

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-180173
Plaintiff-Appellee,	:	TRIAL NO. 18TRD-553
vs.	:	
LAWRENCE M. PALMER,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Lawrence M. Palmer appeals his conviction for failing to obey a flashing red traffic signal, in violation of Cincinnati Municipal Code 506-43. Palmer was cited for violating Cincinnati Municipal Code 506-43 after he was involved in a car collision with Alexander Geers at the intersection of Glenhills Way and Ferguson Road.

At trial, Geers testified that his traffic signal on Ferguson Road had been flashing yellow when the collision occurred and he had noticed immediately after the collision that the traffic signal directing Palmer was flashing red. Geers further testified that the signals were flashing in the same manner 25 minutes after the collision. Palmer and his passenger both testified that Palmer's traffic signal was a solid green light when he drove his car through the intersection and collided with Geers's car.

In his sole assignment of error, Palmer challenges his conviction on the ground that he was denied the effective assistance of trial counsel. To prevail on an ineffective-

assistance-of-counsel claim, an appellant must satisfy a two-prong test. The appellant must establish that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph two of the syllabus. To establish the requisite prejudice, an appellant must show there is a reasonable probability that but for counsel's errors, the result of the trial would have been different. *See Bradley* at paragraph three of the syllabus. We need not review the first prong of the *Strickland* test where, as here, the appellant fails to satisfy the prejudice prong. *See Bradley* at 143, quoting *Strickland* at 697.

The gist of Palmer's complaint is that counsel was deficient for failing to demand discovery or subpoena witnesses or documents favorable to the defense, and that this prejudiced him because the absent information might have shown that the signals were not operating properly that day or that Palmer's signal had not been flashing red. But speculation is not sufficient to establish the requisite prejudice to support an ineffective-assistance-of-counsel claim. *See State v. Madrigal*, 87 Ohio St.3d 378, 390-391, 721 N.E.2d 52 (2000).

Palmer also suggests that counsel was deficient for failing to assert the affirmative defenses set forth in R.C. 4511.099(C)(1)(c). Those defenses may be asserted in an administrative hearing on a ticket resulting from use of a traffic law photo-monitoring device, but had no application in this case. Because those defenses were inapplicable, counsel's failure to raise them could not have prejudiced Palmer.

Finally, Palmer argues that counsel was deficient for failing to move for an acquittal under Crim.R. 29(A) at the close of the state's case-in-chief. A motion for acquittal under Crim.R. 29(A) deals with the sufficiency of the evidence. "A court shall not order an entry of judgment of acquittal [pursuant to Crim.R. 29(A)] if the evidence is such

that reasonable minds can reach different conclusions as to whether each material element of a crime had been proved beyond a reasonable doubt.” *State v. Bridgeman*, 55 Ohio St.2d 261, 381 N.E.2d 184 (1978), syllabus.

According to Palmer, the state failed to establish that his signal was flashing red when he entered the intersection. But our review of the record convinces us that the state’s evidence, which consisted of Geers’s testimony, showed that reasonable minds could have reached different conclusions as to whether Palmer had ignored a flashing red signal when entering the intersection, and that a motion for acquittal would have been properly overruled. Thus, Palmer could not have been prejudiced by counsel’s failure to move for an acquittal at the close of the state’s case.

Consequently, because Palmer has failed to establish the requisite prejudice to support his ineffective-assistance-of-counsel claim, we overrule his assignment of error and affirm the trial court’s judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

BERGERON, P.J., CROUSE and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on April 5, 2019
per order of the court _____.
Presiding Judge