IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-250542 TRIAL NO. B-2402793
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY*
GUSTAVO JIMENEZ,	:	
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 9/11/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer Hunsley
Administrative Judge

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-250542 TRIAL NO. B-2402793
Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N*
GUSTAVO JIMENEZ,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 11, 2026

Connie Pillich, Hamilton County Prosecuting Attorney, and *Scott M. Heenan,* Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Angela W. Chang, Hamilton County Public Defender, and *Joshua A. Thompson*, Assistant Public Defender, for Defendant-Appellant.

CROUSE, Judge.

{¶1} Defendant-appellant Gustavo Jimenez was convicted of raping his young daughter. He now appeals, contending that scientific evidence used to convict him violated the Confrontation Clause, that his interpreter's inability to hear parts of the State's video evidence deprived him of due process, that his jury waiver was invalid, and that his conviction was against the manifest weight of the evidence. After careful review, we hold that Jimenez has failed to show that any language barriers in this case deprived him of due process or rendered his jury waiver invalid. Further, we hold that the testimony of Jimenez's daughter and the circumstantial evidence of his guilt was such that his conviction was not against the manifest weight of the evidence, and that any violation of his Confrontation Clause rights was harmless. We affirm.

I. BACKGROUND

A. Factual Background

{¶2} Jimenez and mother had daughter in 2011.[1] In 2017, mother and daughter moved to live with Jimenez in Colerain Township, Ohio. By 2024, the three were also living with daughter's younger sisters and her half-brother.

{¶3} In May 2024, a fight broke out between Jimenez and mother. Half-brother tried to intervene, which led to a violent altercation with Jimenez. Daughter called the police, apparently at mother's urging. By the time officers arrived at the Colerain home, Jimenez and half-brother had been separated.

{¶4} None of the officers spoke Spanish. So daughter, who was the only family member fluent in English, served as translator. The officers put both Jimenez and half-brother in handcuffs, and they locked Jimenez in the back of a squad car. As

[1] We shall refer to the child victim in this case as "daughter." We refer to any other immediate family members by their relationship to daughter, e.g., "mother," "sisters," and "half-brother."

the officers wrapped up their investigation, daughter suddenly informed Colerain Township Police Officer Seth Moore that Jimenez had sexually abused her "a few years ago." Daughter had not told anyone about this prior to that day.

{¶5} A week later, mother took daughter to the Mayerson Center for Safe and Healthy Children at Cincinnati Children's Hospital. Daughter told a Mayerson Center social worker that Jimenez had sexually abused her from the time she was seven or eight years old up until a few weeks before the interview. During the visit, daughter also received a physical examination, including tests for pregnancy and several sexually transmitted infections ("STIs"). She tested positive for trichomonas vaginalis.

{¶6} Colerain Township Police Department Detective Andrew Mirizzi subsequently obtained a search warrant for a sample of Jimenez's urine. He sent the urine to Quest Diagnostics for testing, and Quest sent back a report (proffered at trial but not admitted) indicating the presence of trichomonas vaginalis in Jimenez's urine.

B. Pretrial Proceedings

{¶7} In June 2024, the Hamilton County Grand Jury returned an indictment charging Jimenez with four counts of rape. Count 1 alleged that "on or about" August 31, 2019, while daughter was "less than ten years of age," Jimenez had "compelled" daughter to engage in "vaginal intercourse" by "force or threat of force" in violation of R.C. 2907.02(A)(1)(b). Count 2 repeated these allegations, except for the allegation regarding daughter's age, and charged Jimenez with violating R.C. 2907.02(A)(2). Counts 3 and 4 repeated this pattern, substituting April 30, 2024, for the date and "less than thirteen years" for daughter's age.

{¶8} Six days after Jimenez was indicted, the trial court ordered him to submit to STI testing pursuant to R.C. 2907.27. The State would later ask for and receive the "certified records" of these and all tests "pertaining to" Jimenez conducted

on or after June 17, 2024.

C. Trial & Conviction

1. Jury Waiver

{¶9} On the day of his trial, Jimenez submitted a form, written in English, waiving his right to trial by jury. The court asked Jimenez—who spoke through an interpreter throughout the proceedings—if the form bore his signature and if he wished to waive his jury rights. Jimenez answered affirmatively, and the matter proceeded to a bench trial.

2. Lay Testimony

{¶10} The State called daughter to testify about the rapes. She explained in detail about two incidents. The first occurred one night in 2019, when daughter was seven years old. Mother had been at work and Jimenez was drunk. Daughter described how Jimenez had climbed into her bed, removed both their garments, restrained daughter's hands, and vaginally penetrated her. When this was over, daughter testified, Jimenez told daughter to put her clothes back on and threatened to kill mother if daughter ever told anyone about what had happened. So daughter kept silent. She testified that she "knew that [mother] was the only person that could help [her] someday and the only person that actually cared for [her]."

{¶11} Daughter testified that this happened again when she was 12 years old—roughly "a week and a half" prior to her May 2024 encounter with the police. While mother was off at work, Jimenez called daughter into his bedroom and locked the door behind her. He told daughter to disrobe. Daughter described how she told Jimenez that she "didn't want to keep doing this," but that Jimenez "didn't care about what [she] didn't want to do and what [she] did want to do. He just ignored everything." Fearing Jimenez's anger, daughter complied. Daughter testified about how Jimenez

once again vaginally penetrated her. She said that her younger sisters were outside the room while this was taking place, calling daughter's name and asking for daughter to come play with them again. Eventually, this drove Jimenez to stop the assault and allow daughter to go.

