

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 112188  
 v. :  
 :  
 TRAMAINE E. MARTIN, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: September 7, 2023**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-16-612220-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Anthony T. Miranda, Assistant Prosecuting Attorney, *for appellee*.

Tramaine E. Martin, *pro se*.

EILEEN A. GALLAGHER, P.J.:

{¶ 1} Defendant-appellant Tramaine E. Martin appeals the trial court's denial of his application for postconviction DNA testing. For the reasons that follow, we affirm.

## **I. Factual Background and Procedural History**

{¶ 2} Martin is serving an indefinite prison sentence of ten years to life, based on convictions for attempted rape, gross sexual imposition and kidnapping imposed following a bench trial in July 2017.

{¶ 3} In the direct appeal, this court summarized the facts adduced at trial as follows, in relevant part:

In December 2016, Martin was charged in a five-count indictment arising from allegations by his former girlfriend's ten-year-old niece, K.B., that Martin sexually assaulted her during a sleepover at Martin's home.

\* \* \*

In December 2016, K.B., along with her two siblings, had a sleep over with their cousins at the Cleveland Heights home of their aunt, K.S. Martin is the father of K.S.'s two youngest children. At the time of the sleep over, Martin was living in K.S.'s home, but slept in his own separate bedroom.

K.B. testified that during the sleep over, she was sleeping in the same bed with her 12-year-old cousin, T.M., in a third-floor bedroom. T.M. is Martin's daughter. K.B. explained she awoke in the middle of the night when she heard someone coming up the stairs. Martin came into the room, got into the bed under the covers between K.B. and T.M., and pulled down K.B.'s pants. He then attempted to "stick his private part" into K.B. from behind while holding down her arms. K.B. explained Martin was not successful because she kept her legs closed. Martin then put his tongue to K.B.'s "private part," pulled up her pants, got out of the bed, and went back downstairs.

\* \* \* K.B. went outside on the porch to call her mother and waited there until her mother arrived.

K.B.'s mother drove her directly to the Cleveland Heights police station, and K.B. gave an interview and a written statement. After K.B. made a police report, she returned home with her mother to wait until a sexual assault nurse examiner ("SANE examiner") became available later that morning. K.B. was examined by a SANE examiner a few hours later.

At trial, K.B.'s mother, aunt, and cousin testified, corroborating K.B.'s version of events. Notably, Martin's 12-year-old daughter, T.M., testified that she remembered sharing a bed with K.B. during the sleep over, and she further recalled that she had seen "my dad" — Martin — get in the bed and under the covers, between her and K.B.

A forensic biologist and a forensic scientist both testified as to the results of the rape kit. The forensic biologist explained she conducted testing that revealed the presence of amylase on both the front and back panels of K.B.'s underwear. Amylase is found in high concentrations in saliva but can also be detected in other bodily fluids. The forensic scientist conducted a DNA analysis of the amylase found in K.B.'s underwear. The forensic scientist testified that the amylase contained a mixed DNA profile from two people — K.B. and a male. The forensic scientist explained that DNA found in the front panel "was consistent with male DNA, but the profile was too low to be able to, with any degree of confidence, say who it may \* \* \* have been from." However, the forensic scientist further testified that the male DNA profile of the amylase swabbed from the back panel of K.B.'s underwear was "consistent with [Martin] to the degree of being rarer than one in one trillion."

\* \* \*

After the state rested, Martin testified on his own behalf, denying any sexual conduct with K.B. However, he admitted to going upstairs to the room in which K.B. and T.M. were sleeping. He explained his purpose was to "check[] on [the girls]" and that he merely put his knee and hand on the bed to retrieve T.M.'s glasses, because she had fallen asleep with them on.

*State v. Martin*, 8th Dist. Cuyahoga No. 106038, 2018-Ohio-1843, ¶ 2, 6–11, 13.

