

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO,	:	
	:	CASE NO. CA2025-12-103
Appellee,	:	
	:	<u>OPINION AND</u>
vs.	:	<u>JUDGMENT ENTRY</u>
	:	10/13/2026
ANTHONY C. COLLINS, SR.,	:	
	:	
Appellant.	:	
	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY MUNICIPAL COURT
Case No. 2025 CRB 02421

Mark J. Tekulve, Clermont County Prosecuting Attorney, and Zachary K. Garrison, Assistant Prosecuting Attorney, for appellee.

Christopher Bazeley, for appellant.

OPINION

M. POWELL, J.

{¶ 1} Appellant, Anthony Collins, appeals his conviction and sentence in the Clermont County Municipal Court for domestic violence.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On September 17, 2025, appellant was charged with first-degree

misdemeanor domestic violence. The charge stemmed from an incident during which appellant thrice slapped the mother of two of his children (the "victim") while at the victim's home. The victim has two older children from a previous relationship.

{¶ 3} The matter proceeded to a bench trial on November 20, 2025. The victim, her 20-year-old son ("Son"), and a police officer who spoke with appellant at the scene of the incident testified on behalf of the State. The victim testified that on the day of the incident she worked third shift at a grocery store and came home around 6:30 a.m. After her two youngest children left for school, she went to her upstairs bedroom to sleep. While there, she heard heavy footsteps coming up the stairs, and appellant swung the bedroom door open and started throwing things around. A verbal altercation ensued and the victim told appellant to leave. Appellant then struck her three times on the right side of her face, causing her pain.

{¶ 4} Son testified he was sleeping in the living room downstairs when he heard appellant banging, yelling, and calling the victim dumbass and a whore. After the victim told appellant to leave, Son heard three slaps and the victim scream. Believing appellant had hit the victim, Son called the police. Son testified that the victim was in shock while speaking with the police. Son further testified that the television and the victim's belongings had been knocked over in the victim's bedroom but that nothing was touched on appellant's side.

{¶ 5} The officer testified he spoke with appellant at the scene of the incident. Appellant told the officer that during a confrontation regarding the victim's oldest sons, the victim slapped herself three times and that all he did was push her. After the State rested its case-in-chief, appellant elected not to testify on his own behalf. The trial court subsequently found appellant guilty of domestic violence, sentenced him to 150 days in jail, and imposed a \$200 fine.

{¶ 6} Appellant now appeals, raising two assignments of error.

II. ANALYSIS

A. Ineffective Assistance of Counsel

{¶ 7} Assignment of Error No. 1:

COLLINS' DEFENSE COUNSEL WAS INEFFECTIVE FOR
FAILING TO PROPERLY PREPARE FOR TRIAL.

{¶ 8} Appellant argues that his trial counsel was ineffective because he failed to bring to trial the recording of the police officer's body camera footage which he intended to use for impeachment. The State concedes that trial counsel's failure to have the recording ready for trial constitutes deficient performance but argues that appellant cannot demonstrate prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984).

{¶ 9} Before trial began, trial counsel informed the trial court that he may need a recess midtrial to get the recording of the police officer's body camera footage which he had failed to bring to trial and which he intended to use for impeachment. Nonetheless, trial counsel advised the court that he was prepared to proceed, and the bench trial went forward. As he began to cross-examine the police officer, trial counsel determined he needed the recording to impeach the officer's testimony that appellant admitted to pushing the victim. The trial court granted a recess to allow trial counsel time to get the recording. Despite multiple attempts and for a variety of immaterial reasons, trial counsel was unable to get the recording. As it was in the State's possession, trial counsel moved the trial court to have the State play the recording. The trial court denied the motion and instructed counsel to proceed with the officer's cross-examination without the recording. Shortly after, the trial concluded. The recording was never admitted or proffered.