{¶12} Daughter explained that she never told anyone about the assaults prior to the night when the police arrived in May 2024. Up to that point, daughter had been afraid Jimenez would follow through on his threats and that mother would not believe her. But once the officers put Jimenez in a squad car, daughter saw an opportunity to avoid a life lived in fear that Jimenez would do this again. So she told Officer Moore about the assaults.

{¶13} Officer Moore also testified about that night. He described the "huge shift in [daughter's] facial looks" just before she told him that Jimenez had raped her. Daughter "started shaking . . . , tears started rolling down her face, and she just immediately became distraught."

{¶14} On cross-examination, daughter was asked about other reasons she might have had issues with Jimenez. She readily admitted that she feared his violent behavior toward mother and that she had been hurt by his refusal to support her artistic aspirations.

{¶15} Mother also testified. Speaking through an interpreter, she told the court about the family's background, the layout and sleeping arrangements in the family's home, her work schedule, and daughter's disclosure of the rapes. She also testified that five days after daughter spoke with the police, she and daughter had moved to a new address.

3. Mayerson Center Evidence & STI Test Results

{¶16} The State also called two Mayerson Center employees: Ashley Cremeans

(the social worker who had interviewed daughter) and Dr. Kathi Makoroff (the physician who had performed the physical examination).

{¶17} Cremeans testified "as an expert in forensic interviewing." She described the interview process at Mayerson and daughter's interview in particular. She testified about "delayed disclosure" of abuse, which she said she had observed in her practice. She explained how disclosure can be delayed when an abuser "makes threats, so they threaten to kill their family members or their friends." Cremeans ultimately testified that the statements daughter made during the interview "were consistent with inappropriate sexual contact."

{¶18} Through her testimony, the State introduced a copy of Cremeans's forensic report for the Mayerson Center, as well as a copy of the expert report she produced for litigation. The State also introduced a video recording of daughter's Mayerson Center interview from May 2024. In it, daughter not only recounted many of the same details that would later appear in her trial testimony, but also described comments Jimenez had made to her and details of the May 2024 rape left out of her trial testimony. For example, daughter told Cremeans that Jimenez had exhibited jealousy of other adult men and family members with whom she would interact. According to her interview, just before the 2024 assault Jimenez had told daughter, "I know what you're doing with those guys."

{¶19} During the trial, Jimenez's interpreter expressed concern that she was unable to hear portions of the Mayerson interview video. The trial court said it, too, was having trouble hearing the video, but that it intended to "carry on." The court instructed the interpreter, "Whatever words you hear, you can translate. Same as what we're doing."

{¶20} After Cremeans, Dr. Makoroff testified about how she had physically

examined daughter during the Mayerson Center visit. She testified that she saw no trauma to daughter's hymen, but that she would "not expect to see any trauma to that tissue, even when an alleged sexual event has happened." Dr. Makoroff also testified about the tests finding daughter's and Jimenez's urine positive for trichomonas vaginalis.

{¶21} Although Jimenez had no objection to the admission of daughter's test results, he *did* object to (1) the admission of the Quest Diagnostics report containing his own lab results, and (2) those parts of Dr. Makoroff's report and testimony discussing his test results. Jimenez argued that the evidence was inadmissible hearsay, violated the Confrontation Clause, and lacked a proper foundation because no one from Quest Diagnostics was there to testify. The trial court did not admit the Quest Diagnostics report into evidence, but *did* admit Dr. Makoroff's report in its entirety. The trial court also permitted Dr. Makoroff to testify with a copy of the Quest report in front of her. Dr. Makoroff used those results to testify that Jimenez had tested positive for trichomonas. On cross-examination, Dr. Makoroff admitted that an individual could theoretically transmit trichomonas by a washcloth or at birth—but that both possibilities were unlikely and that she would not expect either here.

4. Conviction & Sentence

{¶22} The trial court found Jimenez guilty on all four counts. In its on-the-record findings, the court explained that it found daughter and mother both to be credible. With respect to daughter in particular, it said,

> [Daughter] was very credible, especially for a 13-year-old. She explained specifically what happened. She explained specifically why the disclosure was delayed. The Court finds her testimony totally believable, totally credible, and specifically for the rape for the dates

> June 1 of '19 through August 31st of 2019, and also rape between the dates April 1, 2024, and April 30th of 2024.
>
> In fact, the Court finds all her testimony believable, and it alone would be enough to convict the defendant beyond a reasonable doubt.

The trial court also found Cremeans, Dr. Makoroff, and the officer-witnesses to be credible. Specifically, the court stated that it found relevant Dr. Makoroff's testimony "that she didn't expect the physical exam to show trauma" and that "[n]othing in the physical exam was inconsistent with [daughter] being raped." The court also found that the positive tests for trichomonas vaginalis were credible, but that it "could easily find the defendant guilty beyond a reasonable doubt even without this trichomonas vaginalis diagnosis of both the victim and her father."

