

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 115837
ANDRE THOMPSON,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 10, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-06-490690-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Chauncey Keller, Assistant Prosecuting Attorney, *for appellee*.

Kimberly Kendall Corral, *for appellant*.

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Defendant-appellant Andre Thompson appeals the trial court's judgment entry denying his postconviction petition for DNA testing. Finding no merit to the appeal, we affirm the trial court's decision.

I. Factual History and Procedural Background

{¶ 2} In 2007, a jury convicted Thompson for the aggravated murder of Reginald Roberson, the attempted murders of Carnail Duckworth and Antonio Knott, and the aggravated robbery of Duckworth and Roberson. He was sentenced to 53-years-to-life in prison. This court affirmed his convictions in *State v. Thompson*, 2009-Ohio-615, ¶ 2 (8th Dist.).

{¶ 3} In November 2023, Thompson filed an application for postconviction DNA testing. Specifically, he sought to have DNA testing conducted on the eight .40 caliber Smith and Wesson spent shell casings police recovered from the crime scene. Although the State's ballistics and firearm experts conducted toolmark and fingerprint testing on the casings, DNA testing on the casings was not conducted at the time of investigation or prior to trial.

{¶ 4} The State responded to Thompson's application, contending that Thompson failed to satisfy R.C. 2953.74's requirements that would allow the trial court to accept his application. The State asserted that the spent shell casings that were all fired from the same gun were potentially contaminated during both toolmark and fingerprint examination and, as such, it was doubtful that a suitable DNA sample, if ever present, would still exist on the spent shell casings. Moreover, the State contended that even if the shell casings contained an exclusionary DNA result, that result would not establish that someone else committed the offense. Nevertheless, the State asserted that it would be premature for the trial court to determine whether DNA testing would be outcome determinative. Accordingly, the

State requested the trial court to order the clerk of courts to release the spent shell casings to the testing authority to determine whether any biological material present on the shell casing was suitable for analysis.

{¶ 5} The trial court granted the request to evaluate the eight spent shell casings, ordering the Ohio Bureau of Criminal Investigation (“BCI”) to make a determination pursuant to R.C. 2953.74(C)(2) about the presence, sufficiency, quality, and suitability of biological material on the casings. The court ordered BCI to provide the results of its determinations in a written report. As such, the court held any outcome-determinative findings in abeyance.

{¶ 6} In April 2024, the parties filed a joint notice regarding the DNA suitability determination. The filing contained an affidavit from Lewis Maddox, DNA Technical Leader for BCI, and two pages of trial transcript that Maddox relied upon and referenced in his affidavit. Maddox stated that the testing authority is required to determine whether submitted evidence has been contaminated to the extent that it has become scientifically unsuitable for testing. He averred that based on his review of the record, and the prior handling and testing of the shell casings, there was a likelihood that any DNA obtained would be the result of contamination, as opposed to being directly related to the crime. As such, he averred that any DNA profiles obtained would not be eligible for entry into the Combined DNA Index System (“CODIS”) database under standard operating procedures. Maddox therefore concluded:

Based on information received regarding the previous testing of the fired cartridge cases, the cartridge cases are at substantial risk of contamination from at least the firearms and latent print analysis performed. Protocols in place at the time did not have steps to minimize contamination of the cartridge cases. It is unknown if the fired cartridge cases were collected with clean technique for possible DNA testing at the crime scene. It cannot be determined whether DNA testing on the cartridge cases will be successful without actually performing the testing. Should a DNA profile be obtained, it cannot be determined when the DNA was applied to the cartridge case or under what circumstance.

{¶ 7} The trial court denied Thompson's application without a hearing, concluding that his application did not satisfy the requirements in R.C. 2953.74(B)(2), (C)(1), (C)(2)(c), and (C)(5). Relevant to the appeal, the trial court found that even if DNA testing was conducted and an exclusion result was obtained, the testing result would not be outcome determinative because of the overwhelming evidence of guilt established by eyewitness and victim testimony, and because any DNA exclusion result would only prove Thompson did not handle the shell casings; it would neither confirm nor disconfirm that he was the shooter.

II. The Appeal

{¶ 8} In his sole assignment of error, Thompson asserts that the trial court abused its discretion by denying his application for postconviction DNA testing. Specifically, he contends that the court abused its discretion because (1) its determination that DNA testing would not be outcome determinative is "specious," (2) the trial court made a "factual finding" that is inconsistent with a subsequent legal determination, and (3) the trial court accepted Dr. Maddox's averments despite no actual testing of the shell casings to determine the presence of DNA.

