

**IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
CRAWFORD COUNTY**

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**STATE OF OHIO,**

**CASE NO. 3-26-04**

**PLAINTIFF-APPELLEE,**

**v.**

**RICKY THOMPSON,**

**OPINION AND  
JUDGMENT ENTRY**

**DEFENDANT-APPELLANT.**

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**Appeal from Crawford County Common Pleas Court  
Trial Court No. 25-CR-0312**

**Judgment Reversed**

**Date of Decision: October 26, 2026**

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**APPEARANCES:**

*Christopher Bazeley* for Appellant

*Daniel J. Stanley* for Appellee

**WALDICK, J.**

{¶1} Defendant-appellant, Ricky Thompson (“Thompson”), appeals the judgment of conviction and sentence entered against him in the Crawford County Court of Common Pleas, following a jury trial in which he was found guilty of possessing methamphetamine. For the reasons set forth below, we reverse.

*Procedural History*

{¶2} This case originated on December 2, 2025, when a Crawford County grand jury returned a single-count indictment against Thompson. The indictment charged Thompson with Aggravated Possession of Drugs, specifically methamphetamine, a fifth-degree felony in violation of R.C. 2925.11(A) and (C)(1)(a).

{¶3} On December 4, 2025, an arraignment was held and Thompson pled not guilty to the indictment. Nearly three months of pretrial proceedings then ensued.

{¶4} On February 26, 2026, a jury trial was held in the case. Over the course of the single-day trial, the prosecution presented the testimony of three witnesses and introduced eleven evidentiary exhibits.

{¶5} At the close of the State of Ohio’s case, Thompson moved for acquittal pursuant to Crim.R. 29 on several bases. That motion was overruled by the trial court. Thompson then opted to present no evidence, but renewed the motion for acquittal, which was again denied by the trial court.

{¶6} Following closing arguments by counsel and instructions of law by the trial court, the jury received the case for deliberation at 2:42 p.m. on February 26, 2026. At 3:18 p.m. on that same date, the jury returned a verdict finding Thompson guilty as charged in the indictment. The trial court accepted the verdict and discharged the jury.

{¶7} On February 27, 2026, a sentencing hearing was held, at which time the trial court sentenced Thompson to a term of 10 months in prison. The trial court journalized its sentencing orders on that same date.

{¶8} On March 4, 2026, Thompson filed this appeal.

*Summary of Evidence Presented at Trial*

{¶9} During the State of Ohio's case at trial, evidence was presented that on November 29, 2025, Thompson was the sole back-seat passenger in a car that was stopped by the Galion Police Department shortly after midnight for driving with no headlights on. A female identified as Thompson's niece was driving the vehicle, and a female named Kimberly Chitwood, who was identified as Thompson's girlfriend, was the front-seat passenger. After the car was stopped, the three occupants were asked by police to step out of the vehicle, due to furtive movements made by the passengers that had been observed by an officer as the vehicle was being pulled over. The vehicle was then searched. During the search, several quantities of suspected methamphetamine were located in the car, including a small

baggie of the suspected drug that was found on the back-seat floorboard of the car, next to where Thompson's feet had been.

{¶10} Specifically, the record reflects that the first witness called by the State of Ohio at trial was Lieutenant Andy Rehm of the Galion Police Department. Rehm testified that, on November 29, 2025, he was working uniform-patrol on the night shift when he saw a car leave the Speedway gas station in Galion and begin driving with no headlights on. Rehm activated the overhead lights on his cruiser and then also his siren in an attempt to get the car to pull over. After Rehm followed the vehicle for a block-and-a-half with his overhead lights going, the car finally pulled into a hospital parking lot and stopped. Rehm testified that, after the car came to a stop in the parking lot, he observed the vehicle's occupants making unusual movements in the car, as if they were fiddling with something. Rehm called for backup, and then approached the vehicle to speak with the driver. The driver got out of the vehicle, acknowledged she did not have her headlights on, and told Rehm that there was a marijuana product in the car. Rehm testified that the two passengers in the vehicle did not have identification on them but provided their names and information.

{¶11} Lieutenant Rehm testified that he next spoke to the female front-seat passenger and asked about the marijuana product, and she turned over a bag of marijuana products that she said were from a dispensary in Michigan, which Rehm testified was illegal to possess in Ohio. Rehm put the bag in his cruiser and asked

the other two officers who had arrived at the scene, Officer Wallis and Officer Fox, to assist in having the two passengers also step out of the car so that it could be searched. Lieutenant Rehm testified that he then searched the driver's side of the vehicle and Officer Wallis searched the passenger side of the car, while Officer Fox stood nearby with the vehicle's occupants. During the search, Wallis informed Rehm that he had located some drugs in the car, and then showed Rehm what had been found.

{¶12} Lieutenant Rehm also identified State's Exhibit A, which contained audio-video footage from his body camera on the night in question, and that video footage was played for the jury at trial. Rehm identified Thompson in the video footage and testified that, on the video, Thompson was being told he was under arrest for what was found at his feet, and Thompson denied knowing that the substance had been there and said it was not his. Rehm testified that, later in the video, Thompson could be heard explaining that his girlfriend was in a bad way and he was just trying to help her out but did not know she had methamphetamine with her. Rehm testified that he then asked Thompson if he would pass a drug test for marijuana and methamphetamine, and Thompson answered that he would not pass. Lieutenant Rehm testified that he also asked Thompson if his fingerprints would be on a glass pipe that was also found in the vehicle. In response, Thompson first said no, but then said that they may be. Rehm testified that he then asked Thompson if he had smoked the pipe that day, and Thompson said yes.