{¶23} After finding Jimenez guilty, the trial court merged the R.C. 2907.02(A)(2) counts (Counts 2 and 4) into the R.C. 2907.02(A)(1)(b) counts (Counts 1 and 3). It then imposed concurrent prison terms of 25 years to life on Count 1 and 10 years to life on Count 3.

II. Analysis

{¶24} Jimenez now appeals, raising four assignments of error. He argues (1) that the admission of his trichomonas test results violated the Confrontation Clause, (2) that the interpreter's inability to hear the Mayerson Center interview had violated his due-process rights, (3) that he had never validly waived his right to a jury trial, and (4) that his convictions were against the manifest weight of the evidence.

A. Confrontation Clause

{¶25} In his first assignment of error, Jimenez argues that the State violated his right to confront the witnesses against him when it allowed Dr. Makoroff to testify about the STI-test results in the Quest Diagnostics report. We review applications of

the Confrontation Clause de novo. *State v. Terry*, 2024-Ohio-2876, ¶ 21 (1st Dist.).

{¶26} The Sixth Amendment to the United States Constitution states that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." It bars "the admission at trial of 'testimonial statements' of an absent witness unless she is 'unavailable to testify, and the defendant ha[s] had a prior opportunity' to cross-examine her." (Bracketed text in original.) *Smith v. Arizona*, 602 U.S. 779, 783 (2024), quoting *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004).

{¶27} But not all out-of-court statements trigger the need for confrontation—only those statements that (1) are introduced to prove the truth of the matter they assert (i.e., are hearsay) and (2) are testimonial in character. *State v. Hale*, 2024-Ohio-5579, ¶ 20 (1st Dist.), citing *Smith* at 783.

1. Hearsay Prong

{¶28} In this case, there can be no question that Dr. Makoroff's testimony about the results was hearsay for purposes of the Confrontation Clause. The Sixth Amendment does not permit the State to introduce the testimonial opinions of a nontestifying expert through the "surrogate testimony" of an analyst with no firsthand knowledge of the testing performed. *Bullcoming v. New Mexico*, 564 U.S. 647, 652 (2011); *see also Smith* at 786; *Hale* at ¶ 23. Yet "surrogate testimony" was just what Dr. Makoroff offered. She was not present for Quest's testing. Nevertheless, the State handed her a copy of Quest's report, which she used to relay the name, date, and list of tests Quest performed to the finder of fact. The State then asked Dr. Makoroff, "What were the findings for trichomonas?" Once more relying on the report, she replied, "So the finding for trichomonas was detected is the term that they use."

{¶29} In other words: the State had Dr. Makoroff regurgitate test results from

another analyst's report, in order to prove that Jimenez had trichomonas. There is no more textbook example of hearsay.

2. Testimonial Prong

{¶30} The question, then, is whether the Quest report was also "testimonial." Ohio has adopted a "primary purpose" test for assessing testimoniality. *See Hale*, 2024-Ohio-5579, at ¶ 64 (1st Dist.); *see also State v. Stahl*, 2006-Ohio-5482, ¶ 23, 25; *State v. Jones*, 2012-Ohio-5677, ¶ 150. This test asks whether the out-of-court statement was "made 'under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.'" *Stahl* at paragraph one of the syllabus, quoting *Crawford*, 541 U.S. at 52; *accord State v. Beasley*, 2018-Ohio-493, ¶ 182; *Hale* at ¶ 64. If the answer is *yes*, the statement was testimonial.

{¶31} So, would an objective witness in Quest Diagnostics' place reasonably have believed that its report indicating Jimenez tested positive for trichomonas would be available for later use at trial? Under the facts of this case, we answer, "Yes."

{¶32} Detective Mirizzi testified that he obtained Jimenez's urine pursuant to a search warrant, sent that urine sample to Quest, and received the results from them. The page of the Quest report showing Jimenez's trichomonas results lists the following client:

HAMILTON COUNTY JUSTICE CENTER

Attn: MUNICIPAL COURT

1000 SYCAMORE ST RM 120

CINCINNATI, OH 45202-1340

Put simply, Quest (1) received a request for an analysis of a urine sample sent by a police detective, (2) was instructed to send any test results to the Hamilton County

jail/sheriff's office, and (3) was told that the results would be delivered to a court. *Of course* an "objective witness" in Quest's place would presume the report it sent back would be available for use at a trial—at least in the absence of further disclosures by the State.

{¶33} The State argues, however, that the report was *not* testimonial, because "the testing was ordered under R.C. 2907.27." That statute permits the State to test individuals who are "charged with" certain crimes, including rape under R.C. 2907.02, for STIs. *See* R.C. 2907.27(A)(1) and (B)(1)(a). The purpose of the statute is to alert potential victims and partners of any "venereal disease," especially HIV, and to compel treatment if the defendant tests positive. *See* R.C. 2907.27(A)(2) and (B)(1)(c).

{¶34} We need not consider in this case the thorny question of whether Quest's report *would have been* testimonial, if Quest had been told that it was requested pursuant to R.C. 2907.27. Even assuming such a hypothetical report would not have been testimonial, the report *in this case* clearly was for two reasons.

