IN THE COURT OF APPEALS OF OHIO

FIRST APPELLATE DISTRICT

HAMILTON COUNTY

State of Ohio,	:	
Plaintiff-Appellee,	:	No. C-250365 (M.C. No. 24/CRB/17851)
v.	:	(REGULAR CALENDAR)
Ndubuisi Ezeh,	:	
Defendant-Appellant.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered on November 4, 2026, appellant's five assignments of error are overruled. It is the judgment and order of this court that the judgment of the Hamilton County Municipal Court is affirmed. Any outstanding appellate court costs are assessed to appellant.

DINGUS, J., BOGGS, P.J., & EDELSTEIN, J.

By_____
Judge Shawn Dingus

Judges Kristin Boggs, Carly Edelstein, and Shawn Dingus of the Tenth Appellate District, sitting by assignment in the First Appellate District.

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v.	:	(REGULAR CALENDAR)
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Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 4, 2026

On brief: *Mark J. Tekulve*, Clermont County Prosecuting Attorney, and *Nick Horton*, for appellee. **Argued:** *Zack Garrison*.

On brief: *Kessler Defense LLC*, and *Stephanie Kessler*, for appellant. **Argued:** *Stephanie Kessler*.

APPEAL from the Hamilton County Municipal Court

DINGUS, J.

{¶ 1} Defendant-appellant, Ndubuisi Ezeh, appeals from a judgment of the Hamilton County Municipal Court convicting him of one count of aggravated menacing. For the following reasons, we affirm.

I. Factual and Procedural Background

{¶ 2} On October 16, 2024, a criminal complaint was filed against Ezeh, charging him with one count of aggravated menacing, in violation of R.C. 2903.21. Ezeh pleaded not guilty, and the matter proceeded to a jury trial in May 2025. At trial, plaintiff-appellee, State of Ohio, called three individuals to testify: Judge Dwane Mallory ("Judge Mallory"),

Judge William Mallory ("Judge W. Mallory"), and Sergeant Joshua Meadors ("Sergeant Meadors"). Ezeh testified in his own defense.

{¶ 3} Judge Mallory testified to the following facts. In an unrelated 2022 criminal matter, he sent Ezeh to the Summit Behavioral Center. On April 15, 2022, the center's Chief of Police telephoned Judge Mallory to inform him that Ezeh had made a threat against the judge's life. In response to this testimony, the trial court instructed the jury that the evidence of this threat was not being introduced for the truth of the matter asserted; instead, it was introduced only as to the effect on the listener.

{¶ 4} On October 16, 2024, Judge Mallory encountered Ezeh twice outside the Hamilton County Municipal Court building. That morning, Judge Mallory left the courthouse for coffee and heard someone call his name. He turned, saw Ezeh, and told him to stay away. Ezeh, who appeared angry, told Judge Mallory, "you said I threatened your life, that ain't right." (June 2, 2025 Tr. at 82.) Ezeh also complimented Judge Mallory's attire. The judge then walked away without further interaction. Later, at lunchtime, Judge Mallory left the courthouse on foot with his brother, Judge W. Mallory, and his bailiff, Raymond Phoenix, to eat at a nearby grill. During lunch, Judge Mallory described his earlier encounter with Ezeh and expressed concern for his own safety. The group decided to return to the courthouse through the back entrance. Despite taking a different route, Judge Mallory again encountered Ezeh. Judge Mallory heard yelling, looked to his right, and saw Ezeh across the street speaking in his direction. He said to his brother and bailiff, "that's him." (Tr. at 92.) Not using a crosswalk, Ezeh began to cross the street toward them. Feeling threatened, Judge Mallory removed a canister of mace from his pocket and displayed it to Ezeh. Ezeh stopped, turned around, and shouted, "I am coming for you, I am coming for you[,]" as he began to walk away. (Tr. at 94.)

