IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION
SUMMIT COUNTY, OHIO

STATE OF OHIO, Plaintiff, vs. MICHAEL J. DOWLING, Defendant.	CASE NO. CR 2024-02-0473-B JUDGE SUSAN BAKER ROSS **DEFENDANT MICHAEL J. DOWLING'S MOTION FOR ACQUITTAL UNDER CRIMINAL RULE 29(C)** **ORAL ARGUMENT REQUESTED**

INTRODUCTION

The State had 26 witnesses, over 260 exhibits, and 21 days to sufficiently match the evidence presented during trial to the elements of the crimes on which the jury was instructed. It failed to do so. The Court has heard several of these reasons during the Rule 29(A) briefing and arguments, and Michael Dowling respectfully requests that it carefully revisit each evidentiary insufficiency to protect his right to due process.

But what the Court has not yet heard—because the jury had not yet been instructed—is that no jury could have possibly found Dowling guilty of tampering with records, forgery, and telecommunications fraud based on the way the State decided to charge and prosecute its case. That is because there was no evidence that Dowling was the principal offender of these charges and the State did not request a complicity instruction for the jury to consider. The State, not Dowling, must live with the consequences of those decisions, for Dowling has a due process right to be acquitted of charges that lack sufficient evidence even after a "jury … is discharged without having returned a verdict." Crim.R. 29(C).

LEGAL STANDARD

Criminal Rule 29(C) requires that a court order the entry of a judgment of acquittal following a hung jury when the evidence was insufficient to convict the defendant. "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Getsy*, 84 Ohio St.3d 180, 193 (1998). At the Rule 29(C) stage, the essential elements of the crime that the court applies the evidence against are those on which the jury was instructed. *See Akron v. Cabell*, 2013-Ohio-5113, ¶ 7 (9th Dist.).

LAW AND ARGUMENT

While Dowling is entitled to judgment of acquittal on all counts, he focuses the Court's attention on (i) the tampering with records charges in Counts Nine and Ten; (ii) the forgery predicate at the forefront of the Ohio Corrupt Practices Act (OCPA) charge in Count One; and (iii) the telecommunications charge in Count Six for purposes of this motion. Dowling otherwise incorporates prior arguments from his Rule 29(A) oral motion and written supplement, filed on March 9, 2026, as well as applicable arguments raised by Charles Jones in his separate Rule 29(C) motion for acquittal, filed on April 28, 2026.

I. Dowling must be acquitted because there is insufficient evidence that he was the principal offender and the State did not request, nor was the jury provided with, an instruction on complicity.

The Court must order the entry of a judgment of acquittal on tampering with records, forgery, and telecommunications fraud in Count Six because of the manner in which the State prosecuted its case. When the State indicts a defendant on a principal offense, the general rule is that the defendant may also be convicted of complicity to engage in that crime. *Cabell* at ¶ 17. But critically, that general rule gives way where, as here, no complicity instruction was given to the jury. *Id.* In these situations, the Ninth District has clearly stated that the Court cannot consider any complicity theory when evaluating the sufficiency of the evidence and must acquit the defendant when there is insufficient evidence that he was the principal offender. *Id.* at ¶ 18.

As the Ninth District explained, ***acquittal—not a new trial—is the proper remedy*** at the Rule 29(C) stage when the State's case relied on complicity theories it did not ask to instruct the jury on and on which the jury was not instructed:

> It is axiomatic that a defendant may not be convicted of a crime in a jury trial where the jury was not instructed on that crime … ***Because the jury here was never instructed on complicity, [the defendant] cannot be guilty of complicity*** to commit [the alleged offense].

(Emphasis added.) *Id.* at ¶ 18–19. In *Cabell*, the Ninth District explained that the trial court erred in denying the defendant's Rule 29(C) motion to acquit him of coercion because the State failed to offer evidence that he *personally* threatened the victim to render him a principal offender and no complicity instruction was given. *Id.* at ¶ 14–17. The court reasoned that considering "evidence of a defendant's complicity in a criminal act if the jury was not instructed on complicity … ***would violate the defendant's Sixth Amendment right to a jury trial***." (Emphasis added.) *Id.* at ¶ 18. And because the fault of this error laid with the State, the State did not get a redo. *Id.* at ¶ 19.

At least four other appellate districts have similarly found insufficient evidence for a conviction when a defendant was not the individual who took the action proscribed by the criminal statute and the jury was not instructed on complicity. *State v. Peterson*, 2007-Ohio-4979, ¶ 23–24 (7th Dist.) (insufficient evidence for breaking and entering conviction where there was no evidence that the defendant himself forced his way into a garage and no complicity instruction was given); *State v. Garlinger*, 2002-Ohio-366, at *3 (10th Dist.) (same when no evidence that the defendant "himself trespassed"); *State v. Burns*, 2011-Ohio-4230, ¶ 26 (8th Dist.) (discussed in Section I.A, *infra*); *State v. Martin*, 2012-Ohio-1519, ¶ 1 (4th Dist.) (insufficient evidence for robbery conviction where there was no evidence that the defendant "personally" inflicted harm and no complicity instruction was given).

