[Cite as *State v. Wright*, 2026-Ohio-4331.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY

STATE OF OHIO, Plaintiff-Appellee, - vs - KYLE VAUGHN WRIGHT, Defendant-Appellant.	**CASE NO. 2026-A-0004** Criminal Appeal from the Court of Common Pleas Trial Court No. 2025 CR 00245

OPINION AND JUDGMENT ENTRY

Decided: November 2, 2026
Judgment: Affirmed

April R. Grabman, Ashtabula County Prosecutor, and *Dane R. Hixon*, Assistant Prosecutor, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Adam Parker, Goldberg Dowell & Associates, L.L.C., 323 West Lakeside Avenue, Suite 450, Cleveland, OH 44113 (For Defendant-Appellant).

MATT LYNCH, P.J.

{¶1} Appellant, Kyle Vaughn Wright, appeals from the judgment of the Ashtabula County Court of Common Pleas convicting him of aggravated arson following a jury trial. For the reasons herein, we affirm appellant's conviction.

Facts and Procedural History

{¶2} On June 26, 2025, appellant was indicted on one count of aggravated arson, a first-degree felony in violation of R.C. 2909.02(A)(1), and one count of arson, a fourth-degree felony in violation of R.C. 2909.03(A)(5). Appellant appeared with counsel

and pleaded not guilty. The case proceeded to a jury trial in October 2025, at which the following testimony was adduced.

{¶3} In May 2025, appellant lived at the Kingsville Motel in Ashtabula County. On May 19, appellant used some grass and a lighter to start a small fire in the wooded area behind the motel. The fire got out of control and spread because of the wind, burning somewhere between five and six acres of land.

{¶4} The Kingsville Fire Department responded to a 911 call about the fire. Firefighters also arrived from North Kingsville, Plymouth, Sheffield, Monroe, and Pierpoint, as well as from Springfield Township in Pennsylvania. The responding Assistant Fire Chief, Kyle Hammon, when asked to describe the risks associated with putting out a brush fire in the woods, responded: "There's as small as rolling and twisting an ankle, injuries along those lines. There's also the possibility of a wind shift, in which could [sic] push fire into firemen and could lead to possible death."

{¶5} The Ashtabula County Sheriff's Department also arrived on scene. Deputy Sheriff Michael Tsevdos and Sergeant Scott Daniels, along with Assistant Chief Hammon, met with the owner of the motel and reviewed the security camera footage. They also made contact with appellant in his motel room. Sgt. Daniels captured the motel's security camera footage and the interview with appellant on his body-worn camera. The State introduced video footage from the camera as State's Exhibit 19.

{¶6} Both officers testified that they saw on the video appellant walking from his motel room and going through a hole in the fence behind the motel. Appellant appears to have a lighter in his hand. Appellant then reappears through the back fence and looks over his shoulder at the wooded area.

{¶7} The officers interviewed another guest at the hotel who had encountered appellant shortly after the fire started; she testified that appellant stated to her, "that didn't go the way I planned it," looked over his shoulder at the fire, and said, "it's not that serious, don't call nobody." The motel guest further testified that she saw the smoke from the fire and told the "front desk lady," who called the fire department.

{¶8} Appellant initially denied lighting the fire but admitted to previously lighting a fire behind the motel: when asked, "I see you had a camp fire down there before, right?" appellant responded, "yeah, we had that fire before, yeah." Appellant eventually admitted that he used some grass to start a small fire behind the motel that day but that he did not think his fire was what started the out-of-control brush fire. Appellant additionally told the deputies of another incident in his childhood: "I've had this happen to me before. . . . somebody had a mattress, and we – controlled fire, but somehow the wind took it and like burnt down like a whole field."

{¶9} The jury returned a guilty verdict on both counts of the indictment.

{¶10} Appellant's sentencing hearing was held on December 12, 2025. The trial court determined the two counts merge for sentencing purposes, and the State elected to proceed with sentencing on the count of aggravated arson. The court sentenced appellant to ten years in prison. Appellant filed a timely notice of appeal.

{¶11} This appeal was briefly remanded pursuant to App.R. 9(E) for the trial court to clarify what portion of the video exhibit was played for the jury. The trial court clarified as follows:

> The Court has reviewed its Judgment Entry of October 23, 2025, and the official transcript of proceedings. The Judgment Entry of October 23, 2025, preliminarily allowed for the playing of the body camera video without audio up to a certain point, and then the video and audio could be played of Sgt. Daniels conversation with the Defendant. The evidence and testimony

presented by the State of Ohio during trial of Exhibit 19 was in conformity with this Court's ruling from the Judgment Entry of October 23, 2025. The jury only heard, and then had access to during deliberations, the video with the audio portion removed for the beginning of the video in conformity with the prior ruling. The Court's bailiff would have aided the jurors with the playing of Exhibit 19 on the video screen in the courtroom during deliberations. No such request was made by the jurors to play Exhibit 19 during deliberations.