{¶ 5} Judge W. Mallory testified that, over lunch on October 16, 2024, his brother told him about the earlier confrontation with Ezeh. As they walked back to the courthouse, Judge W. Mallory saw someone across the street "screaming in our direction." (Tr. at 122.) Judge Mallory said, "there he is." (Tr. at 122.) Ezeh "was walking in the middle of the street towards us in an aggressive fashion," and screaming, "I am coming for you." (Tr. at 123, 126.) He saw his brother, who "looked very frightened," reach into his pocket for mace. (Tr. at 123.) A vehicle passed between the group and Ezeh, and as Ezeh walked away, the group

continued to the courthouse. Judge W. Mallory described his brother as not easily rattled but said he "was very shaken" by the encounter. (Tr. at 129.)

{¶ 6} After learning of the lunchtime incident, Sergeant Meadors retrieved surveillance video of the area. The jury was shown two silent videos of the incident, recorded from slightly different angles, and the court admitted both into evidence. The videos show Judge Mallory and his two companions walking toward the courthouse on the sidewalk. Judge Mallory removes an object from his jacket pocket with his right hand and extends his arm as he turns toward a man walking toward them on the street. That man, Ezeh, pauses in the middle of the street, turns, and walks away. Judge Mallory's group then continues toward the courthouse.

{¶ 7} Ezeh testified that he was required to appear at the Hamilton County Municipal Court on October 16, 2024. That morning, he saw Judge Mallory leaving the building. Ezeh knew someone had told Judge Mallory that he had threatened him. Ezeh confronted Judge Mallory about what Ezeh believed was a fabricated claim that he had threatened to kill the judge. Ezeh testified that he said that he "would be coming for [Judge Mallory's] job" because of that fabrication. (Tr. at 146.) Judge Mallory walked away, and Ezeh entered the courthouse. Around lunchtime, Ezeh left the courthouse and listened to music while waiting for his ride. He decided to visit a nearby office to get a bus pass and then go to the court clinic. While crossing the street, he stopped abruptly when he heard someone tell him to stay away. According to Ezeh, he "literally froze[,]" said nothing, and "started backing up, going back in the other direction." (Tr. at 154.) Ezeh denied ever threatening Judge Mallory, including by saying that he was "coming for [him]" during their October 16, 2024 encounters. (Tr. at 180.)

{¶ 8} Following deliberation, the jury found Ezeh guilty as charged. The trial court sentenced him to 180 days in jail, with 89 days of jail-time credit, and suspended the balance conditioned on his compliance with community control sanctions.

{¶ 9} Ezeh timely appeals.

II. Assignments of Error

{¶ 10} Ezeh assigns the following five assignments of error for our review:

> [I.] The trial court erred by improperly admitting prior bad act evidence.

> [II.] The state committed prosecutorial misconduct when it violated the golden-rule.
>
> [III.] The trial court erred when it violated the golden-rule and asked the jury to put themselves in the shoes of a party to the case.
>
> [IV.] The verdict was against the manifest weight of the evidence.
>
> [V.] The cumulative nature of all the errors denied Mr. Ezeh his right to a fair trial.

III. Discussion

{¶ 11} Ezeh's first assignment of error asserts that the trial court erred in admitting prior bad-acts evidence. More particularly, he contends it was error for the trial court to admit Judge Mallory's testimony that he was told by someone at the Summit Behavioral Center in 2022 that Ezeh had threatened to harm him. Ezeh argues that the court should have excluded this other-acts evidence, under Evid.R. 404(B), because the state did not provide proper notice or establish a permissible basis for admitting it. Alternatively, Ezeh argues that the court should have excluded the testimony under Evid.R. 403. This assignment of error is not well-taken.

{¶ 12} We apply a mixed standard of review to a trial court's admission of other-acts evidence. *State v. Worley*, 2021-Ohio-2207, ¶ 117. The admissibility of other-acts evidence is a question of law appellate courts review de novo. *Id.* However, whether evidence should be excluded in accordance with Evid.R. 403(A) is reviewed for an abuse of discretion. *Id.* An abuse of discretion occurs when "a court [exercises] its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority." *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. " '[I]t implies that the court's attitude is arbitrary, unreasonable, or unconscionable.' " *Hayes v. Durrani*, 2021-Ohio-725, ¶ 8 (1st Dist.), quoting *Boolchand v. Boolchand*, 2020-Ohio-6951, ¶ 9 (1st Dist.).