That is what happened here. The evidence at trial showed that Dowling was not the principal offender for the tampering with records, forgery, and telecommunications fraud charges and the jury was not instructed on complicity because the State did not ask for that instruction. As such, the Court is bound by the Ninth District to acquit Dowling of these charges and predicate before retrial.

A. There is no evidence that Dowling himself tampered with FirstEnergy's AERs.

To sustain a conviction on tampering with records in this case, the State was required to prove beyond a reasonable doubt that Dowling himself falsified, destroyed, removed, concealed, altered, defaced, or mutilated FirstEnergy's Activity and Expenditure Reports ("AERs"). *See* R.C. 2913.42(A)(1) (proscribing the listed actions); *State v. Burns*, 2011-Ohio-4230, ¶ 26 (8th Dist.) (explaining that the state needed to establish that the defendant *personally* took one of the listed actions in (A)(1) when the jury was only instructed on the tampering with records elements). The State failed to offer evidence that Dowling took any of those actions with respect to the AERs.

Instead, the undisputed evidence established that Ty Pine, FirstEnergy's Director of State Affairs & Lobbyists, gathered the necessary information and completed FirstEnergy's AERs. (2/23/2026 Rough Tr. at 174 (Pine confirming that he is "the one that would get on the computer and actually fill in the information that would be required to be filed with JLEC"); *id.* (Pine confirming that he submitted FirstEnergy's AERs); Def. Ex. 2477 (Pine's Sept. 29, 2017 calendar reminder to "FINISH JLEC REPORTS!!!"); Def. Ex. 2503 (Pine's January 24, 2018 calendar reminder titled "JLEC – MUST Complete").) Because Dowling did not himself tamper with the AERs, no rational juror could have found that he was guilty of Counts Nine and Ten.

To the extent the State attempts to argue that Dowling tampered with the AERs by withholding necessary information from Pine, it relies on a complicity theory on which the jury was not instructed. Indeed, the Eighth District rejected this very argument when vacating a defendant's tampering with records convictions related to four invoices. *Burns*, 2011-Ohio-4230, at ¶ 26–28 (8th Dist.). In *Burns*, the creator of the invoices testified that the defendant provided him with the information that ended up in the invoices. *Id.* at ¶ 27. The State argued that because the defendant's actions "led to the creation of the invoices, he therefore tampered with" them. *Id.* The court found this argument "without merit"—merely providing false information, "[e]ven when reviewing the evidence in a light most favorable to the prosecution" was not evidence that the defendant "tampered with the invoices ***himself***" as was required. (Emphasis added.) *Id.* at ¶ 27–28. No different here. Even if Dowling provided false information to Pine (which he did not), no rational juror could have found that Dowling "tampered with the [AERs] himself." *See Burns* at ¶ 28.

Because there is no evidence that Dowling personally created the AERs, under binding Ninth District precedent, the Court ***must*** acquit him of Counts Nine and Ten and strike the corresponding predicates.

B. There is no evidence that Dowling himself forged the November 2015 Agreement.

This analysis applies with equal force to the forgery predicate. To establish that Dowling committed forgery, the State was required to prove beyond a reasonable doubt that Dowling "forge[d]" the November 2015 Agreement. *See* R.C. 2913.31(A)(2). Forge means "to ***fabricate or create*** …." (Emphasis added) R.C. 2913.01(G). In order to be a ***principal*** offender of forgery, then, the defendant must have ***personally*** created the allegedly forged document. *State v. Priesand*, 2008-Ohio-129, ¶ 15 (8th Dist.) (insufficient evidence to support a conviction for forgery based on principal liability when the defendant "himself did not fabricate the checks"); *State v. Vinson*, 2007-Ohio-6045, ¶ 8 (9th Dist.) (subsection (A)(2) "proscribes the creation of false writings"); *State v. Jackson*, 1995 WL 655931, *2 (9th Dist. Nov. 8, 1995) (demonstrating that the State had to rely on a complicity theory when the defendant did not write the check himself).

There is no evidence that Dowling created the November 2015 Agreement. Rather, all of the evidence goes the other way, including the testimony of Ebony Yeboah-Amankwah that she created the initial agreement in May 2015 and amended it in November. (2/13/2026 Rough Tr. at 4–5 (Yeboah-Amankwah confirming that she built the settlement into the consulting agreement at the direction of Leila Vespoli); *id.* at 246 (Yeboah-Amankwah confirming that she finalized the second amendment to the consulting agreement in November 2015); *id.* at 258 (Yeboah-Amankwah sending Dowling the final revised agreement).) The lack of evidence that Dowling, as an alleged principal offender, created the agreement is fatal to the forgery predicate.

