[Cite as *State v. McCall*, 2026-Ohio-4544.]

# IN THE COURT OF APPEALS OF OHIO
# ELEVENTH APPELLATE DISTRICT
# TRUMBULL COUNTY

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| STATE OF OHIO,<br>CITY OF WARREN,<br><br>Plaintiff-Appellee,<br><br>- vs -<br><br>JAMES F. MCCALL,<br><br>Defendant-Appellant. | **CASE NO. 2026-T-0036**<br><br>Criminal Appeal from the<br>Warren Municipal Court<br><br>Trial Court No. 2025 CRB 001725 |

## OPINION AND JUDGMENT ENTRY

Decided: November 16, 2026
Judgment: Affirmed

*Enzo Cantalamesa*, Warren City Law Director and *Diane Barber*, Warren City Assistant Law Director, 141 South Street, S.E., Warren, OH 44481 (For Plaintiff-Appellee).

*Aaron M. Meikle*, 173 West Market Street, Warren, OH 44481 (For Defendant-Appellant).

ROBERT J. PATTON, J.

**{¶1}** Defendant-appellant, James F. McCall ("McCall"), appeals from the judgment of the Warren Municipal Court sentencing him to 180 days in jail, with five days suspended, as a result of his conviction of domestic violence, a misdemeanor of the first degree. For the following reasons, we affirm.

**{¶2}** On appeal, McCall asserts that the trial court erred when it denied or otherwise failed to grant the State of Ohio's ("State") motion to dismiss. Upon review of the limited record before this court, we conclude that the motion was effectively withdrawn by the subsequent actions of the State, and the matter proceeded to trial at the "request

of the parties." As the trial court did not rule on the State's motion as it was effectively withdrawn, we do not find that the trial court's decision ran afoul of the separation of powers doctrine in this instance.

**{¶3}** Accordingly, the judgment of the Warren Municipal Court is affirmed.

**Substantive and Procedural Facts**

**{¶4}** A complaint was filed in the Warren Municipal Court on September 25, 2025, charging McCall with one count of domestic violence, a first-degree misdemeanor, in violation of Warren Cod.Ord. 537.14(a). McCall pleaded not guilty at arraignment and bond was set at $5,000 cash or surety. As a condition of bond, McCall was ordered to have no contact with the victim, K.O.

**{¶5}** On October 31, 2025, the State filed a motion for leave to dismiss pursuant to Crim.R. 48 and R.C. 2941.30, and a hearing was scheduled for December 3, 2025.[1] The December 3, 2025 notation on the docket indicates that the trial court provided the State with an opportunity to provide additional argument and facts to the court for consideration, that the victim did not object to the motion, and that "the pleading did not have sufficient detail for the court to make a determination."

**{¶6}** On January 9, 2026, the case was scheduled for a final pretrial. The docket indicates that the hearing was reset as the parties were awaiting this court's decision in *State v. Glover,* 2026-Ohio-1332 (11th Dist.).[2] On February 13, 2026, a new assistant prosecutor was assigned to the case and conducted an independent review. The matter

1. Transcripts of these proceedings are not part of the record on appeal. McCall filed a motion to supplement the record with a transcript of the proceedings which was held in abeyance. The request was later construed as a motion for extension of time to file a brief. Because an affidavit from the court reporter was not filed pursuant to Loc.R.10(D), the request was ultimately overruled.
2. The decision in *Glover* was released on April 13, 2026.

then proceeded to a jury trial on April 14, 2026. At the conclusion of trial, the jury found McCall guilty of domestic violence as charged in the complaint.

**{¶7}** A sentencing hearing was held on April 21, 2026. Prior to imposing sentence, the court discussed the previously filed motion for leave to dismiss pursuant to Crim.R. 48. The trial court explained that the motion "was filed by a former prosecutor, no longer employed at the prosecutor's office" and that the "[c]ourt provided an opportunity for new counsel [for the City] . . . to review the matter." The trial court indicated that the new prosecutor asked for the matter to be set for trial after her review. The trial court then imposed a sentence of 180 days in jail with 5 days suspended. The trial court further ordered McCall subject to one year of probation and granted K.O.'s request for a post-conviction no-contact order. Defense counsel made an oral motion for stay of execution of sentence pending appeal. The State opposed. The trial court denied the oral request.