{¶13} At trial, Lieutenant Rehm next detailed the manner in which any collected evidence is labeled, handled, and securely stored by the Galion Police Department, particularly as relevant to the chain of custody of the items that had been collected as evidence in the instant case. Rehm identified a police report listing the items collected by the officers during the search of the vehicle on November 29, 2025, and identified the items themselves, which included a fabric bag containing a glass pipe of a style commonly used to smoke methamphetamine (State's Exhibit E1); a silicone jar with a substance inside of it that later tested to be methamphetamine (State's Exhibit E2), which had been found in Kimberly Chitwood's backpack; a plastic container of what also subsequently tested to be methamphetamine that was found on the floorboard of the rear passenger seat (State's Exhibit E3); and a glass vial and a bag of methamphetamine found inside of a little pink zippered pouch located in between the passenger seat and the car's B pillar (State's Exhibit E4).

{¶14} After providing that testimony at trial, Lieutenant Rehm then identified State's Exhibit B as being a laboratory report containing the results of the weighing and testing of the items collected in the case and then sent to the lab. Rehm testified that State's Exhibit E2 had weighed .97 grams and was found to be methamphetamine, that State's Exhibit E3 was found to be 1.23 grams of methamphetamine, and that State's Exhibit E4 weighed 2.08 grams and contained methamphetamine.

{¶15} During cross-examination at trial, Lieutenant Rehm acknowledged that Thompson was polite and cooperative during the traffic stop. When asked, Rehm testified that the glass pipe had not been tested for fingerprints because Thompson had acknowledged smoking it earlier that day. Rehm also testified that none of the other evidence had been tested for fingerprints or DNA.

{¶16} During redirect-examination, Lieutenant Rehm testified that Kimberly Chitwood had been arrested during the traffic stop on an outstanding warrant, in addition to having been charged with possessing the methamphetamine found in her backpack during the search of the vehicle. Rehm testified that Chitwood told him that, while the car was getting pulled over, Thompson was trying to get her to hand him the drugs.

{¶17} The second witness for the prosecution at trial was Officer Collin Fox, a patrol officer with the Galion Police Department. Fox testified that, while working on November 29, 2025, he was called to assist Lieutenant Rehm with a traffic stop at the hospital. Fox drove to that location and, shortly after he arrived there, Officer Wallis also responded to the hospital parking lot. Fox testified that, upon arriving at the scene of the traffic stop, he was asked to watch the occupants of the stopped vehicle, who were still in the car at that time. Fox then did so, while turning on his body camera.

{¶18} At trial, Officer Fox identified State's Exhibit D as being audio-video footage from his body camera during the traffic stop, and that video footage was

played for the jury. Fox testified that, at the beginning of the video footage, he can be heard telling Officer Wallis that the male in the backseat, subsequently identified as Thompson, was moving around quite a bit. Fox testified that, as he observed Thompson in the backseat, Thompson moved his hands around in his lap and also appeared to reach forward to the front seat passenger. Fox testified that, as he continued to watch closely, he saw that Thompson was holding a light-colored object which Thompson moved under his left leg with his left hand. Fox testified that he also saw Thompson drop his right hand down along his right side. Officer Fox testified that a pouch containing a glass meth pipe was subsequently found near where Thompson had been moving his left hand, and that a container of methamphetamine was subsequently found on the rear passenger floor in the area where Thompson had been moving his right hand, directly below where he had been seated in the backseat. Fox testified that a pink pouch was subsequently found along the B pillar of the car, in between the front and back seats, in an area that was also within reach of where Thompson had been seated in the car. Fox testified that it was Officer Wallis who found the items in the car once the car was searched.

{¶19} On cross-examination, Officer Fox testified that Thompson was cooperative and not combative during their interaction that night. When asked, Fox testified that he later found some methamphetamine in a backpack, after being told by the front-seat passenger that she had some meth in her bag in the car. Fox testified that he did not find anything in that backpack that would indicate the bag

belonged to Thompson. Fox also confirmed that no drugs were found on the persons of any of the three occupants of the car, and that no drugs were found in the area where the driver had been seated.

{¶20} The third and final witness for the State of Ohio at trial was Officer John Wallis of the Galion Police Department. Wallis testified that, while working an overnight shift on November 29, 2025, he was dispatched to assist Lieutenant Rehm with a traffic stop at the hospital. Upon arriving there, Wallis first stood watch at the driver's side of the stopped car, to assist in watching the occupants while Lieutenant Rehm conducted his initial business relating to the stop. Wallis testified that the occupants of the car were subsequently asked to step out of the vehicle, which they did, and that he then assisted in a search of the vehicle. Wallis testified that he was involved in searching the passenger side of the car, both the front and rear, and that he also searched the vehicle's trunk.

{¶21} At trial, Officer Wallis identified State's Exhibit C as containing portions of audio-video footage from his body camera during the search of the stopped vehicle, and that video footage was played for the jury. The three portions of video footage were further identified as State's Exhibits C1, C2, and C3.

{¶22} As the video footage was being played, Wallis testified that it first depicted him finding a plastic bag containing a brown powder in the front passenger seat where Kimberly Chitwood had been seated. Wallis testified that he initially thought that the plastic bag contained hot chocolate mix. Wallis testified that he

asked Thompson and the driver what the brown substance was and they agreed with him that it was hot cocoa mix.

{¶23} Wallis testified that another portion of the video showed him finding a pink bag that held a green leafy substance that he believed to be marijuana, various pieces of paraphernalia, and a glass vial containing what he believed to be methamphetamine. Wallis testified that he found the pink bag and those contents next to the passenger seat where the B pillar of the car is located.

{¶24} Officer Wallis testified that another segment of the video footage showed him searching the rear passenger area of the vehicle, which was where Thompson had been seated. Wallis testified that, during the search of that area, he found an empty tied-off corner of a plastic baggie, which is a common way for persons to package drugs. Wallis testified that he also located a glass vial with a white crystalline substance he believed to be methamphetamine on the floor of the back passenger area, where Thompson's feet had been. Wallis testified that he further found a glass pipe on the back-seat floor, with the pipe being of a type typically used with methamphetamine.