The State even admitted that no rational juror could have found that Dowling was the principal offender. That is why it argued during prior Rule 29 motions that the "allegation specifically is that Mike Dowling was complicit. He was an aider or abettor in this forgery." (3/9/2026 Rough Tr. at 152.) And over a year ago it told this Court "that the evidence will support a complicity instruction on forgery, making Dowling's principle [sic] offender argument moot" and cited the complicity statute R.C. 2923.03(A)(2). (State's Opp. Br. to MTD Forgery Predicate (2/14/2025) at 5.) "Despite the State's repeated arguments that [Dowling] acted as a complicitor, the State never requested a complicity instruction" under R.C. 2923.03(A)(2). *See Cabell*, 2013-Ohio-5113 at ¶ 14 (9th Dist.). The Ninth District has instructed that this is an error the State must bear. *See id.* at ¶ 18. The Court must accordingly strike the forgery predicate.

C. There is no evidence that Dowling himself devised a scheme to defraud.

The State's same folly dooms telecommunications fraud in Count Six. To sustain a conviction on telecommunications fraud, the State was required to prove beyond a reasonable doubt that Dowling "devise[d]" a scheme to defraud. *See* R.C. 2913.05(A). The State has provided no evidence that Dowling himself devised the alleged scheme to defraud the PUCO.

In the State's most favorable telling, the November 2015 Agreement "enabled a scheme to defraud" by concealing FirstEnergy's side deal with IEU-Ohio during a discovery request. (3/16/2026 Rough Tr. at 137.) The agreement did so, the State told the jury, by virtue of it being titled a consulting agreement and not naming IEU-Ohio. But as explained above and as evidenced at trial, there is no evidence that Dowling devised, dictated, or planned what form the November 2015 Agreement would take. Indeed, the evidence demonstrated that Leila Vespoli devised this structure in May 2015 and that Ebony Yeboah-Amankwah created it. (2/13/2026 Rough Tr. at 169 (Yeboah-Amankwah testifying Vespoli decided to document the settlement this way).) And the evidence demonstrated that Dowling did not even see the agreement until November 29, 2015—six months after it had already taken shape. (Def. Exs. 2207, 2209, 2214, 2224 (showing that Dowling never received the May 2015 agreement); State Exs. 61, 63 (same); 2/13/2016 Tr. at 195 (Yeboah-Amankwah confirming that only Vespoli, Hayden, Reffner and Yeboah-Amankwah were aware of the structure of the May 2015 Agreement).) It is crystal clear: Dowling was not the principal offender who devised a scheme to defraud based on a structure that he had nothing to do with and was not aware of until six months later.[1] And while the State may have viewed Dowling as a complicitor, it never requested a complicity instruction, thus requiring acquittal on Count Six. *See Cabell*, 2013-Ohio-5113, at ¶ 14 (9th Dist.).

* * *

The Court need not go further in analyzing the tampering with records, forgery, and telecommunications fraud charges. Given the manner in which the State prosecuted this case, no

1 Indeed, the indictment reflects the lack of Dowling's involvement; it does not even mention his name in the one-page fact description of Count Six. (Indictment at 35–36.)

rational jury could have found Dowling guilty based on the record before this Court. The State does not get to subject Dowling to retrial because of its own shortcomings.

II. Dowling must also be acquitted of tampering with records because there is insufficient evidence that the AERs were false. (Counts Nine and Ten; Predicate Acts Twenty-Six and Twenty-Seven).

Dowling is also entitled to acquittal on tampering with records because there is insufficient evidence that "the truth called for by" the AERs was the inclusion of Sam Randazzo's name as one of FirstEnergy's lobbyists. *See State v. Davis*, 60 Ohio App.2d 355, 363 (5th Dist. 1978) (explaining that a defendant is not guilty of tampering with records when the record is accurate). The lack of evidence on this point—which stems from Randazzo not satisfying the specialized criteria for being a lobbyist under Ohio law—mandates acquittal on the tampering counts and the striking of the corresponding predicate acts.

A. There is no evidence that Randazzo engaged in legislative lobbying activity *on behalf of FirstEnergy* (Count Nine; Predicate Act Twenty-Six).

Count Nine covers twelve of FirstEnergy's *Legislative* AERs submitted between May 31, 2017 and January 22, 2021. Randazzo's name should have appeared on FirstEnergy's Legislative AERs only if Randazzo completed and filed an initial registration statement and performed legislative lobbying activity ***on FirstEnergy's behalf***. (Def. Ex. 2175, JLEC Manual, at 14, citing R.C. 101.70(H) (defining a lobbying engagement as one where "an Employer Compensates a Lobbyist to conduct Lobbying Activity on its behalf").)

