[Cite as *Cleveland v. Price*, 2026-Ohio-4277.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF CLEVELAND, :

Plaintiff-Appellee, :

No. 115803

v. :

KURTIS PRICE, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 29, 2026

Criminal Appeal from the Cleveland Municipal Court
Case No. 2025-CRB-005838

Appearances:

Mark Griffin, Cleveland Director of Law, and Aqueelah Jordan, Chief Prosecutor, and Andrew Zoeckler, Assistant Prosecuting Attorney, *for appellee*.

Dunham Law LLC and Michael P. Dunham, *for appellant*.

MARY J. BOYLE, P.J.:

{¶ 1} Defendant-appellant Kurtis Price ("Price") appeals his theft conviction following a bench trial in Cleveland Municipal Court. He raises the following assignments of error for review:

Assignment of Error I: The trial court erred in finding that [Price] stole the phone when [Price] had consent to use the phone, and, when consent was terminated, attempted to return the phone in violation of his right to due process of law, and, a fair trial under US Con. Amend. V, US Con. Amend. VI, US Con. Amend. XIV, and, Ohio Con. Art. I. Tr. Passim.

Assignment of Error II: The trial court erred in not preserving an audio recording of the hearing sufficient to record the entirety of the trial so the court reporter could prepare a full transcript of the trial in violation of [Price's] right to due process of law, and a fair trial under US Con. Amend. V, US Con. Amend. VI, US Con. Amend. XIV, and, Ohio Con. Art. I. Tr. Passim.

Assignment of Error III: The trial court erred in its evidentiary rulings in violation of [Price's] right to due process of law, and a fair trial under US Con. Amend. V, US Con. Amend. VI, US Con. Amend. XIV, and, Ohio Con. Art. I. Tr. Passim.

Assignment of Error IV: Trial counsel was ineffective in violation of [Price's] right to effective assistance of counsel, due process of law, and a fair trial under US Con. Amend. V, US Con. Amend. VI, US Con. Amend. XIV, and, Ohio Con. Art. I. Tr. Passim.

{¶ 2} For the reasons set forth below, we affirm.

I. Facts and Procedural History

{¶ 3} In July 2025, Price was charged with one count of theft in violation of R.C. 2913.02(A)(2), a first-degree misdemeanor. He was alleged to have borrowed his Mother's cell phone, with the express limitation that he return the phone when he acquired a new phone or by April 29, 2025, whichever came first. Price failed to return it when time had expired and upon Mother's demand. Mother filed a police report, and Price was charged with theft.

{¶ 4} On July 15, 2025, Price was arraigned, pled not guilty, and was assigned counsel. After numerous pretrials, a bench trial ensued on September 19, 2025. The following facts were adduced at trial.

{¶ 5} Mother testified that she loaned the phone to her son Price on the condition that he return it when he bought a new phone or by April 29, 2025. According to Mother, she learned that Price acquired a new phone, so she contacted him and asked when she could retrieve her phone. Mother testified that Price texted, "Dude, you know you're not gonna get the phone back." (Trial tr. 8.) She explained that while Price was in possession of the phone, she was still paying for it. Mother paid a total of $160.71.

{¶ 6} Mother also testified that Price texted her "all kinds of disrespectful names." (Trial tr. 9.) When Mother attempted to testify to other incidents involving Price, defense counsel objected. The trial court did not allow the testimony. She testified that Price never returned the phone, nor did he pay her for it.

{¶ 7} On cross-examination, Mother testified that Price offered to return the phone after he was charged with theft. She explained that she would not let him into her building because she "feared for her life." (Trial tr. 12.) Mother testified that she tried to help Price, but he was always disrespectful to her.

{¶ 8} On redirect, Mother identified Price as the person who took her phone. She also testified that the events happened in Cleveland, Ohio.

{¶ 9} After Mother's testimony, Price moved to dismiss the charge under Crim.R. 29, arguing that he had permission to use the phone and he offered to return the phone several times. The trial court denied Price's motion.