**{¶8}** McCall timely appeals.

## The Appeal

**{¶9}** McCall raises a single assignment of error for review:

> The trial court abused its discretion and violation the separation-of-powers doctrine by refusing the grant the State's factually supported motion for leave to dismiss under Crim.R. 48(A), independently reassessing the evidence, and preserving the prosecution until a successor prosecutor elected to proceed to trial. State's Motion for Leave to Dismiss, filed Oct. 31, 2025; Dec. 3, 2025 Judgment Entry.

**{¶10}** "The [S]tate may by leave of court and in open court file an entry of dismissal of an indictment, information, or complaint and the prosecution shall thereupon terminate." Crim.R. 48(A). "Under this rule, the prosecuting attorney, with the court's discretionary permission, has the ability to request 'when and which charges should be

dropped.'" *State v. Jackson*, 2026-Ohio-2669, ¶ 12 (11th Dist.), quoting *State v. Jones*, 2015-Ohio-1818, ¶ 31 (8th Dist.); *see also State v. Jones*, 2009-Ohio-1957, ¶ 13 (2d Dist.).

**{¶11}** As this court has previously recognized, "'the interplay of the respective roles of two separate but co-equal branches of our government.'" *Jackson* at ¶ 13, quoting *Glover*, 2026-Ohio-1332, at ¶ 13 (11th Dist.). A trial court's discretion in determining whether a State's Crim.R. 48(A) motion should be granted "'is limited by the separation of powers—the decision whether to prosecute, and the decision as to the charge to be filed, rests in the discretion of the prosecuting attorney.'" *Glover* at ¶ 19, quoting *Cleveland v. Primm*, 2017-Ohio-7242, ¶ 5 (8th Dist.), citing *State ex rel. Master v. Cleveland*, 1996-Ohio-228, ¶ 15. Accordingly, it is well established that charging decisions are committed to prosecutorial discretion and are not generally subject to judicial control. *Master* at ¶ 15,

**{¶12}** This court has also recognized that "'[b]roadly interpreting the Crim.R. 48(A) leave-of-court requirement could be an invitation for the judiciary to exceed its constitutional role and breach the separation of powers by intruding upon the plenary prosecution power of the executive branch.'" *Jackson* at ¶ 15, quoting *Primm* at ¶ 5.

**{¶13}** *In Glover,* this court acknowledged the requirement that the State must provide more than a "conclusory assertion of insufficient evidence." *Glover* at ¶ 26. Factually, Glover was charged with aggravated menacing, which required proof, beyond a reasonable doubt, that he knowingly caused A.H. to believe he would cause her or her property serious physical harm. *See* R.C. 2903.21(A). The State sought leave to dismiss the charge and emphasized that neither C.H. nor A.H. experienced any fear during the

encounter. While C.H. asserted he did observe Mr. Glover show the firearm from the pocket of his hoodie, A.H. was the only named victim in the complaint. A.H. firmly maintained she neither saw a firearm in Glover's possession nor was she in fear that Mr. Glover would cause her any harm. *Glover* at ¶ 30. This court concluded that the trial court erred in denying the State's motion for leave to dismiss the charges. *Id.* This court explained that "there was 'good cause' for the State to seek leave to dismiss the aggravated menacing charge against [Glover]," that "the State fundamentally demonstrated it lacked sufficient evidence to prove [the charges] beyond a reasonable doubt. . ." and that "[n]o cognizable public interest is served by compelling prosecution of a charge whose foundational element the alleged victim herself refutes" *Id.* at ¶ 31.

**{¶14}** In *Jackson*, 2026-Ohio-2669 (11th Dist.), this court similarly concluded that no cognizable public interest was served by compelling prosecution of a charge on a theory of complicity where the surveillance footage and the alleged victim refute a foundational element of the assault offense. The court noted that the prosecutor in Jackson "provided significantly more than mere conclusory statements in support of the State's motion for leave to dismiss the assault charge against Jackson." *Jackson* at ¶ 21.

