[Cite as *State v. Lunsford*, 2026-Ohio-4705.]

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

STATE OF OHIO,	:	APPEAL NO. C-260040 TRIAL NOS. C/25/CRB/22168/A/B
Plaintiff-Appellee,	:	
vs.	:	
SEAN LUNSFORD,	:	
Defendant-Appellant.	:	*JUDGMENT ENTRY*

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

For the reasons set forth in the Opinion filed this date, the judgments of the trial court are affirmed in part and reversed in part, and the cause is remanded.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders costs taxed to the appellant.

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 11/25/2026.

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:_____
Administrative Judge

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STATE OF OHIO,	:	APPEAL NO. C-260040 TRIAL NOS. C/25/CRB/22168/A/B
Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N*
SEAN LUNSFORD,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgments Appealed From Are: Affirmed in Part, Reversed in Part, and Cause Remanded

Date of Judgment Entry on Appeal: November 25, 2026

Emily Smart Woerner, City Solicitor, *Susan M. Zurface*, Chief Prosecuting Attorney, and *Robert E. Rickey*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Angela W. Chang, Hamilton County Public Defender, and *Jessica R. Moss* and *Angela Landa*, Assistant Public Defenders, for Defendant-Appellant.

NESTOR, Judge.

{¶1} In early December 2025, a security guard told defendant-appellant Sean Lunsford not to come back to the downtown Cincinnati Kroger after being removed for behaving in a disorderly manner. Later that month, Lunsford returned. While being escorted off the premises by the same guard, Lunsford threatened to shoot him. Lunsford now appeals his resulting convictions for menacing and criminal trespass.

{¶2} Lunsford raised three assignments of error: (1) that his convictions were not supported by sufficient or credible evidence; (2) that the trial court erred by imposing a sentence contrary to the one imposed at his sentencing hearing; and (3) that the trial court erred by allowing the State to elicit "other acts" evidence in violation of Evid.R. 404(B) to his prejudice. The State concedes Lunsford's second assignment of error.

{¶3} Following a thorough review of the evidence, we overrule Lunsford's first and third assignments of error. However, we sustain Lunsford's second assignment of error as the trial court improperly imposed fines and a suspended term not pronounced during sentencing. Accordingly, we affirm both of his convictions, reverse the portions of the sentencing entries imposing fines and suspended sentences, and remand the cause to the trial court with instructions to issue a nunc pro tunc entry correcting this error.

I. Factual and Procedural History

{¶4} Sometime in early December 2025, defendant-appellant Sean Lunsford visited the Kroger in downtown Cincinnati. A manager approached Lunsford and asked him not to bother other patrons. Then two security guards arrived, W.H. and a "bigger guy."

{¶5} Lunsford testified that the bigger guard pushed him and that he told the

guard to stop, which led to W.H. pulling out his mace and pointing it in Lunsford's face. Lunsford responded by telling W.H., "I have the right to bear arms as well." The guards then asked him to leave the Kroger, and he voluntarily left the premises. Lunsford further testified that neither the manager, the bigger guard, nor W.H. told him that he could not come back.

{¶6} W.H. testified that during this first incident he and two other guards escorted Lunsford out because he was intoxicated and behaving in a disorderly manner. W.H. further testified that he told Lunsford that he was no longer allowed to return to the downtown Kroger and that Lunsford responded, "F*** you, I'll come back to this Kroger whenever I want." W.H. further testified that Lunsford threatened him and the other guards, telling them that he would attack them with a machete.

{¶7} Neither Lunsford nor W.H. could remember the exact date of this first incident.

{¶8} On December 19, 2025, Lunsford returned to the downtown Kroger. Lunsford was shopping when the bigger security guard came up to him and told him that he should not be in the Kroger.

{¶9} W.H. testified that he joined the other security guard and told Lunsford that he was trespassing and needed to leave. W.H. and the other guard then escorted Lunsford out of Kroger.