{¶ 10} Price testified on his own behalf and indicated that he was 54 years old. He testified that "the reason why [he] chose not to give her the phone back [was] because" they had "been arguing every day." (Trial tr. 22.) According to Price, he offered to pay her "on the 29th" and testified that he informed her that he would keep the phone "until the 14th. [And he'll] get another phone by then." (Trial tr. 22.) He testified that the phone was shut off "on the 6th" and that is when he got a new phone.[1] (Trial tr. 23.) Price testified that the only reason that Mother does not have the phone back is because the "only thing she wants to do is argue." (Trial tr. 23.) He testified that he offered to return it several times. Price also claimed he gave her $90 in food stamps.

{¶ 11} On cross-examination, Price admitted that he still had the phone in his possession, and he did not pay her for it.

{¶ 12} On October 23, 2025, Price was found guilty of theft and sentenced to 180 days in jail and a $1,000 fine. The trial court suspended the entire jail sentence and $900 of the fine and placed Price on one-year of active probation. Mother declined restitution; thus, none was ordered.

{¶ 13} This appeal followed.

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[1] We note that the months and dates were not clarified on the record.

{¶ 14} For ease of discussion, the assignments of error will be discussed out of order.

II. Law and Analysis

Incomplete Record

{¶ 15} In Price's second assignment of error, he argues that his due process rights were violated because the trial court did not preserve a complete audio recording of his trial resulting in an incomplete record. He claims that much of the trial testimony was described as inaudible. Price asserts that this is structural error.

{¶ 16} "A structural error occurs when a defendant suffers a violation of his constitutional rights." *Cleveland v. Mincy*, 2018-Ohio-3565, ¶ 35 (8th Dist.). Such an error "affect[s] the framework within which the trial proceeds" and is more than "simply an error in the trial process itself." *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991). "[A] structural error mandates a finding of 'per se prejudice.'" *State v. Fisher*, 2003-Ohio-2761, ¶ 9, citing *Campbell v. Rice*, 302 F.3d 892, 900 (9th Cir. 2002). The Ohio Supreme Court has emphasized that there is a "strong presumption" that errors are not structural where the defendant had counsel and the judge was impartial. *State v. Wamsley*, 2008-Ohio-1195, ¶ 16. The Ohio Supreme Court has also cautioned us from applying a structural-error analysis when the error was not raised in the trial court and a plain-error analysis would otherwise govern. *State v. Hill*, 92 Ohio St.3d 191, 199 (2001); *Solon v. Liu*, 2021-Ohio-2030, ¶ 8 (8th Dist.).

{¶ 17} In this case, Price has not overcome the presumption that any error in the transcript was not structural because he was represented by counsel and every judge is presumed to be impartial. *See State v.* Harris, 2024-Ohio-246, ¶ 16 (8th Dist.). Moreover, Price did not object to the proceedings being audio-recorded, and "[i]t is a general rule that an appellate court will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court." *State v. Perez*, 2025-Ohio-4725, ¶ 10 (11th Dist.), quoting *State v. Childs*, 14 Ohio St.2d 56 (1968), paragraph three of the syllabus. Because Price did not overcome the presumption and did not object to the proceedings being audio-recorded, he has waived all but plain error.

{¶ 18} "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Crim.R. 52(B). Plain error is an obvious error or defect in the trial court proceedings that affects a substantial right. *State v. Rogers*, 2015-Ohio-2459, ¶ 22. Plain error requires a showing that there was an error, that the error was plain or obvious, and that but for the error the outcome of the proceeding would have been different and that reversal is necessary to correct a manifest miscarriage of justice. *State v. Buttery*, 2020-Ohio-2998, ¶ 7, citing *State v. Quarterman*, 2014-Ohio-4034, ¶ 16. The party asserting plain error "bears the burden of proof to demonstrate plain error on the record." *Rogers* at ¶ 22, citing *Quarterman* at ¶ 16.

{¶ 19} We find that Price has failed to demonstrate plain error. According to Crim.R. 22:

> In serious offense cases all proceedings shall be recorded.
>
> In petty offense cases all waivers of counsel required by Rule 44(B) shall be recorded, and if requested by any party all proceedings shall be recorded.
>
> Proceedings may be recorded in shorthand, or stenotype, or by any other adequate mechanical, electronic or video recording device.