{¶25} During cross-examination, Officer Wallis was asked a general question about having found methamphetamine in the car, and he clarified that the substances he found were "suspected methamphetamine." (Tr., 211-212). Wallis also testified that he searched Thompson's person and did not locate any drugs on

him. Finally, Wallis confirmed that the car he had searched was very full of various types of items and that, at first, it was fairly hard to see what all was in the car.

{¶26} At the close of the prosecution's case, the trial court admitted without defense objection the various exhibits identified by the prosecution witnesses. Those admitted exhibits included State's Exhibit B, which was the lab report containing the testing results about which Lieutenant Rehm had testified.

*Assignments of Error Raised on Appeal*

**First Assignment of Error**

**Thompson's conviction for Aggravated Possession of Drugs is not supported by the weight of the evidence or legally sufficient evidence.**

**Second Assignment of Error**

**The trial court abused its discretion when it allowed a police officer to testify to the contents of a lab report classifying the substance found in the car as methamphetamine and then accepting that report into evidence without any foundational testimony.**

*Analysis of Assignments of Error*

{¶27} Due to the nature of the claims raised in the two assignments of error, we elect to address them out of order.

*Second Assignment of Error*

{¶28} In the second assignment of error, Thompson asserts that the trial court erred in admitting evidence of the lab results proving that the substance at issue in the case was methamphetamine. Specifically, Thompson claims that the trial court

erred in permitting Lieutenant Rehm to testify as to the contents of State's Exhibit B, which is a Bureau of Criminal Investigation ("BCI") lab report setting forth the results of the testing conducted by a BCI chemist on the substances seized by the police in this case. Thompson also argues that the trial court erred in admitting State's Exhibit B itself into evidence. In support of those claims, Thompson asserts that admitting that evidence was a violation of his rights under the Confrontation Clause.

{¶29} In response to Thompson's assignment of error, the State of Ohio argues that the evidence at issue was properly admitted pursuant to R.C. 2925.51, which – as will be discussed below – is Ohio's "notice and demand" statute relating to laboratory test results in drug cases.

{¶30} Generally, the admission or exclusion of evidence lies within the trial court's discretion, and a reviewing court should not reverse evidentiary decisions absent an abuse of discretion. *State v. Conway*, 2006-Ohio-2815, ¶ 62. "However, we review de novo evidentiary rulings that implicate the Confrontation Clause." *State v. McKelton*, 2016-Ohio-5735, ¶ 97. "De novo review is independent, without deference to the lower court's decision." *State v. Hudson*, 2013-Ohio-647, ¶ 27 (3d Dist.).

{¶31} The Confrontation Clause of the Sixth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, provides that "[i]n all criminal prosecutions, the accused shall enjoy the right \* \* \*

to be confronted with the witnesses against him \* \* \*.” *Crawford v. Washington*, 541 U.S. 36, 42 (2004), quoting the Confrontation Clause. *See also State v. Maxwell*, 2014-Ohio-1019, ¶ 34. The United States Supreme Court has interpreted the right of confrontation to mean that admission of an out-of-court statement of a witness who does not appear at trial is prohibited by the Confrontation Clause if the statement is testimonial, unless the witness is unavailable and the defendant has had a prior opportunity to cross-examine the witness. *Maxwell*, ¶ 34, citing *Crawford* at 53-54.

{¶32} In *Crawford*, the United States Supreme Court “did not define the word ‘testimonial’ but stated that the core class of statements implicated by the Confrontation Clause includes statements ‘made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.’” *Maxwell*, ¶ 35, quoting *Crawford* at 52.

{¶33} However, in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), the United States Supreme Court subsequently held that the contents of a laboratory report are testimonial in nature when the report’s conclusion is prima facie evidence of an element of the offense. In reaching the ultimate holding in *Melendez-Diaz*, the Supreme Court did note with approval in that case that many states, including Ohio, have adopted “notice and demand” statutes, which “permit the defendant to assert (or forfeit by silence) his Confrontation Clause right after receiving notice of the prosecution’s intent to use a forensic analyst’s report.” *Id.*, at 326. As the

Supreme Court explained, “[i]n their simplest form, notice-and-demand statutes require the prosecution to provide notice to the defendant of its intent to use an analyst’s report as evidence at trial, after which the defendant is given a period of time in which he may object to the admission of the evidence absent the analyst’s appearance live at trial.” *Id.*

{¶34} Ohio’s notice and demand statute applicable to drug prosecutions is R.C. 2925.51, which provides in relevant part:

(A) In any criminal prosecution for a violation of this chapter or Chapter 3719 of the Revised Code, a laboratory report from the bureau of criminal identification and investigation \* \* \* and signed by the person performing the analysis, stating that the substance that is the basis of the alleged offense has been weighed and analyzed and stating the findings as to the content, weight, and identity of the substance and that it contains any amount of a controlled substance and the number and description of unit dosages, is prima-facie evidence of the content, identity, and weight or the existence and number of unit dosages of the substance. In any criminal prosecution for a violation of section 2925.041 of the Revised Code or a violation of this chapter or Chapter 3719 of the Revised Code that is based on the possession of chemicals sufficient to produce a compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V, a laboratory report from the bureau or from any laboratory that is operated or established as described in this division that is signed by the person performing the analysis, stating that the substances that are the basis of the alleged offense have been weighed and analyzed and stating the findings as to the content, weight, and identity of each of the substances, is prima-facie evidence of the content, identity, and weight of the substances.

Attached to that report shall be a copy of a notarized statement by the signer of the report giving the name of the signer and stating that the signer is an employee of the laboratory issuing the report and that performing the analysis is a part of the signer’s regular duties, and giving an outline of the signer’s education, training, and experience

for performing an analysis of materials included under this section. The signer shall attest that scientifically accepted tests were performed with due caution, and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(B) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the accused if the accused has no attorney, prior to any proceeding in which the report is to be used against the accused other than at a preliminary hearing or grand jury proceeding where the report may be used without having been previously served upon the accused.