Exhibit 19 was played to the jury during the jury trial and admitted into evidence in conformity with the Court's ruling in the Judgment Entry of October 23, 2025. The Court did not change its ruling or mistakenly submit inadmissible portions of the Exhibit 19 video to the jury.

{¶12} On appeal, appellant asserts six assignments of error for our review.

First Assignment of Error

The trial court committed plain error in allowing the prosecutor to argue facts outside the record and make inflammatory comments.

{¶13} In his first assignment of error, appellant identifies two instances during closing arguments in which he maintains the prosecutor committed misconduct, rising to the level of plain error, by referring to facts outside the record as proof of a material element of aggravated arson and by comparing appellant to a fictional supervillain.

{¶14} Because defense counsel did not object to either of the prosecutor's alleged improper statements, appellant has waived all but plain error review on appeal. *State v. Lester*, 126 Ohio App.3d 1, 8 (12th Dist.), citing *State v. Ballew*, 76 Ohio St.3d 244, 255 (1996). "Plain error does not exist unless it can be said that but for the error, the outcome of the trial would clearly have been otherwise." *Id*., citing *State v. Moreland*, 50 Ohio St.3d 58, 62 (1990).

{¶15} "The test for prosecutorial misconduct is whether the [prosecutor's] remarks were improper and, if so, whether they prejudicially affected the accused's substantial rights." *State v. Garrett*, 2022-Ohio-4218, ¶ 144. "The touchstone of the analysis 'is the

fairness of the trial, not the culpability of the prosecutor.'" (Citation omitted.) *Id.* With respect to closing arguments in general, the Supreme Court of Ohio has observed:

> The prosecution is normally entitled to a certain degree of latitude in its concluding remarks. *State v. Woodards*, 6 Ohio St.2d 14, 26 (1966), certiorari denied, 385 U.S. 930 (1966); *State v. Liberatore*, 69 Ohio St.2d 583, 589 (1982). A prosecutor is at liberty to prosecute with earnestness and vigor, striking hard blows, but may not strike foul ones. *Berger v. United States*, 295 U.S. 78, 88 (1935). The prosecutor is a servant of the law whose interest in a prosecution is not merely to emerge victorious but to see that justice shall be done. It is a prosecutor's duty in closing arguments to avoid efforts to obtain a conviction by going beyond the evidence which is before the jury. *United States v. Dorr*, 636 F.2d 117 (5th Circ. 1981).

State v. Smith, 14 Ohio St.3d 13, 13-14 (1984). "A conviction may be upheld in the face of a prosecutor's improper remarks when it is 'clear beyond a reasonable doubt that the jury would have returned a verdict of guilty' regardless of the comments." *State v. Knuff*, 2024-Ohio-902, ¶ 238, quoting *United States v. Hasting*, 461 U.S. 499, 511-512 (1983).

{¶16} In the first instance of alleged misconduct, the prosecutor made the following statement:

> How do we know that that risk is real, ladies and gentlemen. If you'll recall it was very common knowledge on the news the last couple of years, there were some very serious forest and wildfires in California. Nine firefighters perished in those fires. Here it is by the grace of God that none of our firefighters here locally who had to go bravely put out that fire were actually injured.

Appellant maintains the prosecutor went beyond the evidence at trial and used the example of California firefighters who died fighting wildfires as proof that appellant's conduct created a "substantial risk of serious physical harm," which is a material element of aggravated arson under R.C. 2909.02(A)(1). Appellant argues the prosecutor's remarks did exactly what is forbidden by *State v. Lott*, 51 Ohio St.3d 160 (1990): "'Where opinions [on guilt] are expressed on facts outside the evidence, or are predicated on inferences based on facts outside the evidence, such opinions have not been

countenanced and the judgments in those cases have been reversed upon appeal.'" *Id*. at 166, quoting *State v. Stephens*, 24 Ohio St.2d 76, 83 (1970). Even if this comment was improper, we conclude that it did not deprive appellant of a fair trial and does not amount to plain error. The responding Assistant Fire Chief testified that the possibility of a wind shift "could push fire into firemen and could lead to possible death."

{¶17} In the second instance of alleged misconduct, the prosecutor stated the following at the close of his rebuttal argument:

> He lit that fire and then he went back later and watched it burn. That's what this case is about, ladies and gentlemen. There are some people in this world just like to watch the world burn. That's a line from a Batman film. A very famous line. Some people like to watch the world burn. That man is one of them. He likes to watch the world burn and you should find him guilty.