Likewise, Ohio Sup.R. 11(A), states, "Proceedings before any court . . . may be recorded by stenographic means, phonogramic means, photographic means, *audio electronic recording devices*, or video recording systems." (Emphasis added.) Finally, App.R. 9(A)(2) specifically allows for audio-recording devices, so long as the trial court ensures that all proceedings of record are recorded by a reliable method. Here, the proceedings were audio-recorded and then transcribed in accordance with App.R. 9(A) for purposes of Price's appeal.

{¶ 20} In *State v. Palmer*, 80 Ohio St.3d 543, 553 (1997), a death-penalty case, the Ohio Supreme Court noted that "we have never held that '[a] complete, full, and unabridged' [transcript] is synonymous with 'perfect.'" *Id.* In fact, the *Palmer* Court held that "the requirement of a complete, full, and unabridged transcript in capital trials does not mean that the trial record must be perfect for purposes of appellate review." *Id.*

{¶ 21} Price contends that throughout the transcripts, much of the testimony of Mother and Price were transcribed as "inaudible." He also asserts that

at various times from the arraignment through the sentencing hearing, the testimony was transcribed as "inaudible."

{¶ 22} After careful review, we disagree with Price's characterization of the transcript of the proceedings. Although the transcript is not perfect, it is more than sufficient for appellate review. Moreover, this court previously reviewed the transcript upon Price's motion and denied his request for a remand due to several "inaudible" parts of the record. We stated that "[a] review of the inaudible responses referred to by [Price] are where the surrounding circumstances impart what was said. Some sections are off-the cuff remarks by the bailiff or trial court judge while the proceedings were not ongoing." (Motion No. 592504, Journal Entry, Mar. 9, 2026.)

{¶ 23} We also note that Price does not explain how the inaudible words or phrases affected his case. None of the inaudible words or phrases left a crucial issue to chance, nor did Price establish prejudice; therefore, we find that Price's due process rights were not violated.

{¶ 24} Accordingly, Price's second assignment of error is overruled.

Evidentiary Rulings

{¶ 25} In Price's third assignment of error, he argues that the trial court abused its discretion when it failed to sustain Price's objection to Mother's testimony wherein she called Price derogatory names, including testifying that he was homeless and had threatened Mother during an argument about Price's dog. He also contends that the trial court erred when it allowed testimony on redirect that

was outside the scope of Price's cross-examination. We find no merit to Price's arguments.

{¶ 26} The admission or exclusion of evidence rests within the sound discretion of the trial court. *State v. Beasley*, 2025-Ohio-4463, ¶ 39 (8th Dist.), citing *State v. Sage*, 31 Ohio St.3d 173, 180 (1987). 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. Moreover, in a bench trial, the court is presumed to know and apply the law correctly unless the record affirmatively demonstrates otherwise. *State v. Kilbane*, 2019-Ohio-863, ¶ 15 (8th Dist.), citing *State v. Shropshire*, 2016-Ohio-7224, ¶ 37 (8th Dist.).

{¶ 27} Price mischaracterizes Mother's testimony. She did not call Price names. Rather, she repeated the derogatory names that Price called her in text messages. Even if Mother called Price derogatory names while testifying, or she repeated the names that he called her, we find that the trial court did not abuse its discretion in allowing the testimony. A review of the transcript reveals that the trial court allowed Price much leeway in his testimony too. This was a family dispute where emotions ran high. The trial court clearly allowed the parties to vent their displeasure with each other, both asserting unflattering claims about each other, but there is no evidence in the record that the trial court improperly relied on this testimony to convict Price.

{¶ 28} Next, Price argues that the trial erred by allowing the City, on redirect, to exceed the scope of cross-examination to establish identity and venue. Again, Price did not object to this testimony during trial; therefore, we review for plain error as set forth in the second assignment of error.