{¶ 4} Martin filed an application for postconviction relief in the trial court on the day after he filed his direct appeal, arguing (among other things) that the indictment and trial evidence were insufficient to permit a mandatory ten-years-to-life sentence and the sentence imposed was a "vindictive" "trial tax" and constituted cruel and unusual punishment. On the state's motion, the trial court granted summary judgment against Martin and he did not appeal that judgment.

{¶ 5} This court affirmed Martin’s convictions and sentence on direct appeal. *Martin* at ¶ 80.<sup>1</sup>

{¶ 6} Martin filed a second motion for postconviction relief in January 2019, arguing that investigators improperly used real-time location information from his cell phone to find and arrest him. The trial court denied that motion and this court affirmed that denial on appeal. *State v. Martin*, 8th Dist. Cuyahoga No. 108189, 2019-Ohio-4463, ¶ 19.

{¶ 7} On June 14, 2022, Martin filed an application in the trial court for postconviction DNA testing, requesting that the victim’s underwear be retested for DNA. He explained as follows:

My defen[s]e was that I didn’t restrain K.B. in any way as to have had sexual contact or conduct with her. My theory about the amylase was that it was so weak as to have been from a sweat transfer from the commonly-used toilet.

{¶ 8} He claimed that “testing would prove that I had no contact or acted with any sexual conduct with K.B. \* \* \* An exclusion from saliva amylase would clear me of all the other charges.” The state opposed the motion.

{¶ 9} The trial court denied the motion, stating in its order that it had concluded that the underwear had been subjected to a prior definitive test and Martin had failed to identify any advances in DNA testing since trial. The court further stated that additional testing would not be outcome determinative because

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<sup>1</sup> The Ohio Supreme Court declined to accept jurisdiction over Martin’s appeal from this court’s judgment. *08/29/2018 Case Announcements*, 2018-Ohio-3450.

the “victim credibly testified that Martin licked her private part,” “the victim’s cousin corroborated Martin’s presence in the bed with the victim and the victim’s cousin, and corroborated that the victim started crying,” “DNA testing at trial revealed amylase in the victim’s underwear, which is consistent with the presence of saliva” and “DNA testing at trial identified Martin as a major contributor in a DNA mixture identified from a swab of the back panel of the victim’s underwear.”

{¶ 10} Martin appealed, raising the following assignment of error:

The trial court erred in its adoption of the State’s proposed order concluding that a prior DNA test was definitive as to all of the evidence and that testing would not be outcome determinative.

## II. Law and Analysis

{¶ 11} “A court’s decision to accept an application for postconviction DNA testing or to order a comparison of DNA test results with [the Combined DNA Index System (‘CODIS’)] is within the court’s discretion.” *State v. Scott*, Slip Opinion No. 2022-Ohio-4277, ¶ 10. “That discretion is to be exercised on a case-by-case basis, based on the unique facts of each case.” *Id.*, citing *State v. Ayers*, 185 Ohio App.3d 168, 2009-Ohio-6096, 923 N.E.2d 654, ¶ 43 (8th Dist.).

{¶ 12} Our consideration of the trial court’s finding that the underwear was subjected to a prior definitive DNA test is dispositive of this appeal; therefore, we do not address Martin’s argument that an exclusion result would be outcome determinative. We find additional grounds to affirm because the identity of the perpetrator was not an issue at Martin’s trial.

{¶ 13} R.C. 2953.71 through 2953.81 govern postconviction DNA testing for eligible inmates. R.C. 2953.73(A) provides that an eligible inmate who wants to request DNA testing pursuant to R.C. 2953.71 to 2953.81, must submit an application for DNA testing to the common pleas court that sentenced the inmate for the relevant offense. The state concedes that Martin was eligible to apply for postconviction testing. *See also* R.C. 2953.71(C).

{¶ 14} The circumstances under which a trial court may accept an application for postconviction DNA testing are described in R.C. 2953.74.