{¶35} *First,* the *State's purpose* in seeking test results has no direct bearing on *Quest's purpose* in making the statement, unless the State communicated its purposes to Quest. "In determining whether a statement is testimonial for Confrontation Clause purposes, courts should focus on the expectation of the declarant at the time of making the statement; the intent of a questioner is relevant only if it could affect a reasonable declarant's expectations." *Stahl*, 2006-Ohio-5482, at paragraph two of the syllabus. So, for example, where there is no evidence a declarant knew of a medical center's mission statement when giving her statement, that mission statement cannot impact the declarant's purpose in giving that statement. *Id.* at ¶ 40. Similarly, here the State has offered no evidence that, when Detective Mirizzi submitted the sample to Quest, he told Quest it was pursuant to R.C. 2907.27 or based on public-health concerns.

Thus, even assuming the State did request the testing pursuant to R.C. 2907.27, nothing suggested that statutory basis affected Quest's primary purpose in communicating the report.

{¶36} *Second*, the record shows that Jimenez's trichomonas results were, in fact, sought pursuant to a search warrant executed prior to Jimenez's indictment, not an order under R.C. 2907.27. R.C. 2907.27 applies only once an individual has been charged with a listed offense. Jimenez was indicted for rape on June 21, 2024, and the trial court ordered testing pursuant to R.C. 2907.27 on June 27. But, according to Quest's report, Jimenez's sample for his trichomonas test was "Collected" and "Received" by Quest on June 17—four days *before his indictment*—and Quest "Reported" his results on June 18. This stands in stark contrast to the samples Quest tested for syphilis, HIV, and hepatitis, which the report indicates Quest received only *after* the trial court's June 27 order.

{¶37} While the preindictment dates on the trichomonas report are inconsistent with the State's R.C. 2907.27 theory, they are entirely consistent with the evidence at trial. Daughter's report indicates that her trichomonas test came back positive on May 25, 2024, shortly after her Mayerson Center visit. Detective Mirizzi testified that, at some point after daughter's Mayerson interview, he obtained a search warrant for Jimenez's urine sample as part of his investigation. That sample was sent to Quest for testing. On the stand, Detective Mirizzi identified the Quest report (from which Dr. Makoroff would later read) as "information that [he] received in response to [his] search warrant that was executed." He made no mention of R.C. 2907.27. Thus, while Quest's reports concerning other STIs were likely produced pursuant to the court's R.C. 2907.27 order, the trichomonas report was not.

{¶38} We therefore hold that the Quest report detailing Jimenez's

trichomonas test results was testimonial hearsay. The Confrontation Clause therefore barred the State from introducing the contents of that report through Dr. Makoroff's testimony, unless the analysts who produced the report were otherwise subject to adequate cross-examination. Because they were not, the trial court erred by overruling Jimenez's Confrontation Clause objection.

3. Harmless Error

{¶39} Although we hold that the State violated Jimenez's Sixth Amendment rights, we hold that the other evidence of Jimenez's guilt rendered the error harmless.

{¶40} Errors in the admission of evidence will be "disregarded" on appeal if the State can show those errors did "not affect [the defendant's] substantial rights." Crim.R. 52(A); *see State v. Perry*, 2004-Ohio-297, ¶ 15. Where the defendant preserved his objection below, "the state must show that [the error] was 'harmless beyond a reasonable doubt.'" *State v. Haynes*, 2022-Ohio-4473, ¶ 25, quoting *Chapman v. California*, 386 U.S. 18, 24 (1967). This generally entails demonstrating that, after "excis[ing] the improper evidence from record," what remains provides such strong evidence of guilt that there is "'no reasonable possibility that the [improper evidence] contributed to the accused's conviction.'" *State v. Morris*, 2014-Ohio-5052, ¶ 28-29, quoting *State v. Lytle*, 48 Ohio St.2d 391 (1976), paragraph three of the syllabus; *accord State v. Benson*, 2019-Ohio-3255, ¶ 23 (1st Dist.).

{¶41} Here, the trial court expressly stated that it "could easily find the defendant guilty beyond a reasonable doubt even without" the STI evidence, and that daughter's testimony "alone would be enough to convict the defendant beyond a reasonable doubt."

{¶42} Although the trial court's statement of what it *would have* done is not dispositive, its finding regarding daughter's credibility is certainly significant.

Daughter's testimony was comprehensive and, if believed, could easily have led to Jimenez's convictions. The trial court said she was believable—with or without the STI results—and we generally defer to the factfinder, who saw the witnesses firsthand, on credibility determinations. *See State v. Glover*, 2019-Ohio-5211, ¶ 30 (1st Dist.). Further, we have no reason to doubt the trial court's credibility determination here. Despite daughter's youth, her testimony was detailed, clear, and damning. She recounted the rapes in a manner largely consistent with her prior Mayerson interview and with the background information provided by mother. She believably explained why she had waited so long to speak up, and why she chose to speak up when she did. And the testimony of Officer Moore, Cremeans, and Dr. Makoroff only corroborated her narrative and bolstered her credibility.

{¶43} Further, Jimenez's Confrontation Clause challenge extended only to his own STI test—not daughter's. Thus, the trial court still had before it unchallenged evidence that daughter, who was only 12 years old and had no obvious sexual history, had tested positive for trichomonas vaginalis. While less persuasive than a shared diagnosis, this single test was certainly probative evidence corroborating daughter's claims that she had been raped.

{¶44} Thus, even without the improperly admitted results of Jimenez's STI test, the evidence of Jimenez's guilt was overwhelming. We therefore hold that, although the admission of those results violated the Confrontation Clause, the error was harmless beyond a reasonable doubt.

