[Cite as *State v. Small*, 2026-Ohio-4527.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
LOGAN COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE,

v.

ABBY L. SMALL,

DEFENDANT-APPELLANT.

CASE NO. 8-26-05

OPINION AND JUDGMENT ENTRY

Appeal from Logan County Common Pleas Court
Trial Court No. CR 25 01 0004

Judgment Affirmed in Part and Reversed in Part and Cause Remanded

Date of Decision: November 16, 2026

APPEARANCES:

William T. Cramer **for Appellant**

Nathan Yohey **for Appellee**

WILLAMOWSKI, J.

{¶1} Defendant-appellant Abby L. Small ("Small") appeals the judgment of the Logan County Court of Common Pleas, arguing that her conviction is against the manifest weight of the evidence and that her sentence is contrary to law. For the reasons set forth below, the judgment of the trial court is reversed in part and affirmed in part.

Facts and Procedural History

{¶2} Small resided with her daughters, Q. and J., in a house that was owned by her parents and was just around the corner from where her mother, Terri, lived in West Mansfield, Ohio. After having a falling out with Small in August of 2024, Terri did not see Q. for a few months, even though Terri regularly babysat Q. and J. prior to this family dispute. As a result, Terri did not see Q. until Small asked Terri to babysit J. and Q. in November of 2024.

{¶3} At around noon on November 13, 2024, Q. and J. walked with Small to Terri's house. When they arrived, Terri noticed that Q. looked "very thin" and had two black eyes. (Tr. 81). Terri asked Q. if she got her black eyes from falling down. Terri testified that Q. denied getting these injuries from a fall; that Small then prompted Q. to explain what happened; and that Q. said, "[T]his is what happens when you ignore your mom." (Tr. 82).

{¶4} After Small left, Q. ate a whole banana; a hot dog; two large helpings of macaroni and cheese; green beans; and muffins in a forty-five-minute period. Terri testified that this was more than Q. usually ate and that Q. was acting rather "lethargic." (Tr. 84). She stated that Q. went back and forth between chatting with her and laying down to rest.

{¶5} Terri also observed that Q. was unable to turn the water faucet in the bathroom during this visit. Terri testified that she had to turn the faucet for Q.; that Q. had previously been able to perform this task; and that Q. "just didn't have any strength. . . ." (Tr. 86). Terri stated that this behavior was unusual because she was usually "flipping around doing cartwheels in my room. . . ." (Tr. 88).

{¶6} On November 14, 2024, Terri contacted the Logan County Sheriff's Office to report her concerns about Q.'s welfare. On the following day, Deputy Michael Martz ("Deputy Martz") went to Small's house with a social worker, Molly Vance ("Vance"), to perform a welfare check on the children. Unbeknownst to them, Terri and her husband were at the Logan County Family Court, seeking a limited temporary order that granted them emergency custody of the children.

{¶7} When Deputy Martz and Vance arrived at the house, Small was carrying bags of groceries on her front porch. On seeing them, Small left several bags on the ground, went inside the house, and slammed the door. In response, Deputy Martz knocked on the front door and attempted to make contact with Small. At this point, Small called Terri to ask why law enforcement was at her house and

was informed that a limited temporary order granting emergency custody of the children to Terri had just been issued.

{¶8} While he was still standing outside of the house, Deputy Martz could hear Small yelling on the phone with Terri. Around this time, he was notified that Terri and her husband had temporary custody of the children. Since Small's parents owned her residence, they knew the code to unlock the front door and gave this information to Vance. Deputy Martz used the code to open the door and began to speak to Small.

{¶9} Deputy Martz testified that Small was behaving erratically and pushed against the front door as he tried to communicate with her. He testified that he could hear Small saying: "You're not taking my f**king kids." (Tr. 139). Once inside, Deputy Martz placed Small under arrest for impeding an investigation. Q. and J. were then located in a bedroom in the house.

{¶10} Q. was then taken to Nationwide Children's Hospital where she received a medical examination from Dr. Constance Christian ("Dr. Christian"). During the evaluation, Dr. Christian observed bruising on her chest, cheek, upper right thigh, backside, right shin, and around her eyes. She also noted "healing wounds" on Q.'s lower back and an abrasion on her lip. (Tr. 202). During the assessment, Q. reported that Small had smacked and spanked her on the mouth, face, butt, and hands.

{¶11} Dr. Christian also determined that Q. was at risk for refeeding syndrome. She testified that this condition comes after a patient experiences an increase in caloric intake after a prolonged period of malnutrition. She further testified that, in cases of refeeding syndrome, the body can have severe, adverse reactions to a sudden increase in caloric intake. For this reason, Q. was hospitalized for eight days.

