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IN THE  
COURT OF APPEALS OF INDIANA

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Joel Williams, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 4, 2022

Court of Appeals Case No.  
21A-CR-1581

Appeal from the Lake Superior Court  
The Honorable Natalie Bokota,  
Judge

Trial Court Cause No.  
45G02-1903-FA-1

**Baker, Senior Judge.**

[1] In this interlocutory appeal, Joel Williams challenges the denial of his motion to dismiss the charges against him. He asserts his due process rights were violated by the thirty-five-year delay in charging him with two counts each of rape and criminal deviate conduct, all Class A felonies. In moving to dismiss the charges, he contends his defense will be prejudiced because witnesses have died or become unavailable in the intervening years and the State is not justified

in its delay. Concluding that Williams has not proved that he will suffer actual and substantial prejudice to his right to a fair trial, we affirm.

## Facts and Procedural History

- [2] In 1984, Joel Williams was charged with participating in several home invasions involving robbery, rape, and sexual assault in Gary. Williams was eventually convicted of multiple counts of robbery and sentenced to an aggregate term of forty-five years.
- [3] During the same time period that the home invasions were occurring in Gary, a home invasion occurred in nearby Hobart that bore similarities to those in Gary. On March 20, 1984 in Hobart, three men put a gun to a woman's head and forced her to allow them to enter the residence. The men ransacked the house and forced the woman and other occupants of the house, at knife point and gun point, to submit to intercourse and to perform fellatio.
- [4] That same day, all three victims were examined at the hospital, and evidence was collected for sexual assault kits. This evidence was submitted to Great Lakes Forensic Laboratories (GLFL) on March 29 for testing and analysis. However, in May, GLFL returned the items without having examined or tested them, as indicated on the return form signed by Irene Comsa.
- [5] On May 11, Gary police informed Hobart police that Williams had been arrested for the rapes and robberies in Gary. The Hobart victims viewed a line-up containing Williams, but they could not positively identify him as one of the men who entered their residence. However, they told police that one of the

men in the line-up—Williams—had a similar build and voice as one of the men who assaulted them. Although Williams’ father had informed police he did not want Williams, who was seventeen, giving a statement, a Hobart detective spoke with Williams after the line-up. In his statement, Williams indicated he participated in the Hobart home invasion with L.C. Markham and one of Markham’s brothers.

[6] On May 17, 1984, the victims’ sexual assault kits were submitted to the Indiana State Police Lab (ISP Lab) for analysis. Analyst Janeice Fair’s examination revealed hairs not inconsistent with the perpetrators’ hair, but she reported that “[n]o further examinations were conducted pending the submission of appropriate standards.” Appellant’s App. Vol. II, p. 183. Analyst Patricia Vidal’s analysis revealed seminal fluid on several items of evidence, but she stated in her report that “[f]urther analysis of these items cannot be conducted due to the lack of suspect standards for comparison.” *Id.* at 185. The evidence was returned to police on April 30, 1987.

[7] Thirty-one years later in May 2018, the Hobart Police Department resubmitted to the ISP Lab the sexual assault kits from the victims of the Hobart home invasion. The lab reported that a vaginal swab from victim L.F. yielded a partial male DNA profile. When this profile was submitted to the Combined DNA Index System (CODIS), Williams emerged as a match.

[8] On March 27, 2019, the State charged Williams with two counts of rape, both as Class A felonies, and two counts of criminal deviate conduct, both as Class

A felonies. In September 2020, Williams filed his motion to dismiss these charges, and, following a hearing, the court denied the motion. Williams then sought and was granted permission to pursue this interlocutory appeal.<sup>1</sup>