(C) The report shall not be prima-facie evidence of the contents, identity, and weight or the existence and number of unit dosages of the substance if the accused or the accused's attorney demands the testimony of the person signing the report, by serving the demand upon the prosecuting attorney within seven days from the accused or the accused's attorney's receipt of the report. The time may be extended by a trial judge in the interests of justice.

(D) Any report issued for use under this section shall contain notice of the right of the accused to demand, and the manner in which the accused shall demand, the testimony of the person signing the report.

{¶35} Thus, in a drug prosecution, R.C. 2925.51 requires the State of Ohio to serve a copy of a statutorily-compliant BCI laboratory report on the defense. If that is done, the statute then permits the prosecution to utilize the BCI laboratory report at trial as prima facie evidence of the identity and weight of the controlled substance at issue unless the defendant, within seven days of receiving the lab report from the state, demands the trial testimony of the person who signed the report.

{¶36} The requirements of R.C. 2925.51 satisfy the protections of the Confrontation Clause, as nothing in the text of the Sixth Amendment requires that

the right of confrontation must specifically occur at trial and, pursuant to the statute, a defendant waives his right to confrontation when he fails to demand the testimony of the lab technician. *State v. Smith*, 2006-Ohio-1661, ¶ 18 (3d Dist.). The very specific and strict requirements imposed by R.C. 2925.51 on the prosecution serve to protect a defendant's right to confront witnesses against him and, in addition to those protections, "the defendant is provided with the precise evidence to be introduced against him, i.e. the entire drug analysis and the qualifications of the technician who performed it." *Smith*, ¶¶ 19-20. "Thus, the defendant has the ability to 'confront' the statements against him if he so chooses and has been fully informed as to the exact testimony to which he is waiving his confrontation rights." *Smith*, ¶ 20. Those aspects of R.C. 2925.51, coupled with strictly construing the statute's requirements against the prosecution, "provide sufficient protections to the defendant's confrontation rights such that if he fails to act *after proper notification* he has knowingly, intelligently, and voluntarily waived his confrontation rights." *Id.* (Emphasis added.)

{¶37} In the instant case, following our de novo review of the issue, this Court finds that admitting the BCI lab report as an exhibit, and Lieutenant Rehn's testimony about the contents of the lab report, was erroneous on the part of the trial court. The record reflects that the State of Ohio took the position at trial, as now on appeal, that R.C. 2925.51 permitted the introduction in evidence of the report's testimonial conclusions without the testimony of the BCI chemist who analyzed the

substances at issue and prepared the report. While that would be true if the record demonstrated compliance with the statute on the part of the prosecution, as well as no timely demand having then been made by the defense for the chemist's testimony, the record before this Court on appeal does not reflect compliance by the State of Ohio with the requirements set forth in R.C. 2925.51.

{¶38} Specifically, there is no indication in the record that the lab report at issue was ever served on the defense as required by R.C. 2925.51(B). The record reflects that the state's initial discovery response was filed on January 29, 2026, and that filing does not list the lab report as being one of the documents provided to the defense via the state's electronic discovery web portal. On that same date of January 29, 2026, a supplemental discovery response was also filed by the State of Ohio, which again did not reflect service of the BCI lab report on the defense. Indeed, on February 3, 2026, the State of Ohio filed a motion seeking a continuance of the previously scheduled trial date of February 12, 2026, on the basis that the lab results for the subject matter of the indictment had not yet been completed, and which therefore prevented timely compliance with R.C. 2925.51. On February 10, 2026, the trial court filed a judgment entry granting the state's motion to continue the trial date, and ordering that the jury trial be rescheduled for February 26, 2026. The record reflects no further discovery responses having been filed by the State of Ohio, nor is there any other indication in the docketed filings or in the trial transcript itself that the BCI lab report was ever actually served on the defense.

{¶39} Thus, the record before us fails to demonstrate that R.C. 2925.51 permitted the testimonial hearsay conclusions contained in the lab report to be admitted in evidence at trial in the absence of testimony from the BCI chemist who prepared the report. The trial court therefore erred in allowing that testimonial hearsay into evidence at trial in violation of Thompson’s rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution.

{¶40} With regard to the position taken by the dissent, we have given full consideration to the arguments raised in support of that position and, for the following reasons, do not find those arguments to be persuasive.

{¶41} The dissent begins its analysis by pointing out, accurately, that it is the appellant who “has the burden of affirmatively demonstrating error on appeal and, if an argument exists that can support an assignment of error, it is not this Court’s duty to root it out.” That principle of appellate review stems directly from the requirements set forth in App.R. 9, which governs the record on appeal, and App.R. 16, which governs the contents of merit briefs on appeal. *See, e.g., State v. Breeden*, 2026-Ohio-2987, ¶ 13 (3d Dist.), citing *State v. Moore*, 2019-Ohio 2633, ¶ 10 (3d Dist.); *State v. Ames*, 2019-Ohio-2632, ¶¶ 11-17 (3d Dist.); *Neal v. Stuff*, 2026-Ohio-1246, ¶¶ 14-16 (5th Dist.); *Lewis v. BMW of Westlake*, 2026-Ohio-1870, ¶¶ 11-12 (8th Dist.); *Gibbons v. Kendera Constr.*, 2026-Ohio-394, ¶ 7 (9th Dist.); *Cole v. State Med. Bd. of Ohio*, 2026-Ohio-2502, ¶ 11 (10th Dist.); *Moyer v. Robinson*, 2023-Ohio-764, ¶ 36 (11th Dist.).

{¶42} In the instant case, contrary to the dissent’s position, Thompson fulfilled the obligations imposed by App.R. 9 and App.R. 16 upon an appellant.

{¶43} As required by App.R. 9, a full transcript of the trial proceedings, along with the pertinent exhibits – including the lab report at issue here – were included by Thompson in the record on appeal.