{¶12} On January 14, 2025, Small was indicted on one count of endangering children in violation R.C. 2919.22(A), a third-degree felony; one count of endangering children in violation of R.C. 2919.22(B)(1), a first-degree misdemeanor; and one count of obstructing official business in violation of R.C. 2921.31(A), a second-degree misdemeanor.

{¶13} On February 25, 2026, these charges proceeded to a jury trial. The State introduced the recording from Deputy Martz's body camera and called Terri as a witness. Ex. A. Dr. Christian also testified that, after examining Q.'s medical history and performing her medical examination, she could conclude within a reasonable degree of medical certainty that Q.'s bruising and malnutrition was consistent with physical abuse.

{¶14} On February 26, 2026, the jury found Small guilty on all three charges in the indictment. For the first count of endangering children, the jurors additionally found that Small's violation of her duty of care resulted in serious physical harm to Q. At sentencing, the trial court imposed a prison term of thirty-six months. The

trial court then said the following to Small: "After your release from prison you *may* be placed on up to two years of post-release control, or PRC." (Emphasis added.) (Mar. 31 Tr. 13).

{¶15} On March 31, 2026, the trial court issued its judgment entry of sentencing. While the trial court had notified Small at the sentencing hearing that post-release control was discretionary in this case, its judgment entry of sentencing stated that she "*will* be subject to up to three years, but not less than one year of Post-Release Control." (Emphasis added.) (Doc. 176).

{¶16} Small filed her notice of appeal on April 3, 2026 and raises the following two assignments of error:

First Assignment of Error

> **The weight of the evidence did not support a finding of serious physical harm as necessary to elevate endangering children to a felony offense.**

Second Assignment of Error

> **The trial court violated due process and imposed a sentence contrary to law in violation of R.C. 2953.08 by imposing mandatory postrelease control of one to three years when R.C. 2967.28 only authorized discretionary postrelease control of up to two years.**

First Assignment of Error

{¶17} Small argues that the additional finding that the jurors made on the first count in the indictment was against the manifest weight of the evidence.

Legal Standard

{¶18} "A manifest-weight analysis examines whether the State has carried its burden of persuasion at trial." *State v. Carroll*, 2024-Ohio-1626, ¶ 58 (3d Dist.). On review, "an appellate court's function . . . is to determine whether the greater amount of credible evidence supports the verdict." *State v. Harvey*, 2020-Ohio-329, ¶ 12 (3d Dist.), quoting *State v. Plott*, 2017-Ohio-38, ¶ 73 (3d Dist.).

> Appellate courts "must review the entire record, weigh the evidence and all of the reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts in the evidence, the factfinder 'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'"

State v. Schmidt, 2026-Ohio-2678, ¶ 38 (3d Dist.), quoting *Plott* at ¶ 73, quoting *State v. Thompkins*, 78 Ohio St. 3d 380, 387 (1997).

{¶19} The State can establish a conviction for endangering children in violation of R.C. 2919.22(A) by proving that the defendant "is the parent . . . of a child under eighteen years of age" and "create[d] a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support." If the State proves that the violation of R.C. 2919.22(A) "result[ed] in serious physical harm to the child involved," the offense is elevated from a first-degree misdemeanor to a third-degree felony. R.C. 2919.22(E)(2)(c).

{¶20} In turn, the Ohio Revised Code defines "serious physical harm" as including the following:

> (a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
>
> (b) Any physical harm that carries a substantial risk of death;
>
> (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
>
> (d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
>
> (e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

R.C. 2901.01(A)(5). "The degree of harm that rises to level of 'serious' physical harm is not an exact science, particularly when the definition includes such terms as 'substantial,' 'temporary,' 'acute,' and 'prolonged.'" *State v. Irwin*, 2007-Ohio-4996, ¶ 37 (7th Dist.). For this reason, "[t]he extent or degree of a victim's injuries is 'normally a matter of the weight rather than the sufficiency of the evidence.'" *State v. Sanabria*, 2019-Ohio-2869, ¶ 15 (11th Dist.), quoting *State v. Rogers*, 2018-Ohio-3495, ¶ 15 (8th Dist.).

Legal Analysis

{¶21} On appeal, Small argues that the serious-physical-harm finding made by the jury was against the manifest weight of the evidence. At trial, the State introduced medical records that indicated that Q. was treated in November of 2024 for "severe malnutrition" and was "[a]t risk for refeeding syndrome." (Ex. G, 210).

Dr. Christian testified that refeeding syndrome arises when a person experiences an increase in caloric intake after a "prolonged period" of malnutrition. (Tr. 205).