{¶ 13} Before addressing Ezeh's Evid.R. 404(B) argument, we consider the hearsay implications of the challenged testimony. Evid.R. 801(C) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." The Supreme Court of Ohio has explained that "[a] statement is not hearsay when offered for a purpose other than to prove

the truth of the matter asserted." *State v. Osie*, 2014-Ohio-2966, ¶ 118, citing *State v. Davis*, 62 Ohio St.3d 326, 343 (1991). For example, a statement is not hearsay when introduced to show its effect on the listener. *Id.*

{¶ 14} Here, Judge Mallory testified that someone told him in 2022 that Ezeh had threatened to harm him. Consistent with the hearsay rules, the trial court instructed the jury to consider this evidence only for its effect on the listener, Judge Mallory, and not for any other purpose, including for the truth of whether Ezeh actually made the threat. Ezeh acknowledges that the hearsay rules do not require exclusion of this testimony, and he does not directly challenge the trial court's limiting instruction. Instead, he argues that, even if admissible under the hearsay rules, the testimony was otherwise not admissible under Evid.R. 403 and 404(B).

{¶ 15} Evid.R. 404(B)(1) states that "[e]vidence of any other crime, wrong, or act is not admissible to prove [the appellant's] character in order to show that on a particular occasion the person acted in accordance with the character." Such evidence, however, "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). These listed exceptions are not exclusive. *State v. Wade*, 2023-Ohio-3490, ¶ 62 (10th Dist.). The proponent of "other acts" evidence must provide reasonable notice of its intent to offer the evidence. *Id.* And the rule requires the notice to occur either before trial or during trial, if the trial court excuses pre-trial notice for good cause. Evid.R. 404(B)(2)(c). Further, "[e]vidence that goes directly to the charged offense is not other-acts evidence." *State v. Madaris*, 2026-Ohio-2305, ¶ 31 (1st Dist.). "Evid.R. 404(B) covers other acts that are extrinsic to the original crime, not acts that are intrinsic or tied to the original crime." *State v. Powell*, 2023-Ohio-2770, ¶ 45 (8th Dist.). "When other acts are 'inextricably intertwined' with that offense, those acts are said to be intrinsic to the alleged crime." *State v. Hill*, 2019 Ohio App. LEXIS 3524, *19 (5th Dist. Aug. 5, 2019). "Other acts 'are inextricably intertwined with a charged crime when they are so blended or connected with the charged crime that proof of one incidentally involves the other, explains the circumstances thereof, or tends logically to prove any element of the crime charged.' " *State v. Crowley*, 2023-Ohio-1764, ¶ 21 (2d Dist.), quoting *State v. Sinclair*, 2003-Ohio-3246, ¶ 35 (2d Dist.). *See State v. Rardon*, 2018-Ohio-1935, ¶ 48 (5th Dist.) (evidence that relates

to the counts charged in the indictment and the circumstances surrounding the prosecution leaves this evidence outside the purview of Evid.R. 404(B)). Thus, evidence intrinsic to the charged crime is not subject to the requirements of Evid.R. 404(B).