{¶44} Thompson’s merit brief is also sufficiently compliant with App.R. 16. With respect to the second assignment of error, Thompson’s merit brief sets forth an assignment of error in which he asserts that the trial court erred in allowing a police officer to testify to the contents of a lab report and in accepting that report into evidence. Thompson’s merit brief also includes “an argument containing the contentions of the appellant with respect to [the] assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies”, pursuant to App.R. 16(A)(7). Specifically, Thompson argues in his merit brief that the United States Supreme Court has recognized that the Confrontation Clause prohibits the prosecution from introducing testimonial out-of-court statements of a forensic analyst at trial, that Thompson was prejudiced by such error in this case because the lab report was the only evidence establishing that the substance was methamphetamine and that, without the lab report, the state did not meet its burden of proving that the substance was a controlled substance as required for a conviction under R.C. 2925.11(A). As mandated by App.R. 16, Thompson’s brief also cites to

caselaw supporting that argument and cites to the parts of the trial record upon which his claim of error relies.

{¶45} For those reasons, and because – as detailed in our analysis, *supra* – Thompson is absolutely correct in asserting as a general rule that the Confrontation Clause bars the admission of testimonial hearsay contained within a laboratory report, Thompson has satisfied his burden of demonstrating error on appeal, contrary to the position taken by the dissent.

{¶46} The dissent suggests that, because Thompson does not specifically raise the prosecution's noncompliance with R.C. 2925.51 on appeal, this Court need not address it. However, as noted, Thompson specifically raises the issue of the Confrontation Clause violation through the admission of the lab report's contents. That contention – without more – is meritorious, for the reasons and upon the authority cited in our primary analysis of that claim, *supra*. It is the State of Ohio that has then attempted to rebut Thompson's argument on appeal by asserting that the undisputedly testimonial hearsay contents of the lab report were properly admitted pursuant to R.C. 2925.51, and it is for that reason that an analysis of R.C. 2925.51 compliance is appropriate in this case.

{¶47} With respect to the R.C. 2925.51 issue, it is unquestionable that compliance with that statute by the prosecution is a mandatory prerequisite, in the absence of a stipulation to admissibility, to the admission of a lab report at trial without the testimony of the chemist who authored the report. As detailed

extensively in our primary analysis above, compliance with R.C. 2925.51 serves to implement crucial procedural safeguards that ensure a defendant's constitutional right to confrontation is protected. Contrary to the view espoused by the dissent, the express terms of R.C. 2925.51, as well as Ohio case law interpreting and applying the statute, as we discussed *supra*, place the onus of initial compliance with the procedures set forth in that statute upon the prosecution and, further, the requirements of the statute are to be strictly construed against the state. *See, e.g., State v. Smith*, 2006-Ohio-1661, ¶¶ 19-20 (3d Dist.), citing *State v. Bates*, 2004-Ohio-2219, ¶¶ 5-10 (3d Dist.).

{¶48} In this case, the record utterly fails to establish that the prosecution complied with the mandatory requirements of R.C. 2925.51, such compliance being the means by which a Confrontation Clause violation could have been avoided in the admission of the lab report. While the dissent correctly notes that the statute does not expressly require that proof of service of a lab report upon the defense be specifically docketed, the record here does not show, in any way, directly or indirectly, that the lab report at issue was provided to the defense, much less that it was provided within the time limits required by the statute.

{¶49} With regard to the record being silent on that critical issue, the dissent seems to suggest that Thompson's failure to object to the admission of the lab report and its findings at trial is tantamount to a tacit acknowledgement that the defense had been provided with the lab report as required by R.C. 2925.51.

{¶50} However, contrary to those points raised by the dissent, the failure to object to the admission of the lab report at trial amounts only to the waiver of that issue on appeal in the absence of plain error, as detailed *infra*, which is not the equivalent of a concession that the lab report had been received by the defense. Additionally, the record reflects that the defense in no way conceded at trial that the substance at issue was methamphetamine, the controlled substance alleged in the indictment to have been possessed by Thompson. In fact, the prosecution's failure to present adequate proof of the identity of the substance at issue, a requisite element of the charged crime, was specifically raised by Thompson at trial in the arguments made in support of his Crim.R. 29 motion for acquittal.

{¶51} Those issues aside, the more fundamental flaw in the dissent's analysis is the position that relying on a silent record amounts to speculation on the part of this majority opinion that the lab report was not provided to the defense pursuant to R.C. 2925.51 and, therefore, according to the dissent, the record does not reflect an obvious error.

{¶52} On the contrary, and to be clear, our analysis of this assignment of error involves no speculation, much less any finding, as to whether or not the lab report was in fact provided to the defense in this case. Rather, our analysis focuses strictly on the undisputed rule of law that the evidence at issue is inadmissible under the Confrontation Clause of the Sixth Amendment to the United States Constitution due to the evidence being testimonial hearsay and that, in the absence of established

compliance with R.C. 2925.51, the evidence remains inadmissible. Because the State of Ohio asserts on appeal that the evidence was properly admitted pursuant to that statute, we examined the record to determine whether that was the case and, as we found in our primary analysis above, the record does not support the state's contention because the record does not reflect compliance with the statute. Put another way, the record is silent on that issue.

{¶53} Contrary to the position urged by the dissent, this Court is not permitted to presume that the prosecution complied with the statutory requirements, thereby effectively obtaining a waiver of Thompson's constitutional right to confrontation when he did not demand the testimony of the analyst, absent an affirmative demonstration in the record establishing that to be true. In this case, as in all appeals, this Court's review is necessarily confined to the record on appeal, regardless of what may have occurred off the record. *In re I.K.-W.*, 2019-Ohio-2807, ¶ 18 (9th Dist.). *See, also, State v. Hirschy*, 2023-Ohio-3204, ¶ 21 (3d Dist.). Moreover, it has long been held that, in the normal course of appellate review, "courts indulge every reasonable presumption against waiver of fundamental constitutional rights" and "do not presume acquiescence in the loss of fundamental rights." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) [internal citations omitted]. *Accord State v. Underwood*, 124 Ohio St.3d 365, 272 (2010), citing *State v. Adams*, 43 Ohio St.3d 67, 69 (1989). Most importantly, it is well established that the waiver of fundamental constitutional rights in a criminal proceeding cannot be presumed

from a silent record. *See, e.g., Carnley v. Cochran*, 369 U.S. 506, 516 (1962); *Boykin v. Alabama*, 395 U.S. 238, 242-243 (1969); *State v. Ballard*, 66 Ohio St.2d 473, 477 (1981); *State v. Osie*, 140 Ohio St.3d 131, 138 (2014); *State v. Ginyard*, 2026-Ohio-2241, ¶ 16 (3d Dist.).