{¶ 9} This court reviews a denial of an application for DNA testing for an abuse of discretion. *State v. Lash*, 2026-Ohio-2746, ¶ 6. An abuse of discretion occurs when a court exercises its judgment in an unwarranted way, in regard to a matter over which it has discretionary authority. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶ 10} R.C. 2953.71 et seq. outlines the procedures for eligible offenders to apply for postconviction DNA testing of biological material or evidence collected in their cases. *Lash* at ¶ 7. The criteria under which a trial court may accept a postconviction DNA testing application are found in R.C. 2953.74.

{¶ 11} A trial court may accept a postconviction DNA testing application filed pursuant to R.C. 2953.73 only if one of the criteria in R.C. 2953.74(B) and all six criteria in R.C. 2953.74(C) are satisfied. *State v. Hughes*, 2026-Ohio-545, ¶ 28 (1st Dist.); *see also State v. Scott*, 2022-Ohio-4277, ¶ 6, 10. “A trial court should exercise its discretion based upon the facts and circumstances presented in the case whether it will first determine whether the eligible offender has demonstrated that the DNA testing would be outcome-determinative [pursuant to R.C. 2953.74(B)] or whether [pursuant to R.C. 2953.75(C)(1)] it should order the prosecuting attorney to prepare and file a DNA evidence report pursuant to R.C. 2953.75.” *State v. Buehler*, 2007-Ohio-1246, paragraph two of the syllabus.

{¶ 12} Relevant to this case, R.C. 2953.74(B)(2) provides that

the court may accept the application only if . . . [t]he offender had a DNA test taken at the trial stage in the case in which the offender was convicted of the offense for which the offender is an eligible offender

and is requesting the DNA testing regarding the same biological evidence that the offender seeks to have tested, the test was not a prior definitive DNA test that is subject to division (A) of this section, and the offender shows that DNA exclusion when analyzed in the context of and upon consideration of all available admissible evidence related to the subject offender's case as described in division (D) of this section would have been outcome determinative at the trial stage in that case.^[1]

{¶ 13} Under this statutory scheme, if there was a DNA test taken at the trial stage and the eligible offender requests testing of biological evidence not tested at the trial stage, the offender must show that the previously performed test was not a prior definitive DNA test and that a DNA exclusion result, when analyzed in the context of and upon consideration of all available admissible evidence related to the case, would have been outcome determinative. R.C. 2953.74(B)(2); *see Buehler* at ¶ 30.

{¶ 14} “An ‘exclusion result’ is a DNA test result ‘that scientifically precludes or forecloses the subject offender as a contributor of biological material recovered from the crime scene or victim in question.’” *Scott*, 2022-Ohio-4277, at ¶ 7, quoting R.C. 2953.71(G). Under this statutory scheme, a trial court is required to presume that an “exclusion result” will be obtained by the offender. *Scott* at ¶ 11, citing R.C. 2953.74(C)(4) and (5); R.C. 2953.71(G); *see also Lash*, 2026-Ohio-2746, at ¶ 10. “With that presumption, the trial court must determine whether such a result

¹ Although Thompson's application was brought, in part, pursuant to R.C. 2953.74(B)(1), we note that subsection (B)(2) is the applicable section because, as we will later discuss, Thompson had DNA testing at the trial stage, just not on this biological evidence he is now requesting. Nevertheless, even if (B)(1) applied, both subsections require an outcome-determinative finding before a trial court can grant an application for postconviction DNA testing.

would be outcome determinative for the offender.” *Scott* at *id.*, citing R.C. 2953.74(C)(5).

{¶ 15} “Outcome determinative’ means that ‘there is a strong probability that no reasonable factfinder would have found the offender guilty of [the] offense’ for which [an offender] was convicted if the DNA results had been presented and found relevant and admissible at trial[.]” *Id.* at ¶ 7, quoting R.C. 2953.71(L); *Lash* at *id.* “In determining whether the ‘outcome determinative’ criterion . . . has been satisfied,” the court “shall consider all available admissible evidence related to the subject offender’s case,” not just the exclusion result and the evidence from the original trial. R.C. 2953.74(D); *see also* R.C. 2953.71(L) (requiring the court to analyze the exclusion result “in the context of and upon consideration of all available admissible evidence”); R.C. 2953.73(D) (requiring the court to consider “the supporting affidavits, and the documentary evidence and, in addition to those materials, . . . all the files and records pertaining to the proceedings against the applicant”).