{¶ 16} As set forth above, Ezeh was charged with aggravated menacing, in violation of R.C. 2903.21. R.C. 2903.21(A) states in part: "No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person[.]" To sustain a conviction for aggravated menacing, the state must show that the defendant knowingly caused the victim to have a subjective and reasonable fear of serious physical harm. *State v. Landrum*, 2016-Ohio-5666, ¶ 9 (1st Dist.); *State v. Henry*, 2006-Ohio-4783, ¶ 28 (10th Dist.); *see State v. Barnes*, 2026-Ohio-2088, ¶ 58 (8th Dist.) ("The gist of the offense of aggravated menacing is the victim's reasonable belief that serious physical harm is about to befall him or her."); *State v. McDonald*, 2018-Ohio-3845, ¶ 34 (11th Dist.) (A victim's subjective belief that the offender will cause him or his family serious physical harm is an essential element of the offense of aggravated menacing.). The state is not required to establish "that the offender is able to carry out the threat or even that the offender intended to carry out the threat." *State v. Clemmons*, 2020-Ohio-5394, ¶ 33 (12th Dist.). Thus, Judge Mallory's belief that Ezeh would cause him serious physical harm was an essential element of the charged offense. The evidence that Judge Mallory learned in 2022 that Ezeh, while at the Summit Behavioral Center (where Judge Mallory had sent Ezeh in a criminal case), had threatened to harm him was directly related to the judge's concern for his own safety when Ezeh approached him on October 16, 2024. Thus, because this evidence was intrinsic to the charged crime, it was not other-acts evidence governed by Evid.R. 404(B).

{¶ 17} Ezeh alternatively argues that, even if not inadmissible under Evid.R. 404(B), the evidence that Judge Mallory was informed that Ezeh had threatened him was unfairly prejudicial and should have been excluded under Evid.R. 403(A). This rule provides that relevant evidence is inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." Evid.R. 403(A). Exclusion under Evid.R. 403(A) requires more than mere prejudice because any evidence adverse to a party's case could be deemed prejudicial. *State v. Crotts*, 2004-Ohio-6550, ¶ 23 (emphasis in original) (Evid.R. 403(A) requires exclusion only of "evidence that

is *unfairly* prejudicial."). Unfairly prejudicial evidence "arouses the jury's emotional sympathies, evokes a sense of horror, or appeals to an instinct to punish." (Further quotation marks deleted and citation omitted.) *Worley*, 2021-Ohio-2207, at ¶ 125. Such evidence usually, though not always, appeals to the jury's emotions rather than its intellect. *Id.*

{¶ 18} Ezeh asserts that he would not have been convicted without evidence that Judge Mallory learned of Ezeh's threat in 2022. Although the evidence was certainly unfavorable to Ezeh's defense, it was not unfairly prejudicial. It was directly probative of an essential element of the charged offense: Judge Mallory's belief about the circumstances he faced on October 16, 2024. Whether Ezeh actually made the threat in 2022 was not at issue, and, consistent with the hearsay rules, the trial court instructed the jury to consider the evidence only for its effect on Judge Mallory, not for the truth of whether Ezeh made the threat. At most, the evidence created a minimal risk of appealing to the jurors' emotions rather than their intellect. Consequently, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. Therefore, we reject Ezeh's argument that the trial court erred in admitting this evidence.

{¶ 19} For these reasons, we overrule Ezeh's first assignment of error.

{¶ 20} Because they are interrelated, we address together Ezeh's second and third assignments of error. In Ezeh's second assignment of error, he alleges that the state committed prosecutorial misconduct at trial by making a golden-rule argument. His third assignment of error contends that the trial court erred in similarly asking the jury to place themselves in a party's position. Both assignments of error lack merit.

{¶ 21} Ezeh did not object to the prosecutor's statements or the trial court instructions. Therefore, we review only for plain error. *See State v. Jones*, 2026-Ohio-852, ¶ 5 (1st Dist.) ("The failure to timely object waives all but plain-error review on appeal.") (Internal quotation marks deleted and citations omitted.). To obtain relief under the plain-error standard, a defendant must demonstrate that the error was obvious and resulted in prejudice, "meaning that the error affected the outcome of the trial." *State v. Wilson*, 2026-Ohio-1178, ¶ 12 (1st Dist.); *State v. Sowders*, 2023-Ohio-4498, ¶ 11 (1st Dist.). Reviewing courts must exercise great caution and find reversible plain error only under exceptional

circumstances and "to prevent a manifest miscarriage of justice." (Internal quotation marks deleted and citations omitted.) *State v. Rohrbaugh*, 2010-Ohio-3286, ¶ 6.