{¶ 15} A trial court must reject an offender's application for postconviction DNA testing if a prior definitive DNA test has been conducted on the biological evidence the offender seeks to have tested. R.C. 2953.74(A). A "definitive DNA test" is one that "clearly establishes that biological material from the perpetrator of the crime was recovered from the crime scene and also clearly establishes whether or not the biological material is that of the eligible offender." R.C. 2953.71(U). A prior test is not definitive if "the eligible offender proves by a preponderance of the evidence that because of advances in DNA technology there is a possibility of discovering new biological material from the perpetrator that the prior DNA test may have failed to discover." *Id.*

{¶ 16} Additionally, a trial court only has discretion to grant an offender's application when it "determines that, at the trial stage \* \* \* the identity of the person who committed the offense was an issue." R.C. 2953.74(C)(3).

{¶ 17} Here, Martin seeks to have the victim’s underwear retested for DNA. The parties agree that the underwear was tested for DNA prior to trial. That test revealed the presence of amylase — biological material that is found in high concentrations in saliva — on the front and back panels of the underwear. The samples from both panels contained a mixed DNA profile from two and only two people — the victim and one male. While the sample from the front panel did not contain sufficient DNA to identify the particular male who left that DNA, the sample taken from the back panel revealed that the male DNA was Martin’s.

{¶ 18} Martin argues that this prior test was not definitive because the DNA experts could not conclusively say whether the amylase in the underwear came from saliva or another bodily fluid. He describes on appeal that he wants “independent testing \* \* \* for an exclusion result as to saliva or to rate the strength of the amylase for source determination.” He contends that determining which bodily fluid of his was in the victim’s underwear would be outcome determinative because at trial he denied licking the victim and asserted that the amylase was transferred to the victim and her underwear from Martin’s sweat, left behind on a shared toilet. If additional testing ruled out saliva as the source of the amylase, the argument goes, this defense is much stronger.

{¶ 19} In other words, Martin does not dispute that his DNA is on the victim’s underwear; instead, he disputes the state’s theory about *why* it is there. The issue at trial was whether a crime was committed in the first place, not whether a person other than Martin committed the crime. Postconviction DNA testing is not

permitted under these circumstances. R.C. 2953.74(C)(4); *see also State v. Waver*, 8th Dist. Cuyahoga No. 108820, 2020-Ohio-2724, ¶ 25 (affirming the denial of a postconviction-testing application where “the major issue was not who attacked Jane Doe; the major issue was whether the defendant’s actions were crimes”).

{¶ 20} Additionally, the prior test clearly established that biological material from the perpetrator of the crime was recovered from the underwear and that the biological material was from Martin; in other words, it met the statutory definition of a “prior definitive DNA test.” R.C. 2953.71(U). The fact that the prior DNA testing did not conclusively show whether Martin’s DNA was deposited through sweat, saliva or some other bodily fluid does not make the testing less than definitive for purposes of the postconviction-DNA-testing statutes. *See State v. Lindsay*, 5th Dist. Richland No. 16CA38, 2017-Ohio-594, ¶ 27–29 (affirming the denial of a postconviction-testing application where the offender did not “contest his DNA was present on the victim’s body and underwear” but instead focused “on *how* his DNA came to be present on the victim’s body and underwear”) (Emphasis in original.)

{¶ 21} We are mindful that “the spectre of a wrongful conviction in light of available but untested DNA evidence is something the legislature has sought to prevent by making postconviction testing possible.” *State v. Scott*, Slip Opinion No. 2022-Ohio-4277, ¶ 22. But because Martin’s application did not meet the statutory requirements for acceptance, we cannot say that the denial of his application to retest the evidence was an abuse of discretion.

{¶ 22} We, therefore, overrule Martin’s assignment of error.



### **III. Conclusion**

{¶ 23} Having overruled Martin's sole assignment of error for the reasons stated above, we affirm.

The court finds there were reasonable grounds for this appeal.

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

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas 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.

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EILEEN A. GALLAGHER, PRESIDING JUDGE

LISA B. FORBES, J., and  
EMANUELLA D. GROVES, J., CONCUR