{¶ 29} In *State v. Florencio*, 2019-Ohio-104, ¶ 7 (8th Dist.), we recognized the general rule that the scope of redirect examination is limited to the matters inquired into by the adverse party on cross-examination. *Id.*, citing *State v. Rucker*, 2018-Ohio-1832, ¶ 59 (8th Dist.). Nevertheless, "[e]xceeding the scope of cross-examination in a redirect is not per se error because the redirect is not necessarily limited to the subject areas discussed in cross-examination." *Id.,* citing *id.*, citing *State v. Faulkner*, 56 Ohio St.2d 42 (1978), and *State v. Capko*, 1990 Ohio App. LEXIS 1287 (8th Dist. Mar. 29, 1990). Furthermore, "a witness may be recalled for the purpose of correcting or changing testimony that the witness, through error, mistake, or oversight, has previously given in a trial before the proponent of the evidence rests his case in chief." *Id.,* citing *State v. McBride*, 2008-Ohio-5888, ¶ 33-35 (5th Dist.).

{¶ 30} In this case, the City failed to have Mother identify Price during direct examination and failed to establish venue on direct examination; however, the City corrected its error on redirect. Had Price objected to this testimony, or the trial court prohibited this testimony, the City could have recalled Mother to the stand or had the reporting officer testify to establish identity and venue. Finally, Price has not established that but for the claimed error the outcome of the proceedings would have

been different and that reversal is necessary to correct a manifest miscarriage of justice. Therefore, we find that the trial court did not abuse its discretion when it allowed the City to redirect Mother on issues technically outside the scope of cross-examination.

{¶ 31} Accordingly, Price's third assignment of error is overruled.

Sufficiency and Manifest Weight of the Evidence

{¶ 32} In Price's first assignment of error, he argues that his due process rights were violated but does not set forth any due process arguments. Rather, he argues there was insufficient evidence to sustain a conviction for theft and that his conviction is against the manifest weight of the evidence.

{¶ 33} The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Bowden*, 2009-Ohio-3598, ¶ 12 (8th Dist.). In determining whether the evidence is legally sufficient to support the factfinder's verdict as a matter of law, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307 (1979).

{¶ 34} While the test for sufficiency requires a determination of whether the prosecution has met its burden of production at trial, a manifest-weight challenge questions whether the prosecution has met its burden of persuasion. *Bowden* at

¶ 12, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Recently, in *State v. Reillo*, the Ohio Supreme Court explained that

> under a manifest-weight review, a court "'"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."'" [*State v.*] *Brown,* 2025-Ohio-2804, at ¶ 30, quoting *Thompkins* at ¶ 25, quoting *State v. Martin*, 20 Ohio App.3d 172, 20 Ohio B. 215, 485 N.E.2d 717 (1st Dist. 1983), paragraph three of the syllabus.
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> However, appellate courts may "vacate a jury's verdict and order a new trial "'only in the exceptional case in which the evidence weighs heavily against the conviction."'" *Id.* at ¶ 31, quoting *Thompkins*, 1997-Ohio-52, at ¶ 25, quoting *Martin* at 175. In such cases, the court sits as a "'"thirteenth juror"' who may disagree with the fact-finder's resolution of the *conflicting evidence*." (Emphasis added.) *State v. Martin*, 2022-Ohio-4175, ¶ 26, quoting *Thompkins* at ¶ 25, quoting *Tibbs v. Florida*, 457 U.S. 31, 42 (1982).
>
> But "[i]n weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact." *Eastley* [*v. Volkman*], 2012-Ohio-2179, at ¶ 21. "'"If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment."'" [*In re*] Z.C., 2023-Ohio-4703, at ¶ 14, quoting *Seasons Coal Co.*[*v. Cleveland*]*,* 10 Ohio St.3d [77,] at 80 [(1984)], fn. 3, quoting 5 Ohio Jur.3d, Appellate Review, § 603, at 191-192 (1978). "'The underlying rationale of giving deference to the findings of the [fact-finder] rests with the knowledge that the [fact-finder] is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.'" *Id.*, quoting *Seasons Coal* at 80.