## Discussion and Decision

- [9] Williams claims the trial court erred in denying his motion to dismiss the charges. A defendant has the burden of proving by a preponderance of the evidence all facts necessary to support a motion to dismiss. *Ackerman v. State*, 51 N.E.3d 171, 177 (Ind. 2016). A judgment entered against the party bearing the burden of proof is a negative judgment. *Kingma v. State*, 140 N.E.3d 309, 312-13 (Ind. Ct. App. 2020). On appeal from a negative judgment, this Court will reverse only if the evidence is without conflict and leads inescapably to the conclusion opposite that reached by the trial court. *Ackerman*, 51 N.E.3d at 177.
- [10] The heart of Williams' motion to dismiss is his assertion that the length of time between the commission of his offenses and the filing of charges was excessively long such that it violated his constitutional rights. In general, prosecutors have broad discretion in the decision of when to prosecute. *Reed v. State*, 86 N.E.3d 175, 180 (Ind. Ct. App. 2017). However, that discretion is limited by the Due Process Clause of the Fifth Amendment. *Id.* Providing that

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<sup>1</sup> We held oral argument in this case on April 13, 2022 in the Court of Appeals courtroom. We thank counsel for their advocacy.

“[n]o person shall . . . be deprived of life, liberty, or property, without due process of law,” the Due Process Clause protects defendants against excessive pre-charge delay. U.S. CONST. amend. V; *Marshall v. State*, 832 N.E.2d 615, 626 (Ind. Ct. App. 2005), *trans. denied*. Ordinarily, statutes of limitation operate to prevent prejudicial delay in the filing of criminal charges. *Ackerman*, 51 N.E.3d at 189. However, even where a charge is brought within the statute of limitation or where there is no statute of limitation, the particulars of the case may show that undue delay and the resulting prejudice constitute a violation of due process. *Id.*

[11] To obtain relief from a delayed prosecution that is allegedly violative of a defendant’s constitutional rights, the defendant must make a threshold showing that he suffered actual and substantial prejudice to his right to a fair trial. *Marshall*, 832 N.E.2d at 626. By itself, the mere passage of time between the commission of the crime and the filing of charges is not enough to establish prejudice. *Ackerman*, 51 N.E.3d at 189. Rather, to satisfy his burden of showing actual and substantial prejudice, a defendant must make specific and concrete allegations of prejudice from the delay that are supported by the evidence. *Reed*, 86 N.E.3d at 180. Once the defendant has overcome the burden of showing actual and substantial prejudice, he must then demonstrate that the State delayed the charges to gain a tactical advantage or for some other impermissible reason. *Marshall*, 832 N.E.2d at 626.

[12] Here, we initially observe that although there was a substantial delay between the home invasion in 1984 and the filing of charges in 2019, the use of DNA as

evidence in a trial was only first reported in 1991 in *Hopkins v. State*, 579 N.E.2d 1297 (Ind. 1991). Thus, DNA evidence was not used in criminal prosecutions at the time of Williams' alleged acts. Moreover, Williams was charged with four Class A felonies, for which there is no statute of limitation. *See* Ind. Code § 35-41-4-2(c) (2019) (prosecution for a Class A felony committed before July 1, 2014 may be commenced at any time). Nevertheless, Williams contends the delay is prejudicial. He argues that his defense will be impacted by the deaths of Irene Comsa and his alleged accomplice Markham and by the purported unavailability of the ISP Lab analysts.

[13] When a defendant claims he will be prejudiced by delayed prosecution due to deceased witnesses, witnesses with fading memories, or those who are unavailable, he must do more than show that a particular witness is unavailable and that the witness' testimony would have helped the defense. *Reed*, 86 N.E.3d at 180. The defendant must demonstrate how the witness would have aided his defense by articulating reasonable inferences regarding the knowledge the witness likely possessed and what relevance that information would have had to his defense. *Ackerman*, 51 N.E.3d at 190. The court will not speculate on how the witness would have helped the defense. *Id.*

[14] Williams first claims his inability to question Comsa about GLFL's handling and storage of L.F.'s sexual assault kit causes him prejudice. Comsa, who is deceased, is the GLFL representative that signed the return form to release the evidence to the police in May 1984. However, there is no evidence that Irene Comsa was an evidence analyst. In its brief, the State speculates that Comsa

was likely a clerk who merely signed the form when the evidence was returned to the police. While Williams has shown that Comsa is unavailable, he has failed to demonstrate how she would have helped his defense, and we are not permitted to speculate on the matter.