{¶10} W.H. further testified to Lunsford's reaction to being escorted out. W.H. stated that Lunsford seemed to look at his belt then stated, "You have a gun, I have one too I'll shoot you in the face with mine when we get outside." In the original complaint, Lunsford is quoted as saying, "I will come back and get my gun and kill you." Lunsford also stated, "Come on guys I'll fight you as soon as we get outside." Lunsford continued to act belligerently after being removed from the store and took

off his coat. W.H. stated that he believed Lunsford's statements were a threat and that his prior interaction with Lunsford in early December made him believe that Lunsford would physically harm him.

{¶11} Lunsford's version varies greatly from W.H.'s account. Lunsford asserted he made no threats and only told the bigger guard to keep his hands off him. Once outside he drew an invisible line on the sidewalk and told W.H. and the other guard that he would defend himself if they crossed it. He denied ever having said anything about using any sort of weapon—firearm or otherwise. He took off his coat not because he was preparing for a fight or retrieving a weapon, but rather because he was wearing many layers and was hot.

{¶12} Lunsford was arrested and charged with menacing, in violation of R.C. 2903.22(A)(1), and criminal trespass, in violation of R.C. 2911.21(A)(1). On January 7, 2026, a bench trial was held on these charges in the Hamilton County Municipal Court. The only evidence presented was the testimony of W.H. and Lunsford. The trial court found Lunsford guilty of both charges and went immediately into sentencing.

{¶13} During sentencing, the trial court pronounced that Lunsford's sentences would be one year of nonreporting probation and an order to stay away from both the downtown Kroger and W.H. The court did not state that Lunsford was receiving suspended sentences or that he would have to pay fines. The court did inquire as to whether the State wanted a suspended sentence but made no further comment on the matter. Nonetheless, the sentencing entries imposed a ten-day suspended sentence and a $20 fine for each conviction. Lunsford timely appealed.

II. Analysis

{¶14} In his appellant brief, Lunsford raised three assignments of error: (1)

that both of his convictions were not supported by sufficient and credible evidence; (2) that the trial court erred by imposing sentences that were contrary to what was imposed at the sentencing hearing; and (3) the trial court erred by allowing the State to elicit other-acts evidence in violation of Evid.R. 404(B) to his prejudice. Each is addressed in turn.[1]

A. First Assignment of Error

{¶15} In his first assignment of error, Lunsford argues that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. Accordingly, both convictions will be reviewed for sufficiency and manifest weight.

{¶16} In reviewing a challenge to the sufficiency of the evidence used to support a criminal conviction, we "must 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. Anderson*, 2017-Ohio-8641, ¶ 10 (1st Dist.), citing *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. "'The 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.*

{¶17} When deciding whether a judgment entered by the trial court is against the manifest weight of evidence, the appellate court "'must always be mindful of the presumption in favor of the finder of fact.'" *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 28, quoting *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 21. The manifest-weight-of-the-evidence standard refers to whether there is a "'"greater amount of

[1] In the index of defendant-appellant's brief, the first and second assignment of error are reversed. This opinion addresses the assignments of error in the order they were presented in the brief itself.

credible evidence . . . to support one side of the issue rather than the other.'"" *Id.* at ¶ 25, quoting *Eastley* at ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). The court must look to and weigh the "'evidence and all reasonable inferences, consider[ing] the credibility of witnesses and determine[] whether . . . the [factfinder] clearly lost its way and created such a manifest miscarriage of justice'" so as to justify reversal. *Id.* at ¶ 26, quoting *State v. Brown*, 2025-Ohio-2804, ¶ 30, quoting *Thompkins* at 387.

1. Menacing

{¶18} R.C. 2903.22(A)(1) states that a person is guilty of menacing when they (1) knowingly cause (2) another to believe that the offender will cause physical harm to the other person. As defined, physical harm includes "any injury . . . regardless of its gravity or duration." R.C. 2901.01(A)(3). To prove menacing occurred, the State must show that the victim had a subjective belief of fear of physical harm. *State v. Landrum*, 2016-Ohio-5666, ¶ 9 (1st Dist.). In the current matter, Lunsford fails to show that his conviction for menacing was not supported by sufficient evidence.