Reillo, 2026-Ohio-2701, ¶ 26-28.

{¶ 35} Price contends that a theft does not occur when a person is given permission to use the property and attempts to return the property after permission

is revoked. He insists that a theft only occurs when there is no permission or there is no attempt to return the item. We disagree.

{¶ 36} R.C. 2913.02(A)(2) is clear and states that no person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over the property *beyond the scope of the express or implied consent* of the owner.

{¶ 37} Price cites numerous cases that are not persuasive or analogous to the facts and circumstances of his case, including *State v. Young*, 2002-Ohio-2744 (8th Dist.), *State v. Henderson*, 2024-Ohio-2312 (1st Dist.), *State v. Lusher*, 2012-Ohio-5526 (4th Dist.), and *State v. Martin*, 2005-Ohio-688 (11th Dist.), which involve different subsections of the theft statute. He argues that the intent to deprive the owner must occur at the time Price borrowed the phone; however, Price was charged under a different subsection. Price was charged under R.C. 2913.02(A)(2)(exceeded scope of consent) not R.C. 2913.02(A)(1)(without consent of the owner) or R.C. 2913.02(A)(3)(deception). The intent to deprive the owner does not have to occur prior to the revocation of consent or expiration of consent. Additionally, Price cites *State v. Gordon*, 2011-Ohio-5738 (3d Dist.), wherein the defendant was charged with theft in office, which is a completely different statute with different elements. *See* R.C. 2921.41(A) (theft in office).

{¶ 38} Next, Price cites to two cases that involve written contracts. He cites to *State v. Chait*, 2012-Ohio-6104 (9th Dist.), wherein the Ninth District held that the State failed to establish that defendant had the purpose to deprive the homeowners of money either by deception or by exceeding the scope of their

consent, when the defendant failed to fully perform under a remodeling contract. In *Chait*, the defendant completed extensive work at the homeowners' property; however, the homeowners were dissatisfied and eventually banned him from the property. The court concluded that there was evidence of breach of contract but no evidence of theft. This is not the case here. Price knew the terms Mother laid out for him and then refused to return the phone when the terms came to pass. In fact, contrary to Price's assertions, he did not return the phone or try to return the phone until after he was charged with theft. Nor did he at any point pay for the phone.

{¶ 39} Finally, Price cites to the dissent in *State v. Latham*, 2012-Ohio-2106 (2d Dist.), which stated that a breach of contract was not sufficient to constitute a theft offense. The majority, however, upheld a conviction for theft, under the same subsection that Price was charged R.C. 2913.02(A)(2)(exceeded the scope of consent). The Second District held that the State presented sufficient evidence of theft when the evidence established that Latham rented furniture from Rent-A-Center, made two payments, then failed to make any further payments, and failed to return the property upon demand. At the time of trial, Latham, like Price, was still in possession of the property.

{¶ 40} We find that *Latham* supports Price's theft conviction. Similar to the facts in *Latham*, Mother gave Price limited consent to use the cell phone for a period of time. Price refused to return the phone when that time period elapsed and upon Mother's demand. He also testified that he still had not returned the phone, which was well beyond April 29, 2025 deadline. Therefore, when viewing the evidence in

a light most favorable to the City, we find that there was sufficient evidence set forth to establish, beyond a reasonable doubt, that Price deprived Mother of her phone beyond the scope of her consent.

{¶ 41} With respect to Price's cursory argument that his theft conviction is against the manifest weight of the evidence, we do not agree that the trial court lost its way when finding Price guilty of theft. Even if we were to disregard Mother's testimony completely, Price admitted that he only had limited permission to use the cell phone and failed to return or pay for it. Therefore, his conviction is not against the manifest weight of the evidence.

{¶ 42} Lastly, Price's attempt to return the phone after charges were filed does not negate the theft offense. And contrary to Price's assertions, Price did not pay Mother for the phone. In fact, at the time of sentencing, Price had still not returned the phone nor had he paid for it.

{¶ 43} Accordingly, Price's first assignment of error is overruled.

