeks earlier would have enabled a violent rapist to be brought to justice.

The one constant both of these cases share is that modern, scientific technology led to the identification of the criminals YEARS past the actual commission of the crime and but for luck and timing each would have a far different outcome.

Finally, SOL on rape cannot be discussed fully without looking at the progress made by the legislature and by the adoption of Marcie's law. This heightened awareness on victim's rights in the criminal prosecution arena and the well documented, long term impact on rape victims cannot be ignored. The normal delays that occur in a rape case lead many victims to believe that justice will never be served, having a SOL on rape only confirms this fear and is directly contra to the administration of justice and victim's rights.

I submit to this distinguished Committee that an objective review of the historical pins upon which the SOL for rape were built have deteriorated beyond use. Modern science, technology, forensic analysis, DNA preservation and testing, enhanced education and evidence collection by law enforcement, in connection with the well-established and legitimate rights of victims and the irrefutable evidence of the severe and permanent harm rape survivors must endure renders ANY statute of limitations on rape obsolete.

Thank you for giving me this opportunity.