{¶19} At trial, W.H. testified that Lunsford threatened to shoot him and made other belligerent statements. Moreover, Lunsford admitted to telling W.H. he "had the right to bear arms as well" during their first interaction in early December. W.H. testified that based on the prior interaction and Lunsford's belligerent behavior and statements he felt Lunsford was going to physically harm him.

{¶20} Assuming this evidence is to be believed and taking it in the light most favorable to the prosecution, a rational trier of fact could find the elements of menacing proven beyond a reasonable doubt. Lunsford made statements that a reasonable person would recognize as threats to cause physical harm, and W.H. subjectively believed that Lunsford was going to physically harm him. Accordingly,

defendant-appellant's menacing conviction was based on sufficient evidence.

{¶21} Turning to the manifest-weight analysis, Lunsford claims that this case is a classic "he said, he said" as no evidence was presented beyond his own and the victim's testimony. Lunsford further argues that because W.H. had a firearm, was accompanied by other security personnel, and failed to retreat back into Kroger after escorting Lunsford out, W.H.'s testimony that he feared Lunsford would harm him was not credible. Lunsford points to the inconsistencies between his statement as recorded in the complaint and as W.H. testified to at trial as further evidence that W.H.'s testimony was not credible.

{¶22} When the trial court evaluates the evidence before it, it is "'free to believe some, all or none of each witness's testimony and [to] separate the credible parts of the testimony from the incredible parts.'" *State v. Griffin*, 2024-Ohio-5846, ¶ 21 (6th Dist.), quoting *State v. Greer*, 2023-Ohio-103, ¶ 41 (6th Dist.). When evidence is contradictory, "the trial court [is] in the best position to weigh the evidence and to judge the witness's credibility." *Id.*, citing *State v. Speaks*, 2024-Ohio-15, ¶ 80 (12th Dist.).

{¶23} Here, the trial court clearly found W.H.'s testimony credible and relied upon it to determine that Lunsford was guilty. A slight inconsistency between the complaint and W.H.'s testimony does not mean that his testimony was not credible. *See Reillo*, Slip Opinion No. 2026-Ohio-2701, at ¶ 32, citing *State v. Lee*, 2006-Ohio-5951, ¶ 12 (10th Dist.). When weighing the evidence presented and making all reasonable inferences, this court cannot conclude that the trial court created a manifest miscarriage of justice by finding Lunsford guilty of menacing.

{¶24} Lunsford's menacing conviction is neither based upon insufficient evidence nor is it against the manifest weight of the evidence.

2. Criminal Trespass

{¶25} R.C. 2911.21(A)(1) defines criminal trespass as a person without privilege knowingly entering or remaining on the land or premises of another. "To sustain a conviction for criminal trespass, the state must prove the defendant (1) without privilege to do so (2) knowingly (3) entered or remained on (4) the land or premises of another." *State v. Webb*, 2023-Ohio-4817, ¶ 18 (1st Dist.).

{¶26} There is no doubt that Lunsford knowingly entered on to the premises of the downtown Kroger. He testified that he was there to buy food. Therefore, this conviction hinges on the question of whether Lunsford lacked the privilege to be in the downtown Kroger.

{¶27} Generally, a business invitee possesses a revocable license to be on the premises of a private business. *See Mosher v. Cook United, Inc.*, 62 Ohio St.2d 316, 317 (1980). Other Ohio appellate courts have recognized "'that a business invitee's privilege to remain on the premises of another may be revoked upon the reasonable notification to leave by the owner or his agents.'" *State v. Bennett*, 2022-Ohio-4471, ¶ 18 (11th Dist.), quoting *Marcus v. Revco Discount Drug Ctrs.*, 1994 Ohio App. LEXIS 3620, *5 (8th Dist. Aug. 18, 1994). Only the notification needs to be reasonable, not the underlying request. *Id.* at ¶ 20, citing *Dressler v. Rice*, 739 Fed.Appx. 814, 821 (6th Cir. 2018); *see State v. Gish*, 1994 Ohio App. LEXIS 5562, *2 (4th Dist. Dec. 1, 1994).