{¶ 22} The golden rule is a moral principle that directs people to treat others as they would wish to be treated. At its core, the rule appeals to one's empathy for others. A golden-rule argument that asks jurors to "place themselves in the position of a party to the cause . . . are usually improper, and reversibly erroneous." (Internal citation marks deleted and citations omitted.) *State v. Shelton*, 2023-Ohio-2458, ¶ 14 (1st Dist.). "As this court has explained, golden-rule arguments are, in essence, 'a request by the prosecutor that the jury accord a defendant the same treatment that the defendant accorded his victim.' " *Id.*, quoting *State v. Hairston*, 1984 Ohio App. LEXIS 8832 (1st Dist. Jan. 18, 1984). "By asking the jury to step into the shoes of the victim, the state is 'essentially seek[ing] to have the jury abandon their position of impartiality.' " *Id.*, quoting *State v. Ford*, 2006-Ohio-2108, ¶ 38 (2d Dist.). Such arguments are prohibited because they "seek to invoke the sympathy or prejudice of the jury by asking the jury to step into the shoes of another." *State v. Robinson*, 2008-Ohio-3498, ¶ 60 (6th Dist.). But golden-rule arguments are "not per se prejudicial so as to warrant a new trial; rather, the test is whether it prejudicially affected substantial rights of the defendant." *State v. Ross*, 2010-Ohio-843, ¶ 126 (2d Dist.).

{¶ 23} In alleging prosecutorial misconduct based on a golden-rule argument, Ezeh cites the following statements of the prosecutor during closing arguments:

> And so what I anticipate the judge is going to tell you is that you must put yourself in the position of the alleged victim, with his characteristics, his knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him at the time.
>
> . . .
>
> All that matters was the subjective belief of Judge Dwane Mallory.

(Tr. at 185, 187.) Ezeh also challenges the following jury instruction:

> In deciding whether the alleged victim, Dwane Mallory, had reasonable grounds to believe and an honest belief that the defendant would cause serious physical harm to him, you must put yourself in the position of the alleged victim with his characteristics, his knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him at the time.

(Tr. at 214.)

{¶ 24} Thus, in closing arguments, the prosecutor asked the jury to place themselves in Judge Mallory's position and evaluate the circumstances confronting him at that time. Similarly, the trial court instructed the jury to determine whether Judge Mallory subjectively and reasonably believed that Ezeh would cause him serious physical harm. Neither the prosecutor's statements nor the trial court's instruction was improper. Judge Mallory's belief as to whether Ezeh would cause him serious physical harm was at issue. In deciding whether Judge Mallory actually and reasonably feared for his own safety, the jury necessarily had to consider his knowledge and awareness of all the circumstances confronting him at the time. In this way, the jury had to view the matter from his perspective to evaluate the circumstances and his associated fear. Therefore, by asking the jury to consider the circumstances from Judge Mallory's perspective—to determine whether he reasonably believed that Ezeh would cause him serious physical harm—the prosecutor did not improperly appeal to the jurors' emotions in an attempt to have them abandon their impartiality. And because the jury instruction correctly reflects the law, it was not given in error.

{¶ 25} For these reasons, we overrule Ezeh's second and third assignments of error.

{¶ 26} Ezeh's fourth assignment of error contends that the jury's verdict was against the manifest weight of the evidence. He argues that any finding that he acted knowingly was against the manifest weight of the evidence. This assignment of error lacks merit.

{¶ 27} When an appellate court reviews whether a conviction is against the manifest weight of the evidence, " '[t]he court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving the 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.' " *State v. Thompkins*, 1997-Ohio-52, ¶ 25, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). "Sitting as the 'thirteenth juror,' the court of appeals considers whether the evidence should be believed and may overturn a verdict if it disagrees with the trier of fact's conclusion." *State v. Jordan*, 2023-Ohio-3800, ¶ 17. However, the appellate court's authority to reverse on manifest-weight grounds " 'should be exercised

only in the exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at ¶ 25, quoting *Martin* at 175.