{¶45} Jimenez's first assignment of error is overruled.

B. Inaudible Interview Video

{¶46} In his second assignment of error, Jimenez contends that the trial court deprived him of his liberty without due process of law by admitting into evidence a

video in English, parts of which his interpreter was unable to hear.

{¶47} After the State began playing the recording of daughter's Mayerson Center interview at trial, Jimenez's interpreter interjected. The trial court cut the interpreter off and said, "Just for the record, they're talking about something having to do with the violin. I can't understand it all. I'm sure the translator can't understand every word that's being uttered. We're just going to push through." Later in the same playback, the interpreter again interjected, leading to the following colloquy:

> THE INTERPRETER: Your Honor, I cannot hear anything. Your Honor, the defendant has indicated that he's not hearing the translation because the interpreters aren't hearing.
>
> THE COURT: Yeah, I can't hear it either.
>
> THE INTERPRETER: The interpreter can't hear what is not understandable.
>
> THE COURT: Okay. Whatever words you hear, you can translate. Same as what we're doing.
>
> THE INTERPRETER: It's an issue of accuracy.
>
> THE COURT: We're just gonna carry on.

The trial court then resumed playback.

{¶48} Jimenez now argues that it was error to proceed (or to admit the video) when the translator could not make out some of what was being said.

{¶49} But Jimenez never objected to the admission of the video below. He is therefore limited to arguing that its admission was plain error. *See* Crim.R. 52(B); *Perry*, 2004-Ohio-297, at ¶ 14. That someone *other than Jimenez* (or his counsel) raised the issue is irrelevant. In a joint trial, for example, we have said that "only the defendant who makes an appropriate request or proper objection preserves error on

appeal." *State v. Thompson*, 1984 Ohio App. LEXIS 10503, *4 (1st Dist. Aug. 8, 1984), citing *State v. Henry*, 4 Ohio St.3d 44, 47, fn. 1 (1983). So even a timely and proper objection by a codefendant will not spare the nonobjecting defendant from forfeiture and plain-error review on appeal. *See State v. Lawrence*, 1985 Ohio App. LEXIS 5411, *16-17, fn. 3 (1st Dist. Jan. 16, 1985); *State v. Williams*, 2004-Ohio-4316, ¶ 13 (9th Dist.). The same principle applies with greater force where the issue was raised by an interpreter, but no party formally objected.

{¶50} We therefore ask whether the trial court plainly erred by proceeding despite the interpreter's audibility concerns. "It is well established that a defendant in a criminal case is entitled to hear the proceedings in a language he can understand." *State v. Ramallo*, 2016-Ohio-5544, ¶ 11 (6th Dist.). Further, due process requires that a criminal defendant "be afforded a meaningful opportunity to present a complete defense" and be allowed access to certain exculpatory evidence in the State's possession. *State v. Phelps*, 2011-Ohio-3144, ¶ 11 (1st Dist.).

{¶51} Jimenez therefore argues that he was effectively denied due process when the interpreter's audibility concerns prevented them from interpreting what was said in portions of the Mayerson Center interview.

{¶52} But here, the record is clear that the trial court (who was, in this case, the finder of fact) could not hear portions of the video either. And upon reviewing the interview ourselves, we can understand the difficulty. But Jimenez is limited to plain-error review, and the record does not plainly show that Jimenez's interpreter had any greater trouble understanding the video than anyone else in the courtroom. Thus, Jimenez has not shown that his interpreter's difficulty hearing the video impaired his ability to participate in the proceedings.

{¶53} Jimenez further argues that, by missing out on portions of the video, he

was denied access to evidence necessary for him to present a complete defense. But defense counsel received a copy of the video interview in discovery, so he would already have known of any useful information it might have contained. Jimenez also argues that his defense was impaired because he was not able to review the entire video personally—either in court, because of the audibility issues, or prior, because the video had been marked "counsel only." But there is no reason to believe the counsel-only designation hampered Jimenez in preparing his defense. To the extent the video included information that would be meaningful only to Jimenez, defense counsel remained free to "orally communicate the content of the 'counsel only' material to the defendant." *See* Crim.R. 16(C); *see also State v. Svoboda*, 2021-Ohio-4197, ¶ 48, fn. 2 (1st Dist.); *State v. Sutherland*, 2025-Ohio-488, ¶ 28 (2d Dist.).

{¶54} We therefore hold that, because nothing suggests that the interpreter understood any less of the video than the trial court did, and because defense counsel had received the video interview in discovery, the trial court did not plainly err by failing to exclude or stop playing the video on due-process grounds.[2]

C. Jury Waiver

{¶55} In his third assignment of error, Jimenez argues that his waiver of his right to trial by jury was invalid because he did not speak English and because the trial court did not engage in a sufficiently detailed colloquy.

[2] We note that the Sixth Amendment generally provides the accused a "right to be present in the courtroom at every stage of his trial." *Illinois v. Allen*, 397 U.S. 337, 338 (1970), citing *Lewis v. United States*, 146 U.S. 370 (1892). This is partly to effectuate the defendant's right to confront the witnesses and evidence introduced against him. *See* U.S. Const., amend. VI. Here, the trial court admitted video evidence, which the court could later review in camera, in a more acoustically-conducive environment. Jimenez, by contrast, never got to personally hear real-time interpretation of the inaudible portions of the video—either prior to trial (due to the counsel-only designation) or during. But to the extent these facts raise any Confrontation Clause issues, Jimenez failed to raise them. He rooted his second assignment of error firmly in the Due Process Clause. Our analysis, therefore, does not address how the Confrontation Clause might apply on these facts.