{¶28} Lunsford was a business invitee of Kroger. During the early December 2025 encounter between the two, W.H., an agent of Kroger, told Lunsford to leave the downtown Kroger and to not return. When Lunsford returned on December 19, 2025, W.H. and another security guard informed him he was trespassing and told him to leave pursuant to the revocation of his privilege in early December.

{¶29} Taking all the evidence presented as true and construing it in the light most favorable to the prosecution, W.H. as an agent of Kroger revoked Lunsford's license to be on the premises during the early December incident. Therefore, Lunsford was trespassing when he knowingly entered the downtown Kroger on December 19, 2025. Accordingly, Lunsford failed to show that his conviction for trespass was not supported by sufficient evidence.

{¶30} Lunsford also contends that his conviction for trespass was against the manifest weight of the evidence. As discussed above, on review appellate courts give deference to the factfinder's credibility determinations when determining if a judgment is against the manifest weight of the evidence. *Reillo*, Slip Opinion No. 2026-Ohio-2701, at ¶ 28, citing *In re Z.C.*, 2023-Ohio-4703, ¶ 14.

{¶31} Lunsford testified that he believed he was privileged to enter Kroger, and W.H. testified that he had revoked that privilege earlier in December. No other evidence was introduced. Weighing the evidence and affording the appropriate deference to the credibility determinations of the trial court, we cannot say that the trial court "lost its way and created such a manifest miscarriage of justice that judgement must be reversed." *See Eastley*, 2012-Ohio-2179, at ¶ 20, quoting *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983).

{¶32} Accordingly, we overrule appellant's first assignment of error.

B. Second Assignment of Error

{¶33} Next, we address Lunsford's second assignment of error that the trial court erred by imposing sentences contrary to that which were imposed at sentencing. The State concedes the error.

{¶34} Crim.R. 43(A)(1) requires that a "defendant must be physically present

for every stage of the criminal proceeding, including the imposition of sentence." *State v. Craig*, 2023-Ohio-3777, ¶ 39. "When a sentence pronounced in open court is later modified and the judgement entry reflects the modification, the modification must have been made in open court in the defendant's presence." *State v. Williams*, 2016-Ohio-5827, ¶ 82 (1st Dist.). When a sentence is modified outside the presence of the defendant in violation of Crim.R. 43(A) the sentence must be vacated and the case remanded for resentencing. *Id.* at ¶ 83. If the modified sentence is the result of a clerical error, then this court remands the cause to the trial court with instructions to issue a nunc pro tunc entry correcting the error. *State v. Fields*, 2025-Ohio-2248, ¶ 43-44 (1st Dist.).

{¶35} Here, the trial court clearly violated Lunsford's rights under Crim.R. 43(A). At sentencing, the court pronounced that Lunsford would serve one year of nonreporting probation and was not allowed near the Kroger or W.H. Nonetheless, the sentencing entries reflected that suspended sentences and fines were imposed. During sentencing, the trial court made no mention of fines and merely inquired as to whether the State wished to request a suspended sentence. The complete omission of fines and suspended sentences from the sentence pronounced indicates that their inclusion in the sentencing entry was a clerical error. *See id.* at ¶ 43-44.

{¶36} "[T]he sentence announced in open court and the sentence in the judgement entry must match." *Id.* at ¶ 44, citing *State v. Sullivan*, 2015-Ohio-4845, ¶ 6 (1st Dist.). Here, they did not. Accordingly, we sustain appellant's second assignment of error, reverse the portions of the sentencing entries imposing fines and the suspended sentences, and remand the cause to the trial court with instructions to issue a nunc pro tunc entry correcting the error.

C. Third Assignment of Error

{¶37} In his third and final assignment of error, Lunsford asserts that the trial court erred by allowing the State to elicit "other acts" evidence in violation of Evid.R. 404(B) to his prejudice. For the following reasons we disagree.

{¶38} Evid.R. 404(B) provides that "evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with their character." Other-acts evidence may be admissible to show proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake. Evid.R. 404(B)(2). This is not an exhaustive list. *State v. Morris*, 2012-Ohio-2407, ¶ 18. Evidence of "others acts" may also be presented to prove an element of a criminal offense. *See State v. Roe*, 41 Ohio St.3d 18, 23-34 (1989), quoting *United States v. Turner*, 423 F.2d 481, 483-484 (7th Cir. 1970).