Although the State argued that Randazzo was involved in amendments to Senate Bill 310 ("SB 310"), Senate Bill 128 and House Bill 381 (together, "ZEN"), House Bill 6 ("HB 6"), and the Significantly Excessive Earnings Test ("SEET") as amended in a budget bill in 2019, it failed to provide evidence that Randazzo's actions were ***on FirstEnergy's behalf.***

- **SB 310:** The State relies upon a term in the 2015 Settlement Agreement providing that FirstEnergy executives would "participate jointly" with SFA in meeting with legislators to explain modifications to SB 310. (*See* State Ex. 79.) But the State offered no evidence that such a meeting with FirstEnergy executives ever occurred. And multiple State witnesses testified that Randazzo's involvement with the amendments to SB 310 ***was on behalf of his IEU-Ohio clients***, not FirstEnergy. (*See* 2/6/26 Rough Tr. at 254–55 (Brakey explaining that amendments to SB 310 were something IEU-Ohio wanted); 2/18/26 Rough Tr. at 200–01, 214 (Mikkelsen confirming that Randazzo was acting on behalf of IEU-Ohio); 2/13/2026 Rough Tr. at 227 (Yeboah-Amankwah confirming the same); 2/23/26 Rough Tr. at 83 (Pine confirming the same). No witnesses testified that Randazzo lobbied for FirstEnergy on SB 310 amendments.

- **ZEN:** Not one witness testified that Randazzo lobbied on behalf of FirstEnergy with respect to the ZEN legislation. Rather, Pine's testimony established that Randazzo was involved in ZEN legislation ***on behalf of IEU-Ohio*** because IEU-Ohio members "had concerns about the financial cost of the ZEN legislation and how it would impact their members." (2/23/26 Rough Tr. at 98–99; State Ex. 132 (Randazzo listed as a witness for IEU-Ohio for ZEN hearing).)

- **SEET:** There is no evidence that Randazzo lobbied on behalf of FirstEnergy with respect to SEET. Instead, Pine, who led FirstEnergy's lobbying efforts to amend SEET in Spring and Summer 2019, testified that he knew of "no efforts that Mr. Randazzo made to lobby anyone on behalf of FirstEnergy for SEET." (2/23/26 Rough Tr. at 152–155 (referring in part to Def. Ex. 2766).)

- **HB 6:** State witnesses testified that Randazzo acted in his official capacity as PUCO Chairman and a ***representative of the DeWine Administration*** when working on HB 6. (*See, e.g.,* 2/18/26 Rough Tr. at 277, 283 (Mikkelsen testifying to this effect); 2/23/26 Rough Tr. at 18–19, 125 (Pine testifying that it was his understanding that Randazzo "was there on behalf of the DeWine Administration" and in his capacity as the PUCO Chair).) U.S. Senator Husted confirmed that Randazzo's involvement on HB 6 was on behalf of the DeWine administration. (3/11/2026 Rough Tr. at 31–32.)

None of those pieces of legislation support the State's charge that Randazzo should have been included on FirstEnergy's Legislative AERs. In turn, there is insufficient evidence that these forms were falsified, much less by Dowling.

B. There is no evidence that Randazzo engaged in executive agency *lobbying activity* (Count Ten; Predicate Act Twenty-Seven).

There is likewise no evidence that Randazzo engaged in any *executive agency* lobbying activity on behalf of FirstEnergy that was necessary to sustain a conviction on Count Ten. Indeed, the purported evidence concerning the PUCO's elimination of the 2024 base rate case and the final DMR audit report fall outside the defined meaning of executive agency lobbying.

i. Randazzo's decision making as the Chairman of the PUCO is not lobbying.

Executive agency lobbying activity means "promoting, opposing, or otherwise influencing Executive Agency Decisions through Direct Communication with any Executive Agency Reportable Person." (Def. Ex. 2175, JLEC Manual, at 16, citing R.C. 121.60(E)(2), (H), and (I); Adm.Code 101-11-01(F).) In the words of the Executive Director General of JLEC, lobbying is "***advocating interest before state government***." ((Emphasis added.) 2/27/2026 Rough Tr. at 19 (Tony Bledsoe's response to being asked "What is lobbying?").) Lobbyists "***try and influence your thinking*** … And so ***it's an attempt to try to influence how you think***." ((Emphasis added.) 2/4/2026 Rough Tr. at 142 (testimony of Asim Haque, former Chairman of the PUCO, describing lobbying).) To prove that Randazzo engaged in executive agency lobbying for FirstEnergy, then, there must be evidence that Randazzo tried to ***influence*** the decision making of others at the PUCO. No such evidence was presented.