1. The *Strickland's* Two-Prong Test

{¶ 10} To establish ineffective assistance of counsel, appellant must show (1)

deficient performance by counsel, that is, performance falling below an objective standard of reasonable representation, and (2) prejudice, that is, a reasonable probability that but for counsel's errors, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 687-688, 694; *State v. Mundt*, 2007-Ohio-4836, ¶ 62. "In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently." *Harrington v. Richter*, 562 U.S. 86, 111 (2011). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. The failure to make an adequate showing on either prong is fatal to an appellant's ineffective assistance of counsel claim. *State v. Bell*, 2009-Ohio-2335, ¶ 77 (12th Dist.), citing *Strickland* at 697. Thus, a reviewing court need not address the deficiency issue if the appellant was not sufficiently prejudiced by counsel's performance. *Strickland* at 697; *State v. Isreal*, 2012-Ohio-4876, ¶ 23 (12th Dist.).

2. Appellant Did Not Receive Ineffective Assistance of Counsel

{¶ 11} We find that appellant has failed to show he was prejudiced by his trial counsel's failure to have the recording ready for trial. On appeal, appellant asserts that the recording would have disclosed that appellant told the officer that all he did was to hold the victim's hands. However, trial counsel stated on the record below that he was not asserting that the officer's testimony was not truthful, but rather, that he did not remember appellant admitting to pushing the victim when he reviewed the recording.

{¶ 12} The recording was neither proffered nor admitted into evidence. We therefore cannot assess prejudice. Appellant's claim that the recording would have contradicted the officer's version of the facts is merely speculative and does not support a finding of ineffective assistance of counsel. *State v. Heffernan*, 2006-Ohio-5659, ¶ 16 (12th Dist.); *State v. Debruce*, 2016-Ohio-8280, ¶ 16 (9th Dist.) (speculation regarding

the prejudicial effect of counsel's performance will not establish ineffective assistance of counsel).

{¶ 13} Furthermore, based upon the record before us, including the clear testimony of the victim that appellant thrice slapped her face, Son's testimony as to what he heard during the altercation between appellant and the victim and his observation of the victim's post-incident demeanor, and the disarray on the victim's side of her bedroom corroborating her testimony regarding appellant's actions once he entered the bedroom, we find that appellant has failed to show there is a reasonable probability that the outcome of his trial would have been different had the recording been used at trial. *See State v. Hicks*, 2003-Ohio-7210, ¶ 22 (12th Dist.).

{¶ 14} In light of the foregoing, we find that appellant did not receive ineffective assistance of counsel. Appellant's first assignment of error is overruled.

B. Trial Court's Imposition of a Fine

{¶ 15} Assignment of Error No. 2:

THE TRIAL COURT ERRED BY IMPOSING A \$200 FINE
WITHOUT CONSIDERING COLLINS' ABILITY TO PAY.

{¶ 16} Appellant argues that the trial court erred when it imposed a \$200 fine without first considering his ability to pay, noting that he was represented by court-appointed counsel both in the trial court and on appeal due to his indigency.

1. Review of the Trial Court's Imposition of the Fine under a Plain-Error Standard

{¶ 17} Appellant properly acknowledges that this court is to apply a plain-error standard of review because he failed to object to the imposition of a fine before the trial court. *See State v. Basdon*, 2026-Ohio-2860, ¶ 6 (12th Dist.), citing *State v. Moore*, 2024-Ohio-2382, ¶ 15 (2d Dist.). For plain error to exist, the error in the trial proceedings must be obvious and must have affected the outcome of the trial. *State v. Payne*, 2007-Ohio-

4642, ¶ 16. "Notice of plain error is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus.

2. Consideration of a Defendant's Ability to Pay a Fine in Misdemeanor Cases

{¶ 18} Pursuant to R.C. 2929.28(A), a trial court may impose financial sanctions on a defendant when sentencing the defendant on a misdemeanor offense. This includes the authority to order the defendant to pay a fine. R.C. 2929.28(A)(2). The statute specifies the maximum fine based upon the degree of the misdemeanor. Appellant's offense was a first-degree misdemeanor with a maximum fine of \$1,000. R.C. 2929.28(A)(2)(a)(i). Appellant was fined only \$200.