Appellant argues the prosecutor alluded that he was Joker, a character in the Batman film "who is portrayed as a violent, nihilistic psychopath," and that even if the jurors were unfamiliar with the film, the prosecutor's comments "would still paint [appellant] in a very negative light, as someone who wreaked destruction for mere amusement." He maintains that the prosecutor's comments ascribed a motive to his conduct that was unsupported by admissible evidence and highly inflammatory. However, the prosecutor's comment that appellant is a person who "likes to watch the world burn" was a fair inference that could be drawn from the evidence. Appellant admitted to starting the fire; he returned to look at the fire he had started; he did not call 911 to report the fire or attempt to control it; and he told a bystander not to call the fire department. While the reference to Batman was unnecessary when asking the jury to draw the inference that appellant started the fire just to watch it burn, the prosecutor's single mention of the film (especially without

naming the supervillain) did not deny appellant a fair trial and does not amount to plain error.

{¶18} Viewed as a whole, the prosecutor's closing argument was fair, did not improperly appeal to the jury's emotion, and did not create prejudicial error. *See Knuff*, 2024-Ohio-902, at ¶ 239; *see also State v. Gaetan*, 2025-Ohio-808, ¶ 68 (11th Dist.). Moreover, the trial court instructed the jury that closing arguments are not evidence, and we must presume the jurors followed the court's instruction. *State v. Rand*, 2026-Ohio-2461, ¶ 25 (11th Dist.), citing *Lester*, 126 Ohio App.3d at 8 (12th Dist.).

{¶19} The first assignment of error is without merit.

Second Assignment of Error

> **Mr. Wright received ineffective assistance of counsel when his attorneys failed to object to prosecutorial misconduct.**

{¶20} In his second assignment of error, appellant contends that his defense attorneys rendered constitutionally deficient representation in failing to object when the prosecutor made inflammatory arguments that relied on facts outside the record.

{¶21} "'There is a general presumption that trial counsel's conduct is within the broad range of professional assistance.'" *State v. Robinson*, 2021-Ohio-1064, ¶ 24 (11th Dist.), quoting *State v. Andrus*, 2020-Ohio-6810, ¶ 60 (11th Dist.), citing *State v. Bradley*, 42 Ohio St.3d 136, 142-143 (1989). The burden of establishing ineffective assistance of counsel falls upon the appealing defendant. *Id*.

{¶22} "In order to prevail on an ineffective assistance of counsel claim, an appellant must demonstrate that trial counsel's performance fell 'below an objective standard of reasonable representation and, in addition, prejudice arises from counsel's performance.'" *Andrus* at ¶ 60, quoting *Bradley* at paragraph two of the syllabus (adopting

the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984)). "In order to show prejudice, the appellant must demonstrate a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *Id*., citing *Bradley* at paragraph three of the syllabus.

{¶23} Given our conclusion under appellant's first assignment of error, that the prosecutor's comments during closing argument did not deprive appellant of a fair trial, appellant's argument that defense counsel was ineffective for failing to object to those comments necessarily fails. *See, e.g., Rand*, 2026-Ohio-2461, at ¶ 30 (11th Dist.), citing *State v. Flitcraft*, 2024-Ohio-3146, ¶ 69 (11th Dist.) and *State v. George*, 2024-Ohio-2125, ¶ 55 (11th Dist.). Appellant cannot demonstrate that but for defense counsel's failure to object, the jury would not have convicted him of aggravated arson.

{¶24} The second assignment of error is without merit.

Third Assignment of Error

The Court erred in allowing the jury to hear evidence that Mr. Wright had set previous fires.

{¶25} In his third assignment of error, appellant contends that the admission of his statements about setting fires in the past was improper character evidence under Evid.R. 404(B).

{¶26} "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 the character." Evid.R. 404(B)(1). "This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Evid.R. 404(B)(2).

{¶27} "The admissibility of other-acts evidence pursuant to Evid.R. 404(B) is a question of law." *State v. Hartman*, 2020-Ohio-4440, ¶ 22. A trial court is precluded from admitting improper character evidence under Evid.R. 404(B), but it has discretion to allow other-acts evidence that is admissible for a permissible purpose. *Id.*, citing *State v. Williams*, 2012-Ohio-565, ¶ 17.