{¶54} In summary, for all the reasons stated, we respectfully decline to adopt the dissent’s position in this case.

{¶55} Our analysis, however, does not end there, as the record reflects that Thompson did not object to Lieutenant Rehm’s testimony about the lab report results, nor did Thompson lodge an objection to the report itself at the time the state’s exhibits were admitted. As a result of the failure to object to the admission of the BCI report’s contents on Confrontation Clause grounds, or on any grounds, we must determine whether the error in the admission of the laboratory test results at trial amounted to plain error. *State v. Arnold*, 2016-Ohio-1595, ¶ 65. *See, also, State v. Urbina*, 2008 Ohio 1013, ¶ 19 (3d Dist.) (failure to object at trial to the admission of a laboratory report on Confrontation Clause grounds waived all but plain error).

{¶56} Pursuant to Crim.R. 52(B), “[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” In *State v. Barnes*, 94 Ohio St.3d 21 (2002), the Supreme Court of Ohio articulated the three-part test for plain error review. “First, there must be an error, *i.e.*, a deviation from a legal rule.” *Barnes*, at 27. “Second, the error must be

plain.” *Id.* “To be ‘plain’ within the meaning of Crim.R. 52(B), an error must be an ‘obvious’ defect in the trial proceedings.” *Id.* “Third, the error must have affected ‘substantial rights.’” *Id.* The Ohio Supreme Court has interpreted that third aspect of the test to mean that “the trial court’s error must have affected the outcome of the trial.” *Id.*

{¶57} Finally, it is well established that “[p]lain error is recognized ‘with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.’” *State v. Treece*, 2025-Ohio-4319, ¶ 15 (3d Dist.), quoting *State v. Long*, 53 Ohio St.2d 91, paragraph three of the syllabus (1978).

{¶58} Upon reviewing the record in the instant case, we conclude that the erroneous admission in evidence of the testimonial conclusions contained in the lab report amounted to plain error affecting the outcome of the trial.

{¶59} The indictment in this case charged Thompson with Aggravated Possession of Drugs, specifically methamphetamine, in violation of R.C. 2925.11(A) and (C)(1)(a). To establish that Thompson was guilty of Aggravated Possession of Drugs, the State of Ohio was required to prove that Thompson did “knowingly obtain, possess, or use a controlled substance or a controlled substance analog.” R.C. 2925.11(A). “‘Controlled substance’ means a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V.” R.C. 3719.01(C); R.C. 2925.01(A). “Failure to prove that the substance is a ‘controlled

substance' is fatal to the prosecution." *State v. Jack*, 2012-Ohio-2131, ¶ 19 (3d Dist.).

{¶60} In this case, the BCI laboratory report and Lieutenant Rehm's testimony as to the report's contents was the only evidence presented by the prosecution at trial to establish that the substance at issue was the controlled substance methamphetamine, a schedule II drug. Therefore, had the trial court not improperly admitted the testimonial hearsay conclusions contained in the BCI laboratory report into evidence, there would have been no evidence establishing that the substance at issue was methamphetamine, a schedule II drug, as alleged in the indictment.

{¶61} The second assignment of error is sustained.

*First Assignment of Error*

{¶62} In the first assignment of error, Thompson argues that his conviction for Aggravated Possession of Drugs was not based on sufficient evidence and was against the manifest weight of the evidence.

{¶63} Our resolution of the second assignment of error renders moot the manifest weight of the evidence claim raised by Thompson in the first assignment of error, and we decline to address it. See App.R. 12(A)(1)(c); *State v. Gideon*, 2020-Ohio-6961, ¶¶ 26-27.

{¶64} However, an assignment of error raising the sufficiency of the evidence is potentially dispositive of a conviction on appeal and therefore cannot be

moot, even if that conviction was based on evidence found on direct appeal to have been improperly admitted at trial. *Gideon, supra*, at ¶ 29. “When evaluating an assignment of error challenging the sufficiency of the evidence, a reviewing court must consider all evidence admitted at trial, including the improperly admitted evidence that was the source of the reversal for trial error.” *Id.*, citing *State v. Brewer*, 2009-Ohio-593, ¶¶ 24-26.

{¶65} Accordingly, in the instant case, we shall proceed to address the sufficiency of the evidence argument raised by Thompson in the first assignment of error. With regard to that argument, Thompson asserts that the evidence that a portion of the drugs were found in the area of the car where he had been seated, near where his feet had been, was insufficient evidence that he knowingly possessed the drugs.

{¶66} “An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991). Consequently, “[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *Id.* “In deciding if the evidence was sufficient, we neither resolve evidentiary conflicts nor assess the credibility of

witnesses, as both are functions reserved for the trier of fact.”” *State v. Williams*, 2024-Ohio 2307, ¶ 21 (3d Dist.), quoting *State v. Jones*, 2013-Ohio-4775, ¶ 33 (1st Dist.).

{¶67} In the instant case, Thompson was convicted of Aggravated Possession of Drugs in violation of R.C. 2925.11(A), which provides in relevant part that “[n]o person shall knowingly \* \* \* possess \* \* \* a controlled substance \* \* \*.” The indictment further alleged, and the jury found beyond a reasonable doubt, that the controlled substance possessed by Thompson was methamphetamine.

{¶68} On appeal, Thompson argues in the first assignment of error that the evidence at trial was insufficient to prove that he knowingly possessed the methamphetamine at issue.