{¶ 16} In addition to meeting the requirements of the applicable R.C. 2953.74(B) section, an application for postconviction DNA testing must also satisfy the six factors listed in R.C. 2953.74(C). “If any of the six factors listed in R.C. 2953.74(C) is not satisfied, the court is precluded from accepting the application.” *State v. Hayden*, 2005-Ohio-4025, ¶ 19 (2d Dist.).

{¶ 17} In this case, the trial court found that neither R.C. 2953.74(C)(1), (C)(2)(c), and (C)(5) were satisfied. Relevant to the appeal, R.C. 2953.74(C)(5)

requires the trial court to also find that an “exclusion result” from the requested DNA testing would be “outcome determinative regarding that offender” prior to granting an offender’s application.

{¶ 18} Therefore, both R.C. 2953.74(B) and (C) require the trial court to find that a DNA test exclusion result would be outcome determinative. “[I]f a trial court decide[s] that a DNA test exclusion result would not be outcome-determinative, the court would have no obligation to accept the application and would have no need for a prosecuting attorney to prepare and file a DNA evidence report pursuant to R.C. 2953.75.” *Buehler*, 2007-Ohio-1246, at ¶ 31. Accordingly, a trial court properly denies an application for DNA testing that would not be outcome determinative. *Id.* at ¶ 37.

{¶ 19} Thompson challenges the trial court’s determination that an exclusion result would not be outcome determinative and characterizes the trial court’s determination as “specious.” He contends that the trial court ignored its statutory obligation to presume that DNA testing would lead to an exclusion result in its decision. Moreover, Thompson maintains that the witness and eyewitness testimony presented at trial was unreliable and thus the court should not have relied on this evidence in its determination.

{¶ 20} At the outset, we reject any contention by Thompson that the trial court ignored its statutory obligation to presume that the DNA testing would lead to an exclusion result in its outcome-determinative finding. Recently, the Ohio Supreme Court stated that a trial court is not required to thoroughly explain its

reasons for accepting or rejecting an application for postconviction DNA testing pursuant to R.C. 2953.71 et. seq in order to comply with R.C. 2953.73(D)'s "reasons" requirement. *Lash*, 2026-Ohio-2746, ¶ 1.

{¶ 21} In *Lash*, the trial court denied the defendant's application for DNA testing by summarily concluding that the "[d]efendant has not shown that DNA testing would be outcome determinative. This court finds results would not be probative." *Id.* at ¶ 3, quoting *State v. Lash*, Cuyahoga C.P. No. CR-15-596663-A (Mar. 22, 2024). On appeal, this court reversed the trial court's order, finding that the trial court's "failure to provide an explanation for rejecting a defendant's application under R.C. 2953.73(D) is contrary to law and constitutes an abuse of discretion." *Id.* at ¶ 4, quoting *State v. Lash*, 2024-Ohio-6025, ¶ 13 (8th Dist.). The Supreme Court disagreed with this court's decision and held that "an order satisfies R.C. 2953.73's 'reasons' requirement when it provides a statutory reason for the court's acceptance or rejection of the application." *Id.* at ¶ 5. "An order that identifies the specific statutory requirement that the application failed to meet links the reason for rejecting the application to that requirement." *Id.* at ¶ 13. The Court stated that because a trial court is required to find that testing would be outcome determinative before an application may be accepted, "[i]mplicit in the trial court's order is a determination that if the results of the testing that Lash sought had been presented at his trial, there was not a strong possibility that no reasonable factfinder would have found him guilty [of his offenses]." *Id.* at ¶ 14, citing

R.C. 2953.71(L) (defining “outcome determinative”); R.C. 2953.74(C)(4) and (5) (both requiring an outcome-determinative finding).

{¶ 22} Accordingly, under *Lash*, the trial court’s thorough explanation of findings of fact and conclusions of law, with citation and identification of the relevant statutory sections, was sufficient to satisfy the trial court’s statutory duty in rejecting Thompson’s application because the statutory presumption was implicit in its outcome-determinative finding.