{¶28} The Supreme Court of Ohio has set forth a three-part analysis to determine the admissibility of other-acts evidence: "(1) the evidence must be relevant, Evid.R. 401, (2) the evidence cannot be presented to prove a person's character to show conduct in conformity therewith but must instead be presented for a legitimate other purpose, Evid.R. 404(B), and (3) the probative value of the evidence cannot be substantially outweighed by the danger of unfair prejudice, Evid.R. 403." *State v. Graham*, 2020-Ohio-6700, ¶ 72.

{¶29} Prior to trial, the State filed a motion in limine seeking a preliminary ruling on its intent to introduce prior acts by appellant of setting fires and appellant's statements to police that he started other fires. The court denied the State's motion, stating that "the evidence and statements the State of Ohio seeks to introduce regarding the Defendant's propensity to start fires is nothing more than an attempt to show the jury that his past actions are in conformity with the charges in the indictment. This is exactly what Evid.R. 404(B) was meant to prevent." The court stated that it would not allow testimony from a witness that appellant was known to have started other fires or that he has admitted to starting fires on other occasions unrelated to the charges in the indictment.

{¶30} At trial, the court allowed the State, over objection, to play Exhibit 19, which is the video taken on the day of the fire by Sgt. Daniels' body-worn camera. This video included the interview of appellant in which he admitted to a previous fire behind the motel and to an out-of-control fire in his childhood.

{¶31} On appeal, appellant contends that these statements have no relevance beyond demonstrating his propensity to set fires. Alternatively, appellant contends that the probative value of the evidence, particularly about the incident in his childhood, is substantially outweighed by the danger of unfair prejudice. We disagree.

{¶32} The first statement—"yeah, we had that fire before, yeah"—is relevant and admissible to demonstrate both identity and lack of accident or mistake. *See, e.g., State v. Lowe*, 69 Ohio St.3d 527, 531 (1994) ("Other-acts evidence is admissible to prove identity through the characteristics of acts rather than through a person's character. To be admissible to prove identity through a certain modus operandi, other-acts evidence must be related to and share common features with the crime in question."); *Hartman*, 2020-Ohio-4440, at ¶ 52, quoting McCormick, *Evidence*, Section 190, at 804 (4th Ed. 1994) ("Other-acts evidence is admissible to negate a defendant's claim of mistake or accident with respect to the commission of the alleged crime; such evidence tends 'to show, by similar acts or incidents, that the act in question was not performed inadvertently, accidentally, involuntarily, or without guilty knowledge.'").

{¶33} The second statement—"I've had this happen to me before. . . . Somebody had a mattress, and we – controlled fire, but somehow the wind took it and burnt down like a whole field"—is relevant and admissible to demonstrate appellant's knowledge of the possibility of a fire he set getting out of control.

{¶34} In short, appellant's statements to law enforcement were relevant and admissible to demonstrate that appellant set the fire behind the motel purposely and with knowledge of the danger of doing so. Moreover, as this court has noted, "it would be the rare case in which an 'accused's own actions or language' would be unfairly prejudicial."

Ravenna v. Horn, 2026-Ohio-1920, ¶ 31 (11th Dist.), quoting *State v. Geasley*, 85 Ohio App.3d 360 (9th Dist. 1993).

{¶35} The third assignment of error is without merit.

Fourth Assignment of Error

Cumulative error deprived Mr. Wright of a fair trial.

{¶36} In his fourth assignment of error, appellant contends that even if the errors alleged above are individually harmless, the cumulative effect of prosecutorial misconduct and the admission of other-acts evidence denied him a fair trial.

{¶37} Under the cumulative error doctrine, "a conviction will be reversed where the cumulative effect of errors in a trial deprives a defendant of the constitutional right to a fair trial even though each of numerous instances of trial court error does not individually constitute cause for reversal." *State v. Garner*, 74 Ohio St.3d 49, 64 (1995). The cumulative error doctrine does not apply where the defendant cannot point to multiple instances of harmless error. *Id*.; *accord State v. Mammone*, 2014-Ohio-1942, ¶ 148.

{¶38} Given our resolution of appellant's first three assignments of error, appellant has not demonstrated multiple instances of harmless error. Accordingly, the cumulative error doctrine is not applicable to the case at bar.

{¶39} The fourth assignment of error is without merit.

Fifth Assignment of Error

The evidence at trial was insufficient to support Mr. Wright's conviction for Aggravated Arson.

{¶40} In his fifth assignment of error, appellant contends the evidence at trial was insufficient to support his conviction of aggravated arson in violation of R.C. 2909.02(A)(1), which provides: "No person, by means of fire or explosion, shall knowingly

. . . [c]reate a substantial risk of serious physical harm to any person other than the offender[.]"