In the State's own words, Randazzo simply directed others:

- In opening statements, the State told the jury that the Chairman of the PUCO "***directs the staff. He sets the agenda … That means he gets to decide which cases come on the docket*** [and] when they come on the docket." ((Emphasis added.) 2/3/2026 Rough Tr. at 43 (State's opening argument).)

- In responding to Dowling's Rule 29(A) motion, the State pointed to State Ex. 278 and 281, emails Randazzo sent "***directing staff*** -- i.e. tell Greg Price – to take the rate case requirement out of the ESP IV … [T]he direct result is ***what Sam Randazzo directed his staff to do***." ((Emphasis added.) 3/9/2026 Rough Tr. at 139.)

- In closing argument, the State directed the jury to testimony that Paul Corey understood "Sam Randazzo was the one ***who directed the PUCO staff*** to make the deletions" related to the audit report. ((Emphasis added.) 3/16/2026 Rough Tr. at 109.)[2]

Directing someone to take an action is not equivalent to attempting to influence one's thinking. It is not lobbying.[3]

Only one PUCO Commissioner, Dennis Deters, offered testimony concerning whether Randazzo *lobbied* other members of the PUCO. The answer was an unequivocal no:

> Q: And, sir, Mr. Randazzo never tried to pressure you to vote in a particular way on any case, did he?
>
> A: No.

(3/4/2026 Rough Tr. at 12–13; *id.* at 31 (confirming his vote on the removal of the rate case requirement was his "own personal judgment that that was the right decision for the people of the state of Ohio"); *id.* at 44–45 (same with elimination of final DMR audit report).) No rational juror could conclude that Randazzo engaged in executive agency lobbying for FirstEnergy given the absence of evidence that he tried to influence a reportable person's thinking.

And still, assuming one could make this leap, Ohio law separately excludes attempts to influence executive agency decisions made by officers or employees of state agencies, such as the Chairman of the PUCO, (Def. Ex. 2175 at 15; R.C. 121.60(H)), and decisions "made solely with respect to named persons" as opposed to those that "ha[ve] broad and universal application to all persons subject to the jurisdiction of the agency" (Def. Ex. 2175 at 56; Adm.Code 101-11-01(C)),

[2] Because this evidence is hearsay, the jury could not rely on the assertion as substantive evidence in any event. *See State v. Kirk*, 2010-Ohio-2006, ¶ 28 (6th Dist.).

[3] If this evidence has any value at the Rule 29 stage, it is to Count Two—that while fails for other reasons—at least concerns influencing a public servant "with respect to the discharge of [his own] duties." R.C. 2921.02(A).

such as the audit report. These categorical exclusions of Randazzo's decision making as the Chairman of the PUCO separately mandate acquittal.

ii. At a minimum, the Court must shorten the timeframe of Count Ten to align with the evidence.

Even if the Court accepts that Randazzo's decision-making could constitute executive agency lobbying and the categorical exclusions do not apply (and it should not), the timeframe of Count Ten must be adjusted to begin in September 2019. The State has charged Dowling with tampering with twelve Executive AERs submitted between May 31, 2017 and January 22, 2021. But it has provided no evidence—or even argued—that Randazzo engaged in executive agency lobbying in the period covered by the first AER in May 2017 until after he became the Chairman of the PUCO in April 2019.[4]

While Dowling maintains that he is entitled to acquittal on tampering with the Executive AERs, the Court must, at a minimum, address the complete absence of evidence related to the first seven of twelve Executive AERs.

C. There is insufficient evidence that FirstEnergy *compensated* Randazzo to lobby (both Counts Nine and Ten; Predicate Act Twenty-Six and Twenty-Seven).

The State was also required to prove beyond a reasonable doubt that Randazzo lobbied for FirstEnergy ***for compensation***. (*See* 2/27/26 Rough Tr. at 69 (Bledsoe confirming that if person is not compensated to lobby, the employer does not need to identify that person as a lobbyist on any

[4] In fact, the State's sole reference to Randazzo engaging in executive agency lobbying before joining the PUCO involves his expression of "displeasure with the distribution modernization rider" in a 2016 conversation with the PUCO Chairman Asim Haque. (2/4/2026 Rough Tr. at 140.) Even that 2016 conversation fell out of charged time frame before the earliest AER reporting period charged in 2017, and so could not have been relied on to sustain a conviction. And as with the State's other evidence, it does not even amount to lobbying. Randazzo met with Haque after the PUCO had already made its decision on rider DMR, meaning that he could not have expressed his view in an attempt to influence Haque's decision. (2/4/2026 Rough Tr. at 300–302.)

forms filed with JLEC); Def. Ex. 2175 at 5 ("In Ohio, a lobbyist is a person who is *compensated* to advocate the interests of another before Ohio's legislative and executive branches").)