{¶56} A criminal defendant has a right to trial by jury, if they wish it. *See* U.S. Const., amend. VI; Ohio Const., art. I, § 5; *Duncan v. Louisiana*, 391 U.S. 145 (1968); *State v. Lomax*, 2007-Ohio-4277, ¶ 6. A defendant may waive that right, but their waiver must be knowing, intelligent, and voluntary. *Lomax* at ¶ 6; Crim.R. 23(A).

{¶57} The procedure for waiving the right to jury trial in Ohio is set forth in R.C. 2945.05, which requires that any waiver "be (1) in writing, (2) signed by the defendant, (3) filed, (4) made part of the record, and (5) made in open court." *Lomax* at ¶ 9. Nothing less than "strict compliance" with these requirements will do. *Id.* at ¶ 41; *State v. Allison*, 2026-Ohio-2912, ¶ 13 (1st Dist.). Once R.C. 2945.05 is satisfied, the resulting waiver is deemed "presumptively voluntary, knowing, and intelligent" for purposes of the constitution and Crim.R. 23(A). *State v. Bays*, 1999-Ohio-216, ¶ 24; *accord Lomax* at ¶ 40; *Allison* at ¶ 14. We may set aside a presumptively valid waiver on appeal only "on a plain showing that the waiver was not freely and intelligently made." *Bays* at ¶ 24; *accord Lomax* at ¶ 40; *Allison* at ¶ 14.

{¶58} In this case, the trial court checked all five boxes to comply with R.C. 2945.05. Jimenez signed and filed a written waiver, which was made part of the record. The language of that written waiver mirrored the language prescribed by R.C. 2945.05.

{¶59} The final statutory criterion required Jimenez to make or acknowledge his waiver "in open court." Thus, immediately prior to trial, the trial court conducted the following colloquy:

> DEFENSE COUNSEL: After speaking with Mr. Jimenez, myself and [co-counsel], we would like to enter a waiver of the jury trial and proceed with trial to the judge.
>
> THE COURT: Mr. Jimenez, I have in front of me a waiver of trial by jury. It has your name and your case number on it. Is that your

signature there, sir?

THE INTERPRETER: That's right.

THE COURT: You understand you have an absolute constitutional right to have a trial by jury, and you wish to waive that at this time?

THE INTERPRETER: Exactly.

THE COURT: Thank you.

{¶60} This colloquy satisfied R.C. 2945.05's "open court" requirement. A defendant need only "acknowledge the waiver" in open court to satisfy the statute. *See Lomax*, 2007-Ohio-4277, at ¶ 49; *Allison,* 2026-Ohio-2912, at ¶ 18 (1st Dist.). "[T]he defendant's oral waiver need not use 'magic words,' and the court need not engage in 'a prolonged colloquy.'" *Allison* at ¶ 17, quoting *Lomax* at ¶ 48. Rather, "once a defendant has informed the trial judge in open court that he is waiving his right to a jury trial, the court may accept his waiver, with or without engaging in further questioning to ensure he understood all the rights to a jury trial that he was giving up." (Cleaned up.) *Id.*; *accord State v. Jackson*, 2014-Ohio-3707, ¶ 109. Thus, this court has accepted a defendant's waiver as "made in open court" for purposes of R.C. 2945.05 where the defendant was "presented . . . with his signed jury-waiver form" mid-trial and "reaffirmed that he wished to waive his right to a jury trial, and that he signed the waiver of his own free will." *State v. Brooks*, 2023-Ohio-846, ¶ 18-19 (1st Dist.).

{¶61} Because Jimenez's waiver met all five *Lomax* criteria to comply with R.C. 2945.05, it was presumptively knowing, intelligent, and voluntary.

{¶62} Jimenez argues, however, that the trial court should have engaged in a "colloquy that at least explains what a jury trial is compared with a bench trial, and the

difference in how the two types of trial work." He contends that such a colloquy "should be the bare minimum for a valid jury waiver for a non-English speaker." For support, Jimenez points to *United States v. Duarte-Higareda*, 113 F.3d 1000 (9th Cir. 1997). The Ninth Circuit generally holds that a written jury waiver consistent with Fed.R.Crim.P. 23(a) is presumptively knowing, intelligent, and voluntary, but that this presumption is eliminated where "the record indicates a special disadvantage or disability bearing upon the defendant's understanding of the jury waiver." *Duarte-Higareda* at 1003; *see also United States v. Cochran*, 770 F.2d 850, 851 (9th Cir. 1985) (describing presumption); *United States v. Christensen*, 18 F.3d 822, 826 (9th Cir. 1994) (recognizing that special circumstances will rebut presumption). Under such circumstances, courts in the Ninth Circuit must engage in a more extended colloquy to ensure voluntariness. *Duarte-Higareda* at 1003, citing *Christensen* at 826. In particular, *Duarte-Higareda* held that the defendant's "language barrier" was "a 'salient fact' that was known to the district court and put the court on notice that Duarte's waiver 'might be less than knowing and intelligent.'" *Id.*, quoting *Christensen* at 825. Thus, a more detailed colloquy was required. *Id.*