{¶ 28} As discussed above, Ezeh was convicted of aggravated menacing, in violation of R.C. 2903.21(A), which prohibits any person from "knowingly caus[ing] another to believe that the offender will cause serious physical harm to the person." Ezeh argues that his conviction was against the manifest weight of the evidence because he testified that he never threatened to harm Judge Mallory and had no reason to know that Judge Mallory would fear he would cause him harm. Ezeh also argues that he did not say "I am coming for you" to Judge Mallory, and that even if he did, he made the statement while walking away. (Tr. at 123, 126.) These arguments are unavailing.

{¶ 29} Although Ezeh disputed making the threat against Judge Mallory in 2022, he acknowledged that he knew Judge Mallory had been told about the alleged threat. Ezeh testified that he raised this issue during his first encounter with Judge Mallory on October 16, 2024. As to the second encounter, the surveillance videos showed Ezeh crossing the street outside of a crosswalk and moving toward Judge Mallory's group, consistent with the testimony of Judge Mallory and Judge W. Mallory. Both testified that Judge Mallory displayed a mace canister in response to Ezeh's approach. Both witnesses gave conflicting accounts of whether and when Ezeh verbally threatened Judge Mallory during the lunchtime encounter. Judge W. Mallory testified that Ezeh screamed, "I am coming for you," as he aggressively approached them; Judge Mallory testified that Ezeh shouted this as he walked away, although he also testified that Ezeh yelled at them while crossing the street in their direction. Ezeh denied making the statement. Judge W. Mallory also testified that Judge Mallory, who is not easily rattled, was visibly shaken after the encounter with Ezeh. Ultimately, the jury was in the best position to assess the credibility of the witnesses, resolve inconsistencies or contradictions in the evidence, and to determine whether Ezeh knowingly caused Judge Mallory to believe that he would cause him serious physical harm. Based on our review of the evidence, we cannot find that the jury's resolution of these issues was against the manifest weight of the evidence.

{¶ 30} Accordingly, we overrule Ezeh's fourth assignment of error.

{¶ 31} Lastly, in his fifth assignment of error, Ezeh argues that cumulative error denied him a fair trial. We are unpersuaded.

{¶ 32} Under the doctrine of cumulative error, an appellate court will reverse a conviction "when the cumulative effect of errors in a trial deprives a defendant of a fair trial even though each of the numerous errors does not individually constitute cause for reversal." *State v. Graham*, 2020-Ohio-6700, ¶ 169; *see State v. DeMarco*, 31 Ohio St.3d 191 (1987), paragraph two of the syllabus (although errors at trial singularly "may not rise to the level of prejudicial error, a conviction will be reversed where the cumulative effect of the errors deprives a defendant of the constitutional right to a fair trial."); *State v. Johnson*, 2019-Ohio-3877, ¶ 57 (1st Dist.) ("The doctrine of cumulative error allows a conviction to be reversed if the cumulative effect of errors, deemed separately harmless, deprived the defendant of his right to a fair trial."). However, when an appellant "presents no errors to cumulate," the doctrine of cumulative error does not apply. *State v. Moore*, 2013-Ohio-3365, ¶ 61 (10th Dist.); *see State v. Madrigal*, 2000-Ohio-448 (noting that, to find cumulative error, an appellate court first must find multiple errors committed at trial); *State v. Teitelbaum*, 2016-Ohio-3524, ¶ 124 (10th Dist.) ("where there are not multiple errors, the doctrine of cumulative error is not applicable"); *State v. Duncan*, 2024-Ohio-5610, ¶ 57 (10th Dist.) (cumulative error is not demonstrated "simply by combining . . . unsuccessful arguments together"). Because Ezeh presents no trial court error, his reliance on the doctrine of cumulative error is unavailing.

{¶ 33} Therefore, we overrule Ezeh's fifth assignment of error.

IV. Disposition

{¶ 34} Having overruled all five of Ezeh's assignments of error, we affirm the judgment of the Hamilton County Municipal Court.

Judgment affirmed.

BOGGS, P.J., and EDELSTEIN, J., concur.

Judges Kristin Boggs, Carly Edelstein, and Shawn Dingus of the Tenth Appellate District, sitting by assignment in the First Appellate District.