{¶22} Dr. Christian explained that, after a prolonged period of malnutrition, a person enters "a starvation mode" in which the body begins to use its "muscle and fat" as its source of nutrition. (Tr. 205). If a person in this condition rapidly reintroduces adequate nutrition into his or her system, the body can shift nutrients at a cellular level.

{¶23} In turn, this shift can lead to a drop in a person's magnesium, potassium, and phosphorous levels that is so severe that the person can experience "respiratory issues, heart issues, heart failure," and seizures. (Tr. 205). Dr. Christian underscored the seriousness of this condition by emphasizing that these assorted complications "ultimately can lead to death." (Tr. 205).

{¶24} The tests performed on Q. indicated that she had low potassium, low phosphorus, and a low heart rate. As a result, Q. was admitted to the hospital for eight days so that her heart rate, potassium levels, phosphorous levels, and magnesium levels could be monitored while she was given nutrients. Dr. Christian testified that these interventions were undertaken to avert the complications that could come if she progressed into refeeding syndrome.

{¶25} Dr. Christian's testimony indicated that Q.'s condition was the result of a prolonged period of malnutrition. *See State v. Snyder*, 2025-Ohio-4444, ¶ 223 (1st Dist.). She then explained that her use of the word "prolonged" or "chronic" in

this context would refer to a period that was longer than "a month." (Tr. 244). In addition to the lab results, she stated that Q. had reached the point of being "cachectic," having "low muscle tone, no body fat." (Tr. 209). She indicated Q. was "severely underweight" and was not merely thin or small. (Tr. 215).

{¶26} According to Dr. Christian, Q.'s medical history indicated that her condition was not the result of an underlying medical condition. In particular, she pointed to Q.'s growth chart to explain this conclusion. Q.'s medical records indicate that she was at the 21st percentile for her weight in February of 2022; the 27th percentile in November of 2022; the 24th percentile in February of 2023; and the 6th percentile in November of 2024.[1]

{¶27} Dr. Christian stated that Q. had been following her growth curve before she took a sharp drop in 2024 at the age of four. She stated that Q.'s medical history and subsequent medical examinations contained no indication of an underlying medical condition that would result in rapid weight loss or malnourishment. She also noted that Q.'s situation reversed once she was receiving adequate nutrition. *See State v. Fitzgerald*, 2017-Ohio-2717, ¶ 27 (12th Dist.).

{¶28} As Q. was showing visible signs of malnutrition, Terri testified that Q.'s sister, J., did not exhibit these same symptoms and did not need medical attention at the hospital. She testified that, while she was estranged from Small

[1] These figures are rounded to the nearest whole number.

between August and November of 2024, she saw J. on one occasion but was not permitted to see Q. because "she was in trouble." (Tr. 119).

{¶29} Similarly, Terri testified that, on November 13, 2024, Q. was unable to turn the faucet, even though she had been able to perform this task three months earlier. She also noticed that Q. was tired and lethargic where she had typically been active. Dr. Christian testified that the large meal that Q. ate at Terri's house could have pushed her towards refeeding syndrome and that this would not have happened if Q. had been receiving adequate nutrition.

{¶30} On cross-examination, Dr. Christian indicated that, while she concluded that Q.'s condition was consistent with abuse, she could not rule out all other possible alternative causes. However, she also indicated that her conclusions were within a reasonable degree of medical certainty. She also acknowledged that Q. was only four at the time of her statements but noted that she was able to speak clearly for a child.

{¶31} Dr. Christian also admitted that, while she could give an opinion as to whether a child had suffered from abuse, she could not identify who caused the injuries from a medical examination. On this point, the State introduced a recording from Deputy Martz's body camera in which Small can be heard saying that the children had been in her care. Terri also testified that the Q. and J. had been in the care of Small in the relevant timeframe.

{¶32} In summary, the evidence presented in this case established that a prolonged period of malnutrition put Q.'s body into "a starvation mode" and caused several adverse side effects. (Tr. 205). While more than one of the conditions that are listed in R.C. 2901.01(A)(5) may be applicable in this case, a rational trier of fact could, at a minimum, find that this prolonged period of malnutrition constituted "physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain." R.C. 2901.01(A)(5)(e). *See Snyder*, 2025-Ohio-4444, ¶ 214 (1st Dist.) (finding the symptoms associated with starvation constitute serious physical harm under R.C. 2901.01(A)(5)); *Fitzgerald*, 2017-Ohio-2717, at ¶ 24 (12th Dist.). Further, the record contains no indication that the jury lost its way and made a serious-physical-harm finding that was against the manifest weight of the evidence. Accordingly, the first assignment of error is overruled.