The State offered no evidence that FirstEnergy compensated Randazzo to lobby on its behalf. In the face of this evidentiary void, the State tried to twist the purpose of monies paid to Randazzo's company SFA pursuant to a 2013 Consulting Agreement (State Ex. 30) and the November 2015 Agreement (State Ex. 79) to claim that Randazzo was paid to lobby for FirstEnergy. Neither theory survives scrutiny.

Pursuant to the 2013 Consulting Agreement, FirstEnergy Solutions paid SFA from 2013 through the end of 2017. Only the payments made in 2017 overlap with the time frame charged in Counts Nine and Ten. (*See* Def. Ex. 3267 (showing payments made to SFA in 2017).) The State's witnesses acknowledged that these were consulting payments, and that Randazzo performed sales consulting work under that agreement. (*See* 2/10/26 Tr. at 50 (Mark Hayden recognizing that CEO Tony Alexander and Chief Legal Officer Leila Vespoli decided to hire Randazzo for sales consulting work); 3/5/26 Rough Tr. at 54 (Donald Schneider, who oversaw the early years of the consulting agreement, testifying that Randazzo "was a consultant on sales and marketing, period").) While there is less clarity on what Randazzo was doing for consulting services in the charged year of 2017 (*see* 3/4/26 Rough Tr. at 257–58), the State offered ***zero*** evidence that the purpose of the 2017 payments was different from the purpose of the payments in the prior years. In other words, the evidence showed only one thing—that the payments were for consulting services in connection with the 2013 Consulting Agreement.[5]

[5] Even if the State terminated the consulting agreement in earlier years, FirstEnergy Services would have had to make 85% of the payments under the agreement, while losing the value of preventing Randazzo from working for competitors of FirstEnergy Solutions. (State Ex. 30 at 11.)

Payments made under the 2015 Settlement Agreement fare no better. Even though the State acknowledged that money sent from 2015 to 2018 were settlement payments, it contended that the $4.3 million payment in December 2018 was for Randazzo personally to lobby on behalf of FirstEnergy. Yet the evidence at trial clearly established that ***none*** of that money was intended for Randazzo personally. It was for IEU-Ohio pursuant to a EPV-IV settlement. (*See, e.g.*, Summary Exhibit 1 (reflecting settlement payments, emails and letters to IEU-Ohio members); State's Ex. 335 (Pritchard letter referring to settlement payments "[a]s part of IEU-Ohio's settlement of bona fide legal claims it had against FirstEnergy related to a Public Utilities Commission of Ohio proceeding"); Def. Ex. 2417 (3/26/2017 email from Randazzo regarding a "settlement related communication" where he stated that he was "starting to get questions [from] group members regarding the timing of the payment from FE and distribution to them").) Because FirstEnergy did not compensate Randazzo to lobby, it could not have listed him as a lobbyist on its AERs.

* * *

The above evidentiary insufficiencies on the tampering counts are made more glaring by the State's own witnesses repeatedly informing the jury that they never viewed or understood Randazzo to be FirstEnergy's lobbyist. (2/17/26 Rough Tr. at 112 (Yeboah-Amankwah); 2/18/26 Rough Tr. at 171 (Mikkelsen); 2/23/26 Rough Tr. at 66–67 (Pine); 3/5/26 Rough Tr. at 26 (Schneider).) The complete lack of evidence demonstrating that Randazzo performed either legislative or executive agency lobbying activity on behalf of FirstEnergy and was paid to do so—and the direct testimony to the contrary—mandate acquittal on Counts Nine and Ten.[6]

[6] Dowling maintains that Counts Nine and Ten must be dismissed for the additional reason that the State has impermissibly weaponized the tampering with records statute in an attempt to impose a *felony* conviction on conduct that the General Assembly's intended to be a *misdemeanor* under R.C. 101.99(B) and R.C. 121.99(B). (*See* Dowling's MTD Counts 26 and 27 (5/30/2024).)

III. The forgery predicate act must be stricken from Count One for additional and independent insufficiencies (Predicate Act 2).

The State's OCPA charge rests on its allegation that Dowling forged the November 2015 Settlement Agreement between FirstEnergy Service Company and Sustainability Funding Alliance of Ohio (SFA). As explained above, no evidence was presented that Dowling himself forged the November 2015 Agreement. The Court can, and should, stop at this dispositive shortcoming. But even if it does not, the Court must also strike the forgery predicate because there was insufficient evidence that Dowling acted with intent to defraud and that the agreement was spurious.