{¶63} Whatever the merits of the Ninth Circuit's approach to Fed.R.Crim.P. 23(a), it is inconsistent with how Ohio has applied R.C. 2945.05 and Crim.R. 23. Both jurisdictions generally attach a presumption upon the filing of a compliant, written waiver. And both jurisdictions uphold the constitutional requirement that waiver of the right to a jury trial must be knowing, intelligent, and voluntary. *See Brady v. United States*, 397 U.S. 742, 748 (1970). The difference is in how they deal with evidence of circumstances that *could*, but *may not*, undermine the knowing, intelligent, and voluntary character of a waiver. In the Ninth Circuit, certain circumstances that fit this mold eliminate the presumption entirely. *See Duarte-*

Higareda at 1003; *Christensen* at 826. But the Ohio Supreme Court has been clear that, in Ohio, a written waiver that complies with R.C. 2945.05 is presumptively knowing, intelligent, and voluntary—full stop. *See State v. Brinkman*, 2022-Ohio-2550, ¶ 30; *Jackson*, 2014-Ohio-3707, at ¶ 110; *Lomax*, 2007-Ohio-4277, at ¶ 10; *State v. Fitzpatrick*, 2004-Ohio-3167, ¶ 37; *see also Allison*, 2026-Ohio-2912, at ¶ 28 (1st Dist.). Further, compliance with R.C. 2945.05's open-court requirement does not require more than a cursory in-court confirmation. *See Jackson* at ¶ 109; *Allison* at ¶ 22.

{¶64} Ohio courts still consider evidence of any "special disadvantage or disability bearing upon the defendant's understanding of the jury waiver." *See Duarte-Higareda* at 1003. But, where a compliant written waiver exists, such evidence does not remove the defendant's burden to prove that his waiver was not, in fact, knowing, intelligent, and voluntary. In other words, evidence of disability or language barrier can be used to rebut the presumption of voluntariness, but not to eliminate it entirely. *Compare Allison* at ¶ 29 (defendant's opportunity to "rebut the presumption by showing his waiver was *not* voluntary" provided a "constitutional backstop").

{¶65} The Eighth District's opinion in *State v. Hunter*, 2008-Ohio-3138 (8th Dist.), shows how to apply Ohio's framework in the context of an alleged disadvantage or disability. The defendant in *Hunter* argued that his waiver had been involuntary because of an intellectual disability. The Eighth District did not require, as the Ninth Circuit might have, that the trial court "enumerate all the possible implications of a waiver of a jury." *Id.* at ¶ 30. Rather, it held that the defendant's written waiver had complied with R.C. 2945.05 and was presumptively valid. *Id.* at ¶ 28. Only *then* did it consider whether the evidence of disability, taken together with the content of the colloquy and other evidence in the record, rebutted the presumption created by his

written waiver. *Id.* at ¶ 31-34. It held that "despite [defendant's] mental challenges, he validly waived his right to a jury trial." *Id.* at ¶ 34.

{¶66} In Jimenez's case, the record shows that Jimenez's written waiver complied with R.C. 2945.05, and was therefore presumptively knowing, intelligent, and voluntary. The question is whether, on this record, Jimenez can rebut that presumption.

{¶67} Jimenez points to the fact that his waiver form was written only in English, a language he could not read. We are certainly troubled by the lack of a Spanish-language jury-waiver form—or, at a minimum, a signed attestation that someone had translated the form into Spanish for Jimenez. The absence of either safeguard needlessly raises questions of whether Jimenez knew precisely what was on the page before him. And we acknowledge that, had the trial court merely confirmed that the signature on the waiver form belonged to Jimenez, without checking that Jimenez had been informed of its contents, this would be a difficult case.

{¶68} Nevertheless, the trial court in this case sufficiently ensured that Jimenez knew that he was waiving his jury right. The court informed Jimenez, through the interpreter and on the record, that Jimenez had "an absolute constitutional right to have a trial by jury." It then asked him point blank if he "wish[ed] to waive that at this time," to which Jimenez replied, "Exactly." The record thus shows that Jimenez knew he had a right to a jury, and that he wished to waive that right. The trial court was not required to engage in any more substantial colloquy. *See Allison*, 2026-Ohio-2912, at ¶ 28 (1st Dist.); *Jackson*, 2014-Ohio-3707, at ¶ 109-110. And no other facts or circumstances in the record suggest that Jimenez's affirmation was less than knowing, voluntary, and intelligent. *Compare Allison* at ¶ 29.

{¶69} Countless English speakers likely fail to grasp the full benefits and

burdens of a jury trial when they become entangled in the criminal-justice system. Ohio law generally relies on *defense counsel* to explain these burdens and benefits to them. And it relies on signed, statutory forms to ensure that any waiver was intentional. Evidence that defense counsel failed to offer Jimenez such guidance (in a language Jimenez could understand) or failed to ensure that Jimenez knew what he was signing could vitiate the voluntariness of his waiver. But the record in this case is devoid of such evidence. And "[c]laims that depend upon evidence outside the trial record are better suited for proceedings where that evidence can be introduced." *State v. Collins*, 2024-Ohio-5112, ¶ 73 (1st Dist.). Thus, as the State acknowledged at oral argument, if such evidence exists, it can be brought in "a petition for postconviction relief under R.C. 2953.21 or a motion for a new trial under Crim.R. 33." *See id.*; *see also State v. Blanton*, 2022-Ohio-3985, ¶ 41.