{¶41} "'"[S]ufficiency" is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law.'" *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997), quoting *Black's Law Dictionary* (6th Ed.1990). *See also* Crim.R. 29(A) (motion for judgment of acquittal can be granted by the trial court if the evidence is insufficient to sustain a conviction). "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *Thompkins* at 386. "In addition, a conviction based on legally insufficient evidence constitutes a denial of due process." *Id.* at 386-387, citing *Tibbs v. Florida*, 457 U.S. 31, 45 (1982), citing *Jackson v. Virginia*, 443 U.S. 307 (1979).

{¶42} Appellant specifically argues the State did not present any evidence that would allow a reasonable juror to conclude that any risk of serious physical harm presented by his conduct was "substantial." He submits the fire occurred in a wooded area that was not frequented by any person; the Assistant Fire Chief gave no indication of the likelihood of a wind shift that could move in the firefighters' direction, leading to death; and no other evidence at trial indicated that the latter was a likely occurrence, rather than a remote possibility.

{¶43} This court has previously held that "the obvious risk posed to firefighters who were called to extinguish the fire" is sufficient to demonstrate a substantial risk of serious physical harm to others. *State v. Fordham*, 2003-Ohio-2836, ¶ 41 (11th Dist.). Although the risk posed in *Fordham*, resulting from an apartment fire, was different than the risk resulting from a brush fire, this does not mean the risk posed in this case was not

also substantial. The undisputed evidence in this case demonstrated that this was an out-of-control fire that burned somewhere between five and six acres of land, requiring multiple fire crews to respond. These facts also distinguish the present matter from other cases where the fire was small, not surrounded by brush, and extinguished quickly. *See, e.g., State v. Wolf*, 2008-Ohio-1483, ¶ 27 (3d Dist.) (where the aggravated arson conviction was reversed due to insufficient evidence of a substantial risk of serious physical harm). We conclude, under the circumstances of this case, the Assistant Fire Chief's testimony that the possibility of a wind shift "could push fire into firemen and could lead to possible death" was sufficient as a matter of law to support the jury's verdict.

{¶44} The fifth assignment of error is without merit.

Sixth Assignment of Error

Mr. Wright's conviction for aggravated arson is against the manifest weight of the evidence.

{¶45} In his sixth and final assignment of error, appellant contends that his conviction of aggravated arson is against the manifest weight of the evidence.

{¶46} "Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence." *Thompkins*, 78 Ohio St.3d at 387. "Weight of the evidence concerns 'the inclination of the *greater amount of credible evidence,* offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is

not a question of mathematics, but depends on its *effect in inducing belief.*'" (Emphasis added in *Thompkins*.) *Id*., quoting *Black's* (6th Ed. 1990).

{¶47} "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a '"thirteenth juror"' and disagrees with the factfinder's resolution of the conflicting testimony." *Id*., quoting *Tibbs*, 457 U.S. at 42. "'The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.'" *Id*., quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1983).

{¶48} Moreover, "'[t]he trier of fact is free to believe or disbelieve all or any of the testimony' and 'is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible.'" *State v. Csehi*, 2024-Ohio-779, ¶ 20 (11th Dist.), quoting *State v. Jarrett*, 2023-Ohio-1627, ¶ 13 (11th Dist.). "'Consequently, although an appellate court must act as a "thirteenth juror" when considering whether the manifest weight of the evidence requires reversal, it must also give great deference to the factfinder's determination of the witnesses' credibility.'" *Id.*, quoting *Jarrett* at ¶ 13.

{¶49} Appellant contends that even if the Assistant Fire Chief's testimony was a legally sufficient basis for the jury to infer there was a substantial risk of serious physical harm, it was still unreasonable to decide this issue beyond a reasonable doubt based on this testimony alone. We disagree. Appellant presented no evidence at trial to suggest

that a substantial risk of serious physical harm did *not* exist. Thus, the jury was free to decide how much weight to give the Assistant Fire Chief's testimony in this regard. Very simply, this is not the exceptional case in which the evidence weighs heavily against conviction.

{¶50} We do not find that the jury clearly lost its way and created such a manifest miscarriage of justice that appellant's conviction for aggravated arson must be reversed.

{¶51} The sixth assignment of error is without merit.

{¶52} All assignments of error are overruled. The judgment of the Ashtabula County Court of Common Pleas is affirmed.

ROBERT J. PATTON, J.,

SCOTT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellant's assignments of error are without merit. It is the judgment and order of this court that the judgment of the Ashtabula County Court of Common Pleas is affirmed.

Costs to be taxed against appellant.

PRESIDING JUDGE MATT LYNCH

JUDGE ROBERT J. PATTON,
concurs

JUDGE SCOTT LYNCH,
concurs

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.