{¶ 19} Although R.C. 2929.19(B)(5) expressly requires a trial court to consider a defendant's present and future ability to pay a fine in felony sentencing, the law is not as clear as to whether consideration of a defendant's ability to pay a fine is required in misdemeanor sentencing. *Basdon*, 2026-Ohio-2860, at ¶ 8 (12th Dist.); *State v. Saturday*, 2019-Ohio-193, ¶ 18 (12th Dist.). That is because no provision identical to R.C. 2929.19(B)(5) exists in the misdemeanor sentencing statutes. *Id.*

{¶ 20} The applicable misdemeanor sentencing statute—R.C. 2929.28(B)—instead provides that "[i]f the court determines a hearing is necessary, the court may hold a hearing to determine whether the offender is able to pay the [fine] imposed . . . or is likely in the future to be able to pay the [fine]." R.C. 2929.28(B) further provides that

If the court determines that the offender is indigent and unable to pay the [fine], the court shall consider imposing and may impose a term of community service under division (A) of section 2929.27 of the Revised Code in lieu of imposing a [fine]. If the court does not determine that the offender is indigent, the court may impose a term of community service under division (A) of section 2929.27 of the Revised Code in lieu of or in addition to imposing a [fine] under this section and in addition to imposing court costs.

{¶ 21} Although R.C. 2929.28(B) makes a hearing to determine a defendant's ability to pay discretionary, this court and other Ohio appellate courts have held that "there must be some evidence in the record indicating that the trial court, at a minimum, considered the defendant's present and future ability to pay." *Basdon*, 2026-Ohio-2860, at ¶ 11 (12th Dist.). See also *State v. Charles*, 2025-Ohio-5062, ¶ 5 (2d Dist.); *State v. Merillat*, 2020-Ohio-3825, ¶ 26 (6th Dist.).

3. Trial Court Did Not Err in Imposing the Fine

{¶ 22} Appellant argues that the trial court erred when it imposed a \$200 fine without first considering his ability to pay, noting that he has been represented by court-appointed counsel for the duration of the case due to his indigency. However, "[t]he fact that the trial court appointed counsel to represent [appellant] does not mean that we must find the court should have held a hearing to consider [appellant's] ability to pay or that the court's imposition of fines was contrary to law." *Basdon* at ¶ 12, quoting *Charles* at ¶ 6. See also *State v. Chavers*, 2005-Ohio-714, ¶ 6 (9th Dist.).

{¶ 23} Furthermore, by failing to object to the imposition of the \$200 fine for domestic violence or argue he was unable to pay the fine, appellant has waived the issue for purposes of this appeal. *Basdon*, 2026-Ohio-2860, at ¶ 13-14 (12th Dist.). "Where the offender does not object at the sentencing hearing to the amount of the fine and does not request an opportunity to demonstrate to the court that he does not have the resources to pay the fine, he waives any objection to the fine on appeal." *State v. Ford*, 2024-Ohio-2732, ¶ 10 (2d Dist.), quoting *State v. Keylor*, 2003-Ohio-3491, ¶ 12 (7th Dist.).

{¶ 24} Even if we were to reach the merits of appellant's argument, he cannot demonstrate plain error. The record reflects that the trial court was informed that appellant graduated from high school and has "a partial college education," that he was employed

as a collision expert at the time of the incident, that he has a car and a valid driver's license, that he has a home, and that he provides for his children. Thus, the trial court had before it some evidence of appellant's ability to pay the fine. *Saturday*, 2019-Ohio-193, at ¶ 19 (12th Dist.). If appellant is unable to pay, he may raise the issue at a hearing for nonpayment. *Basdon* at ¶ 14; *Charles*, 2025-Ohio-5062, at ¶ 5 (2d Dist.); *State v. Chaney*, 2004-Ohio-6712, ¶ 8 (5th Dist.).

{¶ 25} Appellant's second assignment of error is overruled.

III. CONCLUSION

{¶ 26} For the reasons outlined above, and finding no merit to appellant's assignments of error, appellant's conviction and sentence for domestic violence are upheld. The judgment of the trial court is affirmed.

PIPER, P.J., and SIEBERT, J., concur.

JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Clermont County Municipal Court for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Robin N. Piper, Presiding Judge

/s/ Mike Powell, Judge

/s/ Melena S. Siebert, Judge