[15] Williams also asserts prejudice resulting from Markham's death. Williams states that the DNA profile obtained from L.F.'s sexual assault kit yielded a mixture of the DNA of two males, one of whom is purportedly Williams. He maintains that he is prejudiced by his inability to obtain Markham's DNA to see if Markham is the additional contributor discovered in L.F.'s samples as well as his inability to obtain information about Stacy Collins, the accomplice Markham named to police.

[16] Markham is undoubtedly unavailable; however, L.F. was raped by two men, and identification of the second man does not alter the result of the testing that identified Williams. Further, Williams does not show that Markham's DNA is not otherwise available, for example through the Department of Correction or the CODIS database. Additionally, Williams fails to articulate reasonable inferences regarding the knowledge Markham likely possessed concerning Collins as an accomplice and what relevance that information would have had to his defense, given that Williams has already been identified as one of the perpetrators by his DNA in the samples taken from L.F. Moreover, Williams does not show that he has made any effort to locate or question Collins or that Collins is unavailable.

[17] Williams next alleges the ISP Lab analysts are unavailable, resulting in prejudice to his defense. With regard to Analyst Vidal, Williams simply claims he has no knowledge of her whereabouts, and he is unable to question her. Likewise, Williams contends Analyst Fair cannot be “located or contacted, and cannot be questioned,” yet he states that her surname is now Amick and that she is living in Anchorage, Alaska. Appellant’s Br. p. 20; Appellant’s App. Vol. II, p. 80 (Motion to Dismiss). Williams demonstrates no effort to locate, contact, or question these analysts to support his claim of their unavailability. His bald assertions consequently are insufficient to satisfy his burden of showing these witnesses are unavailable.

[18] Williams additionally argues it is fundamentally unfair to charge him with these offenses now because when he was investigated in 1984 for the Hobart home invasion, he was also investigated for seven similar incidents with which he was later charged. Following his conviction of two counts and a sentence of forty-five years, the State dismissed the remaining cases. Consequently, Williams theorizes that the dismissals are “tantamount to declaring that justice had been done for [his] alleged 1984 crime spree and no further prosecution was necessary.” Appellant’s Br. p. 23. However, having been presented with no evidence to support this claim, we must deny it as sheer speculation.

[19] Therefore, we find that, with regard to the deceased witnesses, Williams has not established that they likely possessed information that would aid his defense. Furthermore, he has not established the unavailability of the remaining witnesses. Accordingly, we conclude that Williams has not demonstrated that



he will suffer actual and substantial prejudice to his right to a fair trial as a result of the delay in charging him.

[20] Having the burden of first proving actual and substantial prejudice to his right to a fair trial, the defendant must then demonstrate that the State had no justification for the delay. *Ackerman*, 51 N.E.3d at 190; *see also Hill v. State*, 92 N.E.3d 1105, 1112 n.8 (Ind. Ct. App. 2018) (citing *Ackerman* and stating that because it concluded Hill had not met his burden to demonstrate he suffered actual and substantial prejudice to his right to fair trial by thirty-six-year delay in prosecution, court need not consider other prong of test as to whether State's delay was justified), *trans. denied*. Because Williams has not met his burden of demonstrating he will suffer actual and substantial prejudice to his right to a fair trial, it is thus not necessary for us to address the second part of the test. *See Johnson v. State*, 810 N.E.2d 772, 775 (Ind. Ct. App. 2004) ("This court has required the defendant to demonstrate both that he suffered actual prejudice and that there was no justification for the delay in order to successfully raise a due process challenge under the Fifth Amendment."), *trans. denied*.

[21] While we agree that thirty-five years is a substantial delay, we are constrained to abide by the precedent set by our Supreme Court. In doing so, we conclude Williams has not demonstrated the required prejudice and therefore has not established that the evidence is without conflict and leads inescapably to the conclusion that he was entitled to dismissal. Thus, we affirm the trial court's denial of Williams' motion to dismiss and remand.

[22] Affirmed.

Bailey, J., and Tavitas, J., concur.