Ineffective Assistance of Counsel

{¶ 44} In Price's fourth and final assignment of error, he contends that he received ineffective assistance of counsel when his attorney failed to object to the audio recording of the trial, which he claims resulted in an incomplete record. In addition, counsel failed to object to the City's redirect examination as being outside the scope of cross-examination and failed to object to Mother's commentary about Price's homelessness and him yelling at her about his dog. We find no merit to Price's arguments.

{¶ 45} In Ohio, every licensed attorney is presumed to be competent, and a defendant claiming ineffective assistance of counsel bears the burden to prove otherwise. *State v. Davis*, 2021-Ohio-4015, ¶ 25 (8th Dist.). To establish ineffective assistance of counsel, Price must demonstrate that (1) counsel's performance was deficient and (2) the deficient performance prejudiced him. *State v. Trimble*, 2009-Ohio-2961, ¶ 98, citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Deficient performance is conduct that falls below an objective standard of reasonable representation. *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph two of the syllabus. To demonstrate prejudice, Price must show there existed a reasonable probability that, but for counsel's errors, the outcome of the proceeding would have been different. *State v. Sowell*, 2016-Ohio-8025, ¶ 138. The failure to prove either prong of this two-part test makes it unnecessary for a court to consider the other prong. *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000), citing *Strickland* at 697.

{¶ 46} We note that "'[t]he failure to object to error, alone, is not enough to sustain a claim of ineffective assistance of counsel.'" *State v. Dix*, 2023-Ohio-4123, ¶ 32 (8th Dist.), quoting *State v. Holloway*, 38 Ohio St.3d 239, 244 (1988). Moreover, "[t]he failure to do a futile act cannot be the basis for claims of ineffective assistance of counsel, nor could such a failure be prejudicial." *State v. Davenport*, 2018-Ohio-2933, ¶ 26 (8th Dist.); *State v. Kilbane*, 2014-Ohio-1228, ¶ 37 (8th Dist.).

{¶ 47} Nevertheless, the failure to object waives all but plain error. Crim.R. 52(B); *State v. Rogers*, 2015-Ohio-2459, ¶ 28. To constitute plain error,

there must be (1) an error, i.e., a deviation from a legal rule, (2) that is plain or obvious, and (3) that affected substantial rights, i.e., affected the outcome of the trial. *State v. Pratts*, 2016-Ohio-8053, ¶ 34 (8th Dist.), citing *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). As the Supreme Court clarified in *Rogers*, the accused is "required to demonstrate a reasonable probability that the error resulted in prejudice — the same deferential standard for reviewing ineffective assistance of counsel claims." *Rogers* at ¶ 22, citing *United States v. Dominguez Benitez*, 542 U.S. 74, 81-83 (2004). Nevertheless, even if the plain-error standard is met, courts should only notice it "with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91, 97 (1978), at paragraph three of the syllabus.

{¶ 48} As we previously discussed in the second assignment of error, trial courts may use audio recordings to document proceedings. Therefore, it did not fall below an objective standard of reasonableness when defense counsel did not object to audio recordings. Furthermore, Price failed to prove that a few inaudible words in the audio recording caused him prejudice.

{¶ 49} Next, we find that defense counsel's performance did not fall below an objective standard of reasonableness when he did not object to Mother's redirect examination as being outside the scope of cross-examination because the facts elicited on redirect were admissible and any objection would have been futile.

{¶ 50} Finally, we find that defense counsel's performance did not fall below an objective standard of reasonableness when he did not object to Mother's

derogatory statements about Price. As we discussed previously, it is clear from the record that the trial court allowed both Mother and Price to vent their grievances during trial, any objection would have been futile. Furthermore, Price has not set forth how he was prejudiced by the failure to object. Price admitted that he did not give the phone back and did not pay for it. Therefore, we find that defense counsel was not ineffective.

{¶ 51} Accordingly, Price's fourth assignment of error is overruled.

{¶ 52} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cleveland Municipal Court to carry this judgment into execution.

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

MARY J. BOYLE, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
EILEEN A. GALLAGHER, J., CONCUR