{¶69} R.C. 2901.22(B) defines the culpable mental state of “knowingly”, and provides:

A person acts knowingly, regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

{¶70} “‘Possess’ or ‘possession’ means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance

is found.” R.C. 2925.01(K). “The issue of whether a person charged with drug possession knowingly possessed a controlled substance ‘is to be determined from all the attendant facts and circumstances available.’” *State v. Brooks*, 2012-Ohio-5235, ¶ 45 (3d Dist.), quoting *State v. Teamer*, 82 Ohio St.3d 490, 492 (1998).

{¶71} “Possession of drugs can be either actual or constructive.” *State v. Bustamante*, 2013-Ohio-4975, ¶ 25 (3d Dist.). “A person has ‘constructive possession’ if he is able to exercise dominion and control over an item, even if the individual does not have immediate physical possession of it.” *Id.*, citing *State v. Hankerson*, 70 Ohio St.2d 87, syllabus (1982). “For constructive possession to exist, [i]t must also be shown that the person was conscious of the presence of the object.” *Id.*, quoting *Hankerson* at 91.

{¶72} “Although a defendant’s mere proximity to drugs is in itself insufficient to establish constructive possession, proximity to the drugs may constitute some evidence of constructive possession.” *State v. McClain*, 2020-Ohio-1436, ¶ 46 (3d Dist.), quoting *State v. Brown*, 2009-Ohio-5390, ¶ 20 (4th Dist.). “Therefore, presence in the vicinity of contraband, coupled with another factor or factors probative of dominion or control over the contraband, may establish constructive possession.” *Id.*

{¶73} Finally, “the State may prove \* \* \* constructive possession of contraband by circumstantial evidence alone.” *McClain*, at ¶ 45, quoting *Bustamante, supra*, at ¶ 25.

{¶74} In the case *sub judice*, this Court's review of the record leads us to conclude that the evidence at trial was sufficient to prove that Thompson knowingly possessed the methamphetamine at issue.

{¶75} The evidence of knowing possession included, but was not limited to, the fact that Thompson was the sole occupant of the back-seat area where some of the methamphetamine was found on the floor of the car, next to where his feet had been. Moreover, after the car had been pulled over, Officer Fox observed Thompson moving his hands around in his lap, reaching forward to the front seat passenger, and then dropping his right hand down along his right side. Officer Fox testified that a container of methamphetamine was subsequently found on the rear passenger floor in the area where Thompson had been moving his right hand, directly below where he had been seated in the backseat. Additionally, a pouch containing a glass meth pipe was found on the back-seat floor in the area where Thompson had been moving his left hand, and Thompson made statements indicating that he had been in possession of that pipe earlier the same day.

{¶76} In sum, viewing the evidence presented in the light most favorable to the prosecution, we find that a rational trier of fact could have found the essential element of knowing possession proven beyond a reasonable doubt.

{¶77} The first assignment of error is overruled.

*Conclusion*

{¶78} Having found error prejudicial to the defendant-appellant as raised in the second assignment of error, the judgment of the Crawford County Court of Common Pleas is reversed.

***Judgment reversed***

**ZIMMERMAN, P.J., concurs.**

**MILLER, J., dissenting in part and concurring in part,**

{¶79} The majority and I view this case from opposite sides of the same coin. That coin is a record needlessly devoid of pertinent facts.

{¶80} In order to prevail on an appeal, the appellant has the burden of affirmatively demonstrating the trial court's error. *State v. Moore*, 2019-Ohio-2633, ¶ 10 (3d Dist.). "Put another way, a defendant has the burden of affirmatively demonstrating error on appeal and, if an argument exists that can support an assignment of error, it is not this Court's duty to root it out." *State v. Breeden*, 2026-Ohio-2987, ¶ 13 (3d Dist.), citing *Moore* at ¶ 10. The majority opinion holds that the trial court committed plain error by admitting a Bureau of Criminal Investigation ("BCI") laboratory report into evidence and permitting Lieutenant Rehm to testify regarding its contents in violation of the Confrontation Clause. This holding hinges on a critical factual assumption: that the State failed to comply with the service requirements of R.C. 2925.51 because the record contains no indication regarding actual service of the laboratory report by the State. Consequently, the majority

reverses the conviction based on a record that is void of any evidence showing that the State failed to comply with R.C. 2925.51. Because such an analysis violates the fundamental tenant of appellate jurisprudence requiring an appellant to affirmatively demonstrate the error of which he complains, I respectfully dissent.

{¶81} On November 29, 2025, defendant-appellant, Ricky Thompson (“Thompson”), was arrested. He was indicted on December 2, 2025 and charged with aggravated possession of drugs, in violation of R.C. 2925.11(A), a felony of the fifth degree. A brief period of pretrial proceedings and exchange of discovery ensued. The court issued a scheduling order setting the matter for trial on February 12, 2026 which was within the 90-day speedy trial requirement. The State provided discovery, supplemental discovery and a bill of particulars on January 29, 2026.<sup>1</sup> The discovery did not include a written laboratory analysis of the suspected drugs as that analysis had not yet been completed. Consequently, on February 3, 2026, the State filed a motion to continue the upcoming trial. In its motion, the State advised the laboratory results were not yet available, but analysis would be completed within the next week. The State acknowledged its obligation to provide the results to opposing counsel and specifically referenced R.C. 2925.51. Additionally, the State noted R.C. 2925.51 afforded the defense a limited time to demand the testimony of the analyst once the results were provided. Finally, the

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<sup>1</sup> The documents indicate the discoverable items were provided to defense counsel through various electronic means.

State informed the court the delay requested was still within the speedy time constraints. The court granted the State's motion and rescheduled the trial for February 26, 2026.

{¶82} The analysis was completed and confirmed the presence of methamphetamine. A laboratory report was prepared on February 3, 2026. The notarized statement required by R.C. 2925.51(A) was acknowledged and dated the next day. The record contains no indication when the prosecutor received the report from BCI or that the State provided the report to defense counsel. It is clear, however, that at trial Lieutenant Rehm read the laboratory results to the jury without objection and also that the laboratory report was admitted into evidence without objection.