{¶70} We therefore hold that, because Jimenez's written waiver complied with R.C. 2945.05, and because Jimenez failed to rebut the presumption of voluntariness, the trial court did not err by accepting his waiver and hearing his case without a jury. Jimenez's third assignment of error is overruled.

D. Manifest Weight

{¶71} In his fourth and final assignment of error, Jimenez argues that his conviction was against the manifest weight of the evidence. To assess such a challenge, we must sit as a proverbial "thirteenth juror," reviewing the record and weighing the evidence and all reasonable inferences to assure ourselves that the factfinder did not clearly lose its way in finding guilt beyond a reasonable doubt. *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983); *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 26. This necessarily entails considerations of witness credibility, where such assessments can be made from a cold record. *State v. Garrett*, 2026-Ohio-49, ¶ 69 (1st

Dist.). However, because we did not observe the witnesses firsthand, we defer to the factfinder's credibility judgments in all but those "'most exceptional circumstances,' when the factfinder 'disregarded or overlooked compelling evidence' that contradicted its findings." *Garrett* at ¶ 69, quoting *State v. Gibson*, 2023-Ohio-1154, ¶ 39 (1st Dist.). If the trial court lost its way in resolving conflicts in the evidence and created a manifest miscarriage of justice, then we must reverse its judgment and order a new trial. *Martin* at 175; *Reillo* at ¶ 26, 31-32.

{¶72} Although the trial court found Jimenez guilty on all four counts, it merged Counts 2 and 4 into Counts 1 and 3. Jimenez's challenges to his convictions on Counts 2 and 4 are therefore moot, unless we reverse his convictions on the other counts. *See State v. Myers*, 2018-Ohio-1903, ¶ 138; *Garrett* at ¶ 17.

{¶73} To prove that Jimenez violated R.C. 2907.02(A)(1)(b), the State had to show (1) that Jimenez engaged in "sexual conduct" with daughter during the periods listed in the indictment, (2) that daughter was not Jimenez's spouse, and (3) that daughter was less than 13 years old. *See State v. Warner*, 2024-Ohio-1949, ¶ 15 (1st Dist.). Jimenez does not contest elements two and three.

{¶74} As we have already explained in Part II.A.3, the trial court had ample evidence proving Jimenez's guilt, even if we disregard Jimenez's erroneously admitted STI test. The trial court reasonably credited daughter's testimony and the corroborative evidence, which easily proved that Jimenez engaged in "sexual conduct" with daughter during the relevant periods.

{¶75} Recognizing that daughter's credible testimony formed the backbone of his convictions, Jimenez seeks to undermine her credibility. For example, Jimenez points to daughter's long-delayed disclosure of the 2019 rape. But that was fully explained by daughter's own testimony, which was corroborated by Cremeans. The

trial court found daughter's explanation credible, and nothing in the record clearly undermined that finding.

{¶76} Jimenez also points to possible ulterior motives that might have driven daughter to lie about the rapes. For example, Jimenez notes that daughter feared his physical violence toward family members, and that she was hurt by his refusal to support her musical pursuits. But even if we assume that these and other ulterior motives have been in daughter's mind, none of the justifications proposed by the State would plausibly explain why daughter would allege that Jimenez had committed such heinous acts against her, or why she would subject herself to testifying about them in such detail on multiple occasions. This is certainly not the sort of "compelling evidence" that would persuade us to disregard the trial court's credibility finding. *See Gibson*, 2023-Ohio-1154, at ¶ 39 (1st Dist.).

{¶77} Jimenez also suggests that daughter's use of the American slang term "dick" to refer to a penis in her testimony was strange, especially given her use of the more clinical "vagina" to refer to female genitalia. But Jimenez never explains how this combination of slang and biologically-appropriate terminology showed that daughter was lying (or mistaken) about what Jimenez did to her.

{¶78} Finally, Jimenez argues that the State did not prove motive. "Motive" is not an element, merely a tool for persuading a factfinder. The trial court did not lose its way in finding Jimenez guilty without proof that he had any extrinsic motive to rape daughter. When it comes to rape, the motive is often the act itself.

{¶79} Jimenez's arguments, whether viewed individually or in concert, do not cast substantial doubt on the trial court's findings that daughter's testimony was credible and that Jimenez raped her. They certainly do not demonstrate that this is one of those "most exceptional circumstances" in which the factfinder so "disregarded

or overlooked compelling evidence" that we may set aside its credibility finding. *See Gibson*, 2023-Ohio-1154, at ¶ 39 (1st Dist.). The trial court did not lose its way in rejecting the highly improbable ulterior motives offered by Jimenez. *Compare Warner*, 2024-Ohio-1949, at ¶ 19-20 (1st Dist.). It was entitled to believe daughter, and it did.

{¶80} Jimenez's fourth assignment of error is overruled.

III. CONCLUSION

{¶81} Having overruled Jimenez's four assignments of error, we affirm the judgment of the trial court.

Judgment affirmed.

ZAYAS, P.J., and **MOORE, J.,** concur.