A. There is insufficient evidence that Dowling acted with the requisite intent.

The State had to prove beyond a reasonable doubt that Dowling possessed "purpose to defraud, or know[ledge] that [he was] facilitating a fraud." R.C. 2913.31(A)(2). "'Defraud' means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another." R.C. 2913.01(B). The State argued that Dowling acted with the requisite intent because the November 2015 Agreement was written to deceive either the PUCO or IEU-Ohio. Neither theory is sufficiently supported.

The evidence at trial showed that Dowling had nothing to do with discovery matters at the PUCO or anything to do with the decision not to disclose the November 2015 Agreement. (*See* 2/13/26 Rough Tr. at 277 (Yeboah-Amankwah confirming Dowling had nothing to do with discovery); 3/2/26 Rough Tr. at 31 (PUCO ALJ Greg Price confirming Dowling never appeared before him at PUCO as an attorney or witness).) Indeed, the evidence established that FirstEnergy's ***lawyers*** reviewed and approved the discovery responses and made colorable and "legitimate" objections to disclosing the agreements. (*See* Def. Ex. 3063 at 21 (AEP brief defending lack of relevance of side agreements with non-signatory parties based on Ohio Supreme Court precedent); 2/4/26 Rough Tr. at 262 (former Chair Haque noting it was a legitimate argument).) Dowling had zero involvement in those responses. (*See* Def. Exs. 2297, 2300, 2304–2307.) There is no way that Dowling could have acted with the requisite intent to defraud the PUCO when he had no knowledge that the lawyer's objection in discovery could even be conceived as impermissible.

The overwhelming evidence also showed that Dowling, and the FirstEnergy lawyers who advised him, intended the November 2015 Agreement to be a settlement with IEU-Ohio to resolve IEU-Ohio's opposition to ESP-IV. (*See, e.g.,* 2/13/26 Rough Tr. at 268 (Yeboah-Amankwah agreeing that it was her "belief and understanding that [Randazzo] had been negotiating on behalf of his clients, IEU-Ohio"); *id*. at 295 ("Q: So [Randazzo] is confirming what you understood that this money, that's not for him. It's for his clients, right? Yeboah-Amankwah: "That's correct."); 10/19/23 Rough Tr. at 248:14–22 (Dowling testifying, "That contract, it's my understanding, was a contract related to a settlement agreement through SFA, the Sustainability Funding Alliance, for the benefit of the Industrial Energy Users of Ohio."); *see also* 2/6/26 Rough Tr. at 284 (IEU-Ohio client Matt Brakey testifying, "I was—under the impression [in May 2015] and long after that we had a bona fide settlement with FirstEnergy on this."). Simply put, there is no evidence that Dowling intended to deceive IEU-Ohio when he—along with everyone else—believed they were the recipients of the funds.

Because the evidence is insufficient to prove that Dowling possessed any intent to defraud, the State has failed to carry its burden with respect to an essential element of forgery.

B. There is no evidence that the November 2015 Settlement Agreement was "spurious."

Even if the State had offered sufficient evidence of Dowling's intent to defraud (which it did not do), the forgery predicate must be stricken from Count One because the State failed to prove that the November 2015 agreement "purport[ed] to be genuine when it actually [was] spurious." *See* R.C. 2913.31(A)(2). Ohio law distinguishes between "spurious," or fake, writings that satisfy the forgery statute and "writings which are what they purport to be, but which may contain false information" that do not. *State v. Bosak*, 1984 WL 4541, at *2 (8th Dist. Mar. 8, 1984). For example, in *Leatherwood*, the defendant was convicted of uttering a forged document after he submitted a record check form to a prospective employer with false information. *State v. Leatherwood*, 1994 WL 316482, at *2 (9th Dist. July 6, 1994). The Ninth District found that the form was not spurious, reasoning that "while the information contained in the form issued by the Sheriff was false … the form itself was genuine." *Id.* The Eighth District similarly reversed a defendant's forgery conviction where the evidence demonstrated only that the defendant provided false information that an officer entered into an inspection form." *Bosak*, 1984 WL 4541, at *2–3.

The distinction between a document that is actually not what it purports to be and a document that contains false information matters here because the State failed to prove that the November 2015 Agreement falls into the former category. At trial, witness after witness testified that the November 2015 Agreement was a settlement agreement for IEU-Ohio in connection with ESP-IV. (*See supra* Section III.A.) Countless documents from both FirstEnergy and IEU-Ohio show that the agreement was created in the context of a settlement regarding ESP-IV (*see, e.g.,* Def. Ex. 3305), and that settlement payments were made according to the agreement and paid to the IEU-Ohio members. (*See, e.g.*, Summary Exhibit 1 (reflecting settlement payments, emails and letters to IEU-Ohio members); State's Ex. 335 (Pritchard letter referring to settlement payments "[a]s part of IEU-Ohio's settlement of bona fide legal claims it had against FirstEnergy related to a Public Utilities Commission of Ohio proceeding); Def. Ex. 2417 (3/27/2017 email from Randazzo regarding a "settlement related communication" where he stated that he was "starting to get questions [from] group members regarding the timing of the payment from FE and distribution to them").)