Second Assignment of Error

{¶33} Small argued that the judgment entry improperly ordered a mandatory period of post-release control.

Standard of Review

{¶34} "R.C. 2953.08(G)(2) establishes the scope of appellate review for felony sentences." *State v. Morgan*, 2024-Ohio-625, ¶ 6 (3d Dist.). Under this provision, an appellate court has the authority to increase, reduce, or modify a sentence if it clearly and convincingly finds that the sentence is contrary to law.

State v. Brill, 2023-Ohio-404, ¶ 7 (3d Dist.). "Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954). As used in this statute, "contrary to law" means "in violation of statute or legal regulations at a given time." *State v. Bryant*, 2022-Ohio-1878, ¶ 22, quoting Black's Law Dictionary (6th Ed. 1990).

Legal Standard

{¶35} "'Post-release control' involves a period of supervision by the Adult Parole Authority after an offender's release from prison that includes one or more post-release control sanctions imposed under R.C. 2967.28." *State v. Collins*, 2018-Ohio-4760, ¶ 15 (2d Dist.). At sentencing, "[t]he trial court must advise the offender at the sentencing hearing of the term of supervision, whether postrelease control is discretionary or mandatory, and the consequences of violating postrelease control." *State v. Bates*, 2022-Ohio-475, ¶ 11.

{¶36} Post-release control can be mandatory or discretionary depending on the nature and degree of the offense. *State v. Manzi*, 2023-Ohio-732, ¶ 10 (2d Dist.). Where a person is convicted of a sex offense or an offense of violence that is a third-degree felony, post-release control is generally going to be mandatory. R.C. 2967.28(B)(1), (4). Otherwise, post-release control for a third-degree felony will generally be discretionary and could last for a period of "up to two years." R.C. 2967.28(C).

{¶37} Crim.R. 36 provides that "[c]lerical mistakes in judgments, orders, or other parts of the record . . . may be corrected by the court at any time." A trial court may issue a nunc pro tunc entry to rectify a clerical mistake. *State v. Newsome*, 2025-Ohio-3102, ¶ 9 (6th Dist.). "Nunc pro tunc entries cannot be used to resentence a defendant or to impose a sanction on a defendant that was not imposed as part of the sentencing hearing." *Id*. Rather, "[a] nunc pro tunc entry is permitted to correct the record to accurately reflect what happened in a hearing when a judgment entry is inaccurate." *State v. Brown*, 2019-Ohio-1696, ¶ 8 (3d Dist.).

Legal Analysis

{¶38} In this case, Small was convicted of endangering children in violation of R.C. 2919.22(A). On appeal, she points out that this third-degree felony is not classified as an offense of violence in R.C. 2901.01(A)(9)(a) and that the imposition of post-release control should, therefore, be discretionary in this case pursuant to R.C. 2967.28(C). However, the judgment entry of sentencing employs mandatory language, stating that she "*will* be subject to up to three years, but not less than one year of Post-Release Control." (Emphasis added.) (Doc. 176).

{¶39} In response, the State concedes that the judgement entry of sentencing incorrectly states that Small *will* have to serve one to three years on post-release control. The State also points out that the trial court provided the correct notification at the sentencing hearing, stating that Small "may" be placed on post-release control for "up to two years. . . ." (Mar. 31 Tr. 13).

{¶40} The language in the judgment entry that imposes a mandatory period of post-release control is erroneous. For this reason, this portion of Small's sentence is reversed. Since the trial court gave a correct post-release control notification at sentencing, the erroneous statement in the judgment entry can be cured with a nunc pro tunc entry. *See Newsome*, 2025-Ohio-3102, at ¶ 11 (6th Dist.). Accordingly, the second assignment of error is sustained.

Conclusion

{¶41} Having found no error prejudicial to the appellant in the particulars assigned and argued in the first assignment of error, the judgment of the Logan County Court of Common Pleas is affirmed as to these issues.

{¶42} Having found error prejudicial to the appellant in the particulars assigned and argued in the second assignment of error, the judgment of the Logan County Court of Common Pleas is reversed as to these issues.

{¶43} This cause of action is hereby remanded to the trial court for further proceedings consistent with this opinion.

Judgment Affirmed in Part
Reversed in Part
And Cause Remanded

MILLER and WALDICK, J.J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, it is the judgment and order of this Court that the judgment of the trial court is affirmed in part and reversed in part with costs assessed equally between Appellant and Appellee for which judgment is hereby rendered. The cause is hereby remanded to the trial court for further proceedings and for execution of the judgment for costs.

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

John R. Willamowski, Judge

Mark C. Miller, Judge

Juergen A. Waldick, Judge

DATED:
/hls