**{¶15}** However, both *Glover* and *Jackson* involved the trial court's *denial* of the State's request. A review of the record in the case sub judice reveals no such denial. Instead, a hearing was held on the request, a decision was held in abeyance for this court's decision in *Glover*, and a new prosecutor was assigned to review the file. The transcripts of the pretrial hearings were not made part of the record on appeal. "Counsel or the appellant, and not the court reporter, has the sole responsibility for filing the transcript of proceedings and/or requesting timely extensions for the record." Eleventh

Dist.Loc.R. 10(C); App. R. 9(B). While defense counsel requested leave to supplement the record and an extension of time to file his brief, the request was not accompanied by the court reporter's affidavit as required by Loc.R.10(D). Thus, counsel's request was overruled. *Id.*

**{¶16}** "It is well settled that, when an appellant is asserting error relating to proceedings in a trial court, he or she is required to provide a transcript for appellate review." *State v. Lao*, 2018-Ohio-3745, ¶ 5 (11th Dist.), citing *State v. Martin*, 2013-Ohio-2833, ¶ 13 (11th Dist.). "Such is necessary because an appellant shoulders the burden of demonstrating error by reference to matters within the record." *Warren v. Clay*, 2004-Ohio-4386, ¶ 4, citing *State v. Skaggs*, 53 Ohio St.2d 162, 163 (1978). "Where a transcript is necessary for the resolution of matters raised on appeal is omitted from the record, an appellate court has nothing to review. As appellant has failed to provide the transcripts, he cannot demonstrate error. Accordingly, this court has no choice but to presume the validity of the lower court's proceedings." *Lao* at ¶ 8, citing *Martin* at ¶ 16, citing *Clay* at ¶ 7.

**{¶17}** Upon review of the limited record before us, the trial court did not rule on the State's motion for leave. Instead, it appears the request was effectively withdrawn by the subsequent actions of the State when the newly assigned prosecutor elected to proceed to trial. Indeed, the March 13, 2026 docket entry reads "set for trial at the request of the parties." Importantly, the decision to set the matter for trial occurred prior to this court's April 13, 2026 decision in *Glover*, 2026-Ohio-1332 (11th Dist.). Moreover, at trial, neither the State nor the defense objected to the trial court proceeding to trial.

**{¶18}** Thus, the case sub judice stands in stark contrast to the trial court's explicit refusals of the State's motions to dismiss in *Jackson* and *Glover*. Indeed, the record suggests that the State effectively withdrew their motion for leave to dismiss and that the trial court did not otherwise rule on the State's request. Indeed, in the sentencing entry, the trial court noted the procedural history. The trial court noted that a similar case regarding a motion for leave to dismiss charges was pending in this court. While waiting for that decision, a new assistant prosecutor took over the case and requested that the case proceed to trial.

**{¶19}** "'[T]he decision whether to prosecute, and the decision as to the charge to be filed, rests in the discretion of the prosecuting attorney.'" *Glover,* 2026-Ohio-1332 at ¶ 19 (11th Dist.), quoting *Primm*, 2017-Ohio-7242, at ¶ 5 (8th Dist.), *citing State ex rel. Master*, 1996-Ohio-228, at ¶ 15. As the trial court did not rule on the State's motion as it was effectively withdrawn by subsequent action of the State, we do not find that the trial court's decision ran afoul of the separation of powers doctrine in this instance. A decision to the contrary would result in the impermissible infringement upon the plenary powers of the executive branch.

**{¶20}** Accordingly, McCall's assignment of error is without merit.

## Conclusion

**{¶21}** For the reasons set forth above, the judgment of the Warren Municipal Court is affirmed.

MATT LYNCH, P.J.,

EUGENE A. LUCCI, J.,

concur.

## JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellant's assignment of error is without merit. It is the judgment and order of this court that the judgment of the Warren Municipal Court is affirmed.

Costs to be taxed against appellant.

JUDGE ROBERT J. PATTON

PRESIDING JUDGE MATT LYNCH,
concurs

JUDGE EUGENE A. LUCCI,
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.