Just like the record check form in *Leatherwood* or the inspection form in *Bosak*, the agreement was what it purported to be—a settlement agreement that FirstEnergy and IEU-Ohio recognized and performed under. Even if the agreement contained false information, it was not a fake, or "spurious," document as defined under the forgery statute. The forgery predicate should thus be stricken from Count One.

IV. Dowling must be acquitted of telecommunications fraud for additional and independent insufficiencies (Count Six; Predicate Act Twenty-Three).

The State alleges that Dowling committed telecommunications fraud in violation of R.C. 2913.05(A) between May 5, 2015 and June 6, 2018 when FirstEnergy paid SFA pursuant to the November 2015 Agreement. As explained in Section III.A, *supra*, the Court must acquit Dowling of this charge because there was insufficient evidence of a scheme to defraud the PUCO through the November 2015 Agreement.

Moreover, there is insufficient evidence that Dowling knowingly transmitted or caused the transmission of the payments by means of a wire, and so the Court must acquit on this basis too. Members of FirstEnergy's legal department processed the payments, without instruction from Dowling thereafter. (*See, e.g.,* 2/11/26 Rough Tr. at 115-116 (Jason Lisowski testifying that Dowling did not approve the payments in FirstEnergy's SAP system); *id*. at 232–233 (Lisowski testifying that a SFA invoice was "processed within the legal department between Mr. Bingaman … Ms. Yeboah, Mr. Reffner, and then Ms. Peddicord and Ms. Corrigan"); *see also* Defs.' Exs. 2214, 2344, 2353, 2424, 2427, 2431, 2530, 2538, 2545, 2548, 3146 and State's Exs. 65, 66, 98, 129, 150, 478 (emails from FirstEnergy attorneys corresponding about and approving payments, and corresponding with Randazzo about the wire transfers); State's Exs. 66A, 99A, 98A, 466, 465 (SFA invoices directed to FirstEnergy lawyers).) This independent insufficiency merits acquittal on telecommunications fraud Count Six and the striking of the corresponding predicate act.

V. Dowling is entitled to acquittal for the additional reasons previously articulated and that are expressed in Mr. Jones's motion for acquittal.

Finally, Dowling incorporates by reference the additional reasons he is entitled to acquittal as stated in his Rule 29(A) oral motion and written supplement and his Rule 29(B) oral motion. This includes, but is not limited to, (1) acquittal on bribery (Count Two) for insufficient evidence of that Randazzo was a public servant at the time of the alleged bribe and of Dowling's intent; (2) acquittal on telecommunications fraud (Count Three) for reliance on an honest services fraud theory that is not cognizable under R.C. 2913.05 and for insufficient evidence that Dowling knowingly disseminated anything; (3) acquittal on the OCPA charge (Count One) for insufficient evidence that the alleged enterprise shared a common purpose; and (4) acquittal on the OCPA (Count One) and Conspiracy to Engage in OCPA (Count Eleven) for insufficient evidence of two distinct predicate acts. (*See* Dowling's Supplemental Memorandum in Support of Oral Motion for Judgment of Acquittal (3/9/2026); 3/9/2026 Rough Tr. at 69–114 (Dowling's oral Crim.R. 29(A) motion); 3/12/2026 Rough Tr. at 46–61 (Dowling's oral Crim.R. 29(B) motion).) Because these counts overlap with those brought against Jones, Dowling likewise incorporates the arguments in Jones's motion of acquittal under Crim.R. 29(C) filed on April 28, 2026.[7]

CONCLUSION

The State has had a full and fair opportunity to try its case against Dowling and has come up short. It failed to provide sufficient evidence that Dowling was the principal offender for tampering with records, forgery, and telecommunications fraud in Count Six, and it did not seek a complicity instruction. Nor did the State provide sufficient evidence of many other required elements of these offenses and, as articulated in Jones's motion for acquittal, the remaining counts.

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[7] Dowling has filed an additional notice explaining that he joins the applicable arguments in Jones's motion for acquittal. *See* Def. Michael J. Dowling's Notice of Adoption (4/28/2026).

Criminal Rule 29(C) protects Dowling's right to due process by preventing the State from getting a do-over to try to fix these failures. For these reasons, Dowling respectfully requests that the Court enter an order of judgment of acquittal under Crim.R. 29(C).

[Signature blocks on following page]

Date: April 28, 2026

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