{¶ 23} Notwithstanding, the trial court’s decision provides that it complied with its statutory obligation to presume that DNA testing would lead to an exclusion result in its outcome-determinative finding. The trial court incorporated the requisite presumption in its decision:

Even if the Court assumed that the casings contained an exclusionary result, which was not subsequently compromised as discussed above, at best, such a result would establish that somebody aside from Thompson handled the casings. Such a result would neither confirm [n]or disconfirm that Thompson was the shooter. In the context of the otherwise overwhelming evidence of Thompson’s guilt in this case, it cannot be said that an exclusionary result would have been outcome determinative.

Accordingly, Thompson’s argument is without merit.

{¶ 24} We now turn to Thompson’s contention that the trial court’s outcome-determinative conclusion was “specious.” He bases his argument on the trial court’s reliance on the eyewitness testimony provided at trial.

{¶ 25} In its decision denying Thompson’s application, the trial court set forth the procedural history, including this court’s decision affirming his convictions

in his direct appeal — specifically, this court’s discussion addressing Thompson’s manifest-weight-of-the-evidence argument. In its findings of fact, the trial court focused on witness testimony and their identification of Thompson as the shooter.

In finding Thompson’s convictions were not against the manifest weight of the evidence, the Eighth District observed “all of the witnesses who knew Thompson identified him as the shooter. [*Thompson*, 2009-Ohio-615] at ¶ 18 [(8th Dist.)]. Clarissa Pittman testified that she had known Thompson for approximately ten years, that she saw him approach Roberson’s car with a gun, and that she recognized Thompson’s voice. *Id.* Linda Alexander testified that she recognized Thompson from the neighborhood, that she was standing outside Roberson’s car when Thompson approached with a gun, and that she ran away after Thompson shot Duckworth. *Id.* at ¶ 19. Se’Anna Payne and Chantae Payne testified that they had known Thompson for their entire lives and that they saw him shooting. *Id.* at ¶ 20. Clarence Pittman testified that he saw Thompson walk out to his van and then towards the group standing outside, firing shots at Roberson’s car. *Id.* at ¶ 20. The Eighth District underscored that “other than the victims, all of the witnesses had known Thompson for a significant time.” *Id.* at ¶ 27. Victim Carnail Duckworth testified that he did not know Thompson prior to the shooting but identified Thompson in a photo array as the shooter. *Id.* at ¶ 22. Victim Christopher Page also identified Thompson as the shooter from a photo array. *Id.* at ¶ 24. Although Victim Antonio Knott did not specifically identify Thompson as the shooter, Knott’s testimony was consistent with this being the case. *Id.*

{¶ 26} In analyzing R.C. 2953.74(B)(2)’s outcome-determinative requirement, the trial court concluded:

Thompson did not and cannot make the requisite showing that DNA exclusion when analyzed in the context of and upon consideration of all available admissible evidence related to [his] case as described in R.C. 2953.74(D) would have been outcome determinative at the trial stage in this case. Even if the Court assumed that the casings contained an exclusionary result, which was not subsequently compromised as discussed above, at best, such a result would establish that somebody aside from Thompson handled the casings. Such a result would neither confirm [n]or disconfirm that Thompson was the shooter. In the

context of the otherwise overwhelming evidence of Thompson's guilt in this case, it cannot be said that an exclusionary result would have been outcome determinative.

{¶ 27} Further, in analyzing R.C. 2953.74(C)(5), the trial court found that if DNA testing was conducted and an exclusion result is obtained, the results of the testing would not be outcome determinative regarding Thompson. The trial court stated that the "conclusion is based upon the overwhelming evidence of guilt at trial," relying on the eyewitness testimony from Clarissa Pittman, Linda Alexander, Se'Anna and Chantae Payne, Clarence Pittman, Carnail Duckworth, Christopher Page, and Antonio Knott and that "the recovered casings were determined to have been fired from the same gun."

{¶ 28} Insofar as Thompson challenges the reliability of the witnesses' testimony or identification of him as the shooter, these arguments are barred by res judicata because they could have been, and actually were, raised on direct appeal. *See generally State v. Gray*, 2022-Ohio-1945, ¶ 15 (8th Dist.). In his direct appeal, his manifest-weight-of-the-evidence assignment of error was based on the witnesses' identification of him as the shooter, specifically challenging the "various descriptions of the shooter" provided by the witnesses. *Thompson*, 2009-Ohio-615, at ¶ 17 (8th Dist.). Additionally, he challenged the witnesses' photo array identification of him as the shooter. *Id.* at ¶ 30. Accordingly, Thompson's attempt to relitigate this issue by discounting that testimony is barred by res judicata.