{¶39} The Ohio Supreme Court has set out a three-step process for determining whether other-acts evidence has been admitted for a legitimate purpose. *State v. Hartman*, 2020-Ohio-4440. "The first step is to determine whether the evidence is relevant to the particular purpose for which it is offered. Second, the other-acts evidence must be offered for a legitimate purpose under Evid.R. 404(B) and not to show propensity to criminal conduct." (Citations omitted.) *State v. White*, 2021-Ohio-1644, ¶ 47 (1st Dist.), citing *Hartman* at ¶ 22-25. The final step is for a trial court to conduct the Evid.R. 403 balancing test. *Id.* at ¶ 48. The first two steps are typically reviewed de novo, and the final step is reviewed for abuse of discretion. *Id.* at ¶ 47-48, citing *Hartman* at ¶ 22, 30.

{¶40} In this matter, evidence of the early December incident was ostensibly admitted for the purpose of proving that W.H. had revoked Lunsford's privilege to be

on the downtown Kroger's premises. W.H.'s testimony about the early December incident was clearly relevant as it established that he had previously revoked Lunsford's privilege to enter the downtown Kroger. This is a legitimate purpose as it establishes an essential element of trespass—a lack of privilege.

{¶41} Moreover, this testimony does not fail an Evid.R. 403 balancing test as the other purpose the evidence was used for—establishing that W.H. believed Lunsford intended to harm him—was also a permissible use of the evidence. Testimony about prior acts is admissible in menacing cases to establish a victim's subjective belief about harm. *See State v. Carter*, 2010-Ohio-1061, ¶ 10 (1st Dist.); *see also City of Cleveland v. McCoy*, 2016-Ohio-3451, ¶ 4 (8th Dist.). W.H. explicitly testified that the early December incident led to his belief that Lunsford would harm him. This is a separate permissible purpose and is not equivalent to impermissibly admitting propensity evidence to show that Lunsford was behaving in line with his violent character. Thus, the trial court did not abuse its discretion in admitting the evidence of the early December incident as its probative value was not substantially outweighed by a risk of unfair prejudice.

{¶42} Lunsford also argues that the trial court erred when it admitted evidence of the early December incident as the State failed to provide notice in writing of its intent to use this evidence as required by Evid.R. 404(B)(2). Lunsford acknowledges that this issue was waived at trial and accordingly is subject to review for plain error.

{¶43} "Plain error does not exist unless it can be said that but for the error the outcome of the trial clearly would have been different." *State v. Grubbs*, 2025-Ohio-1384, ¶ 60 (1st Dist.), citing *State v. Terry*, 2024-Ohio-2876, ¶ 36 (1st Dist.).

{¶44} Here, the trial court's decision cannot be shown to have prejudiced

Lunsford. Even without evidence of the early December incident, his threat to shoot W.H. was enough to establish W.H.'s belief that Lunsford intended to harm him. Therefore, Lunsford could have been convicted of menacing even if he had been able to prepare evidence to rebut W.H.'s testimony about the early December incident. As Lunsford cannot show that the outcome of his trial clearly would have been different, he has failed to establish that the trial court plainly erred.

{¶45} Accordingly, this court overrules Lunsford's third assignment of error.

III. Conclusion

{¶46} Because Lunsford's convictions were based on sufficient and credible evidence and the trial court admitted the "other acts" evidence for a permitted purpose we overrule Lunsford's first and third assignments of error. However, we sustain Lunsford's second assignment of error as the trial court improperly imposed fines and suspended sentences not included in the sentence pronounced during sentencing.

{¶47} Accordingly, we affirm both of his convictions, reverse the portions of the sentencing entries imposing fines and suspended sentences, and remand the cause to the trial court with instructions to issue a nunc pro tunc entry correcting this error.

Judgments affirmed in part, reversed in part, and cause remanded.

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