{¶83} The majority correctly recognizes that R.C. 2925.51 is Ohio's notice-and-demand statute governing laboratory reports in drug prosecutions. The onus of ensuring the report meets the statutory requirements is on the State. Under this statute, a qualifying laboratory report is prima facie evidence of the content, identity, and weight of a controlled substance provided the State serves the report on the defendant or his counsel before the proceeding in which it is to be used, unless the defense timely demands the testimony of the analyst. *State v. Pasqualone*, 2009-Ohio-315, ¶ 5; R.C. 2925.51.

{¶84} The majority observes that the State's January 29, 2026 discovery response and supplemental discovery response did not list the laboratory report, that

the State later sought a continuance because the laboratory results were not yet complete, and that the docket does not contain a later discovery response reflecting service of the report. From that silence, the majority surmises the State must have failed to serve the laboratory report on opposing counsel as required by R.C. 2925.51(B).

{¶85} R.C. 2925.51(B) pertains to the prosecuting attorney serving the laboratory report and reads:

The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the accused if the accused has no attorney, prior to any proceeding in which the report is to be used against the accused other than at a preliminary hearing or grand jury proceeding where the report may be used without having been previously served upon the accused.

{¶86} The majority finds the laboratory report and the testimony of Lieutenant Rehm regarding the analysis were erroneously admitted at trial because “there is no indication in the record that the lab report at issue was ever served on the defense as required by R.C. 2925.51(B)” and “in the absence of established compliance with R.C. 2925.51, the evidence remains inadmissible.” *See* majority opinion, ¶ 38 and ¶ 52. In making this finding the majority adds an additional requirement to R.C. 2925.51(B) that the prosecutor is not only required to serve the laboratory report but, must also, in some manner, document in the record the State’s service of the laboratory report. I disagree.

{¶87} The statute does not, by its express terms, require that proof of service be separately docketed, that the prosecutor file a supplemental discovery response indicating service of the report, or that the trial court conduct an on-the-record colloquy confirming service prior to the State's utilizing the report at trial. While documentation of service of discovery is the better practice, I respectfully decline to incorporate such a requirement into the statute when the legislature did not.

{¶88} I am also mindful that Thompson never claimed, either at trial or on appeal that he was not served with the laboratory report. First, at trial the defense strategy as outlined in counsel's opening statement dealt with refuting the State's claim that Thompson possessed the drugs in question, not the identity or quantity of the drugs. Moreover, Lieutenant Rehm testified that Thompson admitted he had smoked meth earlier in the day and that his fingerprints would be on a meth pipe found near where Thompson was seated in the car. Thus, Thompson's best strategy was to cast possession of the drugs on the other occupants of the car, specifically Ms. Chitwood, the passenger seated directly in front of him and who was found to have methamphetamine in her purse.

{¶89} Second, on appeal Thompson does not assign error to, nor even allege, a lack of service under R.C. 2925.51. Instead he challenges the manifest weight and sufficiency of the evidence contending the State failed to prove he possessed the methamphetamine. His assignment of error challenging the admissibility of the

laboratory report only contends the report was admitted “without any foundational testimony” not that the State failed to serve the report.

{¶90} Relying on the unsubstantiated idea that the State failed to serve the laboratory report as required by R.C. 2925.51(B), the majority faults defense counsel for failing “to object to the admission of the BCI report’s contents on Confrontation Clause grounds, or on any grounds...” *See* majority opinion, ¶ 55. I do not agree with the inference that trial counsel failed in his duty. I find it equally plausible that the State received the report from BCI and provided it to defense counsel. This could have been done electronically, by email, by discovery portal, by hand delivery, or by other means not reflected in the record.

{¶91} With the lack of an objection by defense counsel the majority next applies the plain error standard to find the trial court erred by not recognizing the Confrontation Clause issue and sua sponte precluding the State’s use of the information contained in the report and the report itself. However, plain error requires more than a possible defect. It requires an error that is plain—an obvious defect in the trial proceedings—and one that affected substantial rights. It is reserved for exceptional circumstances and only to prevent a manifest miscarriage of justice. *State v. Cass*, 2024-Ohio-2614, ¶ 57 (3d Dist.). On this record, the alleged defect—that the State failed to provide the laboratory report— is not obvious. Rather, it is unknown because the record is silent on this issue. To reach its conclusion, the majority’s reasoning necessarily speculates that the State failed to serve the report

as required by R.C. 2925.51. I do not agree with a finding of plain error where the record is devoid of the facts necessary to make such a determination.

{¶92} Under Ohio law, it is the appellant's burden to demonstrate reversible error from the record. The majority decision improperly shifts Thompson's burden to the State by requiring the State to negate defense counsel's forfeiture of the Confrontation Right by pointing to the absence of a docket entry showing service, when such an entry is not required.

{¶93} I would overrule Thompson's second assignment of error because the claimed Confrontation Clause violation was not preserved, the appellate record does not affirmatively establish noncompliance with R.C. 2925.51, and Ohio appellate law does not permit this Court to presume error from a silent record.

{¶94} I agree with the majority's separate conclusion that the evidence admitted at trial was sufficient to support the conviction. Because I would find no reversible error in the admission of the laboratory report or Lieutenant Rehm's testimony concerning the laboratory results, I would proceed to consider, and reject, Thompson's manifest-weight challenge and affirm the judgment of conviction.

{¶95} Accordingly, I respectfully dissent as to the second assignment of error.

**JUDGMENT ENTRY**

For the reasons stated in the opinion of this Court, the second assignment of error is sustained and it is the judgment and order of this Court that the judgment of the trial court is reversed with costs assessed to Appellee for which judgment is hereby rendered. The cause is hereby remanded to the trial court for further proceedings and for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.

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Juergen A. Waldick, Judge

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William R. Zimmerman, Judge

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Dissents in Part, Concur in Part  
Mark C. Miller, Judge

DATED:  
/jlm