{¶ 29} Thompson acknowledges this court's resolution of these issues in his direct appeal but contends that "the entire process would have been different with

the benefit of DNA evidence.” This is precisely the standard that the trial court was required to apply in reviewing his application — presuming a DNA exclusion result is obtained, would the results of the testing be outcome determinative? Accordingly, the only issue is whether the trial court abused its discretion in finding that even if an exclusion result was obtained from the shell casings, those results would not be outcome determinative.

{¶ 30} Presuming that Thompson was excluded as a contributor to DNA discovered on the shell casings, those results would simply establish that he did not touch or load the bullets in the firearm or that someone else handled the casings — the results would neither confirm nor disconfirm that Thompson was the shooter. The absence of Thompson’s DNA on the shell casings would not override the multitude of eyewitness testimony identifying Thompson as the shooter. As the evidence demonstrated, every witness who knew Thompson identified him as the shooter. Additionally, witnesses, including the victims who did not know Thompson, selected Thompson from a photo array or described him sufficiently to distinguish him from any other potential suspect.

{¶ 31} Based on our review of all the available admissible evidence related to Thompson’s case and applying the requisite presumption that an exclusion result would be obtained, we find that the trial court reasonably determined that a DNA test excluding Thompson as a contributor on the shell casings would not be outcome determinative. A strong probability does not exist that had the jury known of the exclusion result and analyzed that result in light of all the other available admissible

evidence, no reasonable factfinder would have found Thompson guilty. Accordingly, the trial court did not abuse its discretion in denying Thompson's application for postconviction DNA testing pursuant to R.C. 2953.74(B)(2) and (C)(5), both of which require an outcome-determinative finding.

{¶ 32} Thompson also challenges the trial court's denial of his application, contending that the trial court made a conclusion of law that is inconsistent with its earlier factual determination. According to Thompson, the trial court's legal determination that an exclusionary result would not be outcome determinative is inconsistent with the trial court's factual finding that "[w]hile the shell casings were not submitted for DNA testing in this case prior to trial, multiple pieces of evidence aside from the casings were, although such DNA evidence was not presented to the jury at trial." Thompson has failed to set forth any reasoning or demonstrate how or why the trial court's correct statement of fact is inconsistent with its subsequent conclusion of law that an exclusionary result would not be outcome determinative.

{¶ 33} In our review of the record, we do not find any inconsistency or that the trial court used this finding of fact to support its outcome-determinative conclusion. Rather, when read in the context of the trial court's decision, we find that the trial court even used this finding of fact to support the initial threshold determination regarding which subsection of R.C. 2953.74(B) applies — Thompson relied on (B)(1) in support of his application, but (B)(2) applies when a defendant had a DNA test taken at the trial stage, but the test was not a prior definitive DNA test. *See* R.C. 2953.01(U) (setting forth the definition of "definitive DNA test,"

wherein it clarifies that “[p]rior testing may have been a prior ‘definitive DNA test’ as to some biological evidence but may not have been a prior ‘definitive DNA test’ as to other biological evidence”). The court’s statement that some pieces of evidence were submitted for DNA testing was nothing more than properly setting forth the facts to the appropriate section relevant to Thompson’s application. Accordingly, Thompson’s argument to the contrary is without merit.

{¶ 34} Finally, Thompson makes two brief statements about the trial court’s acceptance of Dr. Maddox’s determinations despite no actual testing to determine “if the parent sample contained scientifically sufficient material to extract a test sample. Instead, Dr. Maddox averred the collection method may have caused there to be contamination.” These statements do not demonstrate how the trial court abused its discretion in denying his application. As previously explained, even if DNA testing was performed and an exclusion result was obtained, the result would not be outcome determinative.

{¶ 35} Based on the foregoing, we find that the trial court did not abuse its discretion in denying Thompson’s application for postconviction DNA testing. The assignment of error is overruled.

{¶ 36} Judgment affirmed.

It is ordered that appellee recover from appellant 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.

KATHLEEN ANN KEOUGH, JUDGE

SEAN C. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR