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

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

INTRODUCTION

Chuck Jones is entitled to acquittal under Rule 29 based on the evidence introduced at trial. The State presented insufficient evidence to support its OCPA charges because Jones's alleged criminal conduct amounted to a single event—not a pattern of corrupt activity. Acquittal is likewise warranted on the bribery charge because the undisputed evidence establishes that Sam Randazzo was not a "public servant" when the alleged bribe took place, as the Ohio bribery statute requires. And the telecommunications fraud charge fails because it is based on a theory—so-called "honest-services fraud"—that Ohio law does not recognize.

These issues present pure "question[s] of law" for the Court to decide: whether the evidence presented at trial was sufficient to prove all the essential elements of the charged offenses beyond a reasonable doubt. *State v. Mora*, 2020-Ohio-5455, ¶ 8 (9th Dist.); *see also* Crim.R. 29. This is not a matter of the Court's discretion: if "the evidence is insufficient to sustain a conviction," the Court "is required to enter a judgment of acquittal." *State v. Ondreyka*, 1995 WL 500104, at *2 (9th Dist. Aug. 23, 1995).

The Court's gatekeeping function is especially critical in this procedural posture. The State had a full and fair opportunity to present sufficient evidence to sustain a conviction. It failed to do so. Jones should not have to stand trial again so the State can have a second bite at the apple. That is why, when a Rule 29 motion is granted, jeopardy attaches and the State is barred from subjecting the defendant to a second trial. *City of Girard v. Giordano*, 2018-Ohio-5024, ¶ 9. A rigorous Rule 29 examination is thus critical to protect Jones's double-jeopardy rights.

LAW AND ARGUMENT

I. Jones Must Be Acquitted of Engaging in a Pattern of Corrupt Activity (Count 1).

A "pattern of corrupt activity" under the Ohio Corrupt Practices Act (OCPA) requires two or more predicate offenses that "are ***not*** so closely related to each other and connected in time and place that they constitute a single event." (Emphasis added.) R.C. 2923.31(E). Yet the two offenses underlying Jones's OCPA charge—bribery and telecommunications fraud—are very obviously nothing more than different criminal labels on a single event. According to the State, the bribery occurred when Jones told Sam Randazzo that FirstEnergy would pay the remaining balance on a pre-existing settlement agreement with Randazzo's client, IEU-Ohio. And this one decision, the State maintains, also amounted to telecommunications fraud because other individuals at FirstEnergy subsequently made the payment via wire transfer.

The State's evidence was insufficient to prove bribery or telecommunications fraud. But even if Jones had committed bribery (by promising to pay the money on December 19, 2018) and telecommunications fraud (because others at FirstEnergy paid the money on January 2, 2019, by wire), those offenses could not possibly add up to a ***pattern*** of corrupt activity. For this reason, Jones moved to dismiss the State's OCPA charges before trial. In response, the State insisted that it should be given the opportunity to prove the "pattern" element at trial, arguing that this was "a question for a trier of fact, not the Court on a pretrial motion to dismiss." (2/14/2025 State Opp. at 11.) At the time, this Court agreed, holding that whether "the State is incorrectly aggregating multiple steps of a single bribe into a pattern" was "a matter of fact for the jury to determine." (5/30/2025 Journal Entry at 3.)

But after a full and lengthy trial, the State presented exactly zero evidence that Jones engaged in a "pattern of corrupt activity." Instead, the State acknowledged the fact that its bribery and telecommunications fraud claims were simply two sides of the same coin, each stemming from Jones's authorization of the $4.3 million payment. (2/3/26 Cert. Tr. Excerpt 44–45 (describing the "telecommunications fraud" charge as "using a network, wires in the state of Ohio to transmit bribe money").) And the ***only*** evidence the State presented connecting Jones to this payment is that he communicated with Randazzo and FirstEnergy employees about it on December 18 and 19, 2018.

The State has argued that these alleged offenses establish a pattern because "they are different crimes, and, again, different elements, different criminal intents." (3/12/26 Proceedings.[1]) This argument is frivolous. It ignores the statutory definition of "pattern of corrupt activity"—and the reams of caselaw applying it. Indeed, throughout all the briefing and argument on this issue, the State has never cited a single case suggesting that two crimes can form a pattern simply because their elements are different. No such case exists.

To the contrary, Ohio courts have consistently held that a "single event"—or even a "single scheme"—"***cannot establish a pattern regardless of the number of criminal acts emanating therefrom***." (Emphasis added.) *Herakovic v. Catholic Diocese of Cleveland*, 2005-Ohio-5985, ¶ 36 (8th Dist.); *see also Argote-Romero v. LAZ Parking LTD., LLC*, 2025-Ohio-400, ¶ 48 (10th Dist.) (same). In *Herakovic*, the Eighth District explained that acts of witness intimidation, failing to report multiple instances of physical abuse, and money laundering did not amount to a pattern

[1] Certified copies of certain transcripts are forthcoming.

because they all were part of a single effort to conceal the abuse. 2005-Ohio-5985, at ¶ 36. More recently, in *Argote-Romero*, the Tenth District held that multiple acts of "extortion and criminal usury" did not form a pattern because they stemmed from a single scheme "to issue and collect payment upon citations for non-payment of parking meters." 2025-Ohio-400, at ¶ 46–48.

The Ninth District too has stringently enforced the OCPA's pattern requirement. In *State v. Mora*, the Court held that ***multiple acts of breaking and entering at multiple businesses*** were not enough to form a pattern. 2020-Ohio-5455, ¶ 23 (9th Dist.). There, the defendant, acting with three other individuals over the course of several days, purchased supplies, broke into three separate businesses, stole money from the premises, and disposed of the evidence. The defendant pleaded guilty to three counts of breaking and entering, two counts of vandalism, one count of grand theft, one count of theft, and one count of safecracking—but went to trial on the OCPA charge. *Id.* at ¶¶ 2–5, 12–21. After the jury returned a verdict of guilty, the trial court denied the defendant's Rule 29 motion for acquittal.

The Ninth District reversed. Citing myriad cases, the court held that the OCPA is "intended to criminalize the pattern of criminal activity, not the underlying predicate acts" and "requires proof of conduct independent of the conduct required to commit [the underlying predicate offenses]." *Id.* at ¶ 23 (citations and quotations omitted). "Were it otherwise," the court explained, "every crime spree involving more than one individual would violate the [OCPA]." *Id.* Thus, despite the many predicate offenses involving several different acts by the defendant, the court held that these "incidents were 'so closely related to each other and connected in time and place that they constituted a single event.'" *Id.* (quoting R.C. 2923.31(E)).

The Ninth District's decision in *Mora* is hardly an outlier. In a seminal OCPA decision, the Ohio Supreme Court explained that "a situation such as ***three robberies*** committed by the same person" would not constitute a pattern. (Emphasis added.) *State v. Schlosser*, 79 Ohio St.3d 329, 334 (1997). More recently, the First District held "***six separate illegal contracts***" to be a "single event," not a pattern, because they "covered the same subject matter" and "might as well have been one contract on automatic renewal." (Emphasis added.) *Sun Bldg. Ltd. P'ship v. Value Learning & Teaching Acad., Inc.*, 2021-Ohio-2008, ¶ 63-64 (1st Dist.). And more examples abound. *See Morrow v. Reminger & Reminger Co. LPA*, 2009-Ohio-2665, ¶ 31 (10th Dist.) (several "instances of perjury" insufficient to establish a pattern where they were all part of a single attempt to avoid "liability for [a] default judgment"); *Krieger Ford, Inc. v. Chase Motors, Inc.*, 1999 WL 561693, at *12 (10th Dist. Aug. 3, 1999) (passing multiple bad checks to facilitate the sale of 90 vehicles was "a single transaction," not a pattern under the OCPA).

In arguing that a single transaction can establish an OCPA pattern, the State has relied mainly on the companion cases of *State v. Dent*, 2020-Ohio-6670, and *State v. Groce*, 2020-Ohio-6671. But those cases say nothing of the sort. The defendants in *Dent* and *Groce* were convicted under the OCPA for manufacturing and selling crack cocaine at a known drug house. On appeal, they argued there was insufficient evidence of a pattern because a video introduced by the State had recorded events on only one day. *Dent* at ¶ 22–24; *Groce* at ¶ 8.

The Ohio Supreme Court found sufficient evidence to support the OCPA conviction—but not because a pattern could arise from a single drug transaction or activities that occurred over the course of a single day. Instead, the Court emphasized that the evidence established that the defendants engaged in multiple drug sales involving multiple customers. *Dent* at ¶ 26. The video evidence, which captured a four-hour period during a single day, showed that the defendants had engaged in "several" distinct drug transactions—evincing a "high degree of familiarity" with an "up-and-running drug house." *Id.* at ¶ 8–10, 26. And through law-enforcement surveillance that predated the video, the State also established that additional transactions took place on other days. *Id.* at ¶ 4, 23. In sum, the Court held that "a rational juror could reasonably infer from the activity and interactions observed in the video-surveillance evidence that Groce's activity in the house with Dent and Walker was ***not*** isolated to a single day or a single drug transaction." (Emphasis added.) *Groce* at ¶ 9; *Dent* at ¶ 26 (same).

Dent and *Groce* thus reinforce the principle that an OCPA charge cannot be based on a "single [] transaction." *Groce* at ¶ 9. And if there had been just one transaction, there would not have been a pattern. *See Kadouri v. Fox*, 2005 WL 783255, at *5 (E.D.N.Y. Jan. 24, 2005) (holding "one 'act' of converting a premises to a drug manufacturing facility cannot be divided into multiple acts of racketeering").

Federal courts, too, "have consistently held that a single episode does not constitute a 'pattern,' even if that single episode involves behavior that amounts to several crimes." *Apparel Art Int'l, Inc. v. Jacobson*, 967 F.2d 720, 723 (1st Cir. 1992) (Breyer, C.J.).[2] In *Apparel Art*, then-Chief Judge Breyer illustrated this principle with the following hypothetical scenario:

> For example, a single (interstate) bank robbery … consists of several different parts (say, using a gun, threatening a teller, stealing a getaway car, perhaps abducting the teller as well, and eventually lying about participation). Some of those separate parts may themselves constitute separate criminal acts or "crimes" (in the technical sense that each, separately, violates a specific statute). ***Yet, those several separate criminal parts, taken together, do not generally make out a "pattern."*** To hold otherwise would mean that many individual bank robberies, frauds, drug sales, embezzlements, and other crimes as well would automatically fall within the scope of the RICO statute, a result contrary to RICO's basic purpose.

[2] The OCPA "is modeled on the federal RICO Act, 18 U.S.C. 1961, and its body of federal law is instructive." *Cleveland v. JP Morgan Chase Bank, N.A.*, 2013-Ohio-1035, ¶ 30 (8th Dist.); *see also Schlosser*, 79 Ohio St.3d at 332 (same).

(Emphasis added.) *Id.* at 723; *see also Lian v. Home Reno Concepts, LLC*, 803 F. App'x 444, 448 (2d Cir. 2020) (plaintiffs may not "artificially fragment[] a singular act into multiple acts simply to invoke RICO"). And in *Roeder v. Alpha Indus., Inc.*, the First Circuit addressed the interplay between bribery and the "pattern" element, holding that "a bribe, which by any realistic appraisal is solitary and isolated, is not transformed into the threatening 'pattern of racketeering activity' with which Congress was concerned simply because the bribe is implemented in several steps and involves a number of acts of communication." 814 F.2d 22, 31 (1st Cir. 1987).

The evidence against Jones, all of which stems from his decision to make a single payment on December 19, 2018, does not resemble a pattern in any respect. The State had a fair opportunity to offer evidence of criminal conduct by Jones that did not amount to a single event, and it came up with nothing at all. Because no rational trier of fact could find that Jones's single decision to authorize a lump-sum payment amounted to a ***pattern*** of corrupt activity, the Court must acquit Jones on Count 1.[3]

II. Jones Must Also Be Acquitted of Conspiracy (Count 11).

To prove conspiracy, the State must prove that Jones, "with purpose to commit or to promote or facilitate the commission of ... engaging in a pattern of corrupt activity ... [w]ith another person or persons, plan[ned] or aid[ed] in planning the commission of [engaging in a pattern of corrupt activity]." R.C. 2923.01(A)(1). As the Ninth District has held, this means the State had to present evidence that Jones either "agreed to commit predicate acts himself that would have been sufficient to establish a 'pattern of corrupt activity'" or "agreed that others would commit the acts that would establish the 'pattern of corrupt activity.'" *State v. Feliciano*, 115 Ohio

[3] Jones is further entitled to acquittal on Count 1 because the State failed to introduce sufficient evidence that he committed the alleged predicate acts of bribery and telecommunications fraud, as explained below.

App.3d 646, 660–661 (9th Dist. 1996). The U.S. Supreme Court explained: "A [RICO] conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense[.]" *Salinas v. United States*, 522 U.S. 52, 65 (1997).

The State presented no evidence that Jones planned or agreed that he or anyone else would commit incidents of corrupt activity sufficient to form a "pattern of corrupt activity" under R.C. 2923.31(E). The State alleged that this conspiracy did not begin until December 18, 2018. (Am. Ind. 40.) The incidents of corrupt activity alleged against Jones in Count 11—bribery and telecommunications fraud—both stem from the $4.3 million payment. As explained above, Jones's decision to authorize this payment cannot establish a pattern—even if, in making this decision, Jones had been conspiring to commit these two offenses.

The State also alleged tampering with records as an incident of corrupt activity in Count 11. But the State did not present any evidence that Jones planned or agreed that he or anyone else would tamper with records. Indeed, there was no evidence at trial that Jones even knew about this alleged offense. Accordingly, tampering with records cannot count toward Jones's "pattern of corrupt activity" for Count 11. *See Feliciano* at 660-661 (9th Dist.).

Moreover, even if the State had presented evidence that Jones agreed to the commission of tampering with records (and it clearly did not), the State cannot combine the $4.3 million payment and Dowling's alleged failure to disclose that payment in lobbying forms into a pattern of corruption. If it could, "then every offense related to a criminal enterprise would be eligible for inclusion in a pattern whenever the offender falsely denied its commission. That is not what Congress"—or the General Assembly—"intended." *United States v. Biaggi*, 909 F.2d 662, 686 (2d Cir. 1990) (overturning RICO conviction because bribery and false statements denying bribe were single event for purposes of RICO even though denials gave rise to separate charge for obstruction of justice); *see also Sun Bldg.*, 2021-Ohio-2008, ¶ 59 (explaining that "the General Assembly conveyed its desire not to apply the OCPA too broadly, lest it transform any transgression into a pattern of corrupt activity").

III. Jones Must Be Acquitted of Bribery (Count 2).

A. The State's evidence demonstrates that Randazzo was not a "public servant" at the time of the alleged bribe.

To sustain a bribery conviction, the State was required to prove that Jones promised, offered, or gave $4.3 million with purpose to corrupt or improperly influence ***a public servant***—"Samuel C. Randazzo, Chairman of the Public Utilities Commission of Ohio" (Am. Ind. 18)—with respect to the discharge of the public servant's duty. *See* R.C. 2921.02(A).[4] But Randazzo indisputably was not a "public servant" when Jones promised to make the $4.3 million payment—or even when others at FirstEnergy made the payment. Because the plain language of the bribery statute required Randazzo to be a "public servant" at that time, the Court must acquit Jones of bribery. And even if the bribery statute was ambiguous on this point, the rule of lenity—which has been codified at R.C. 2901.04—would require acquittal in any event.

1. The bribery statute requires the person allegedly being bribed to be a "public servant" when the promise, offer, or gift is made.

The charged bribery statute makes it a crime to "promise, offer, or give" something of value "with purpose to corrupt" or "improperly … influence" a "public servant." R.C. 2921.02(A). In other words, the statute requires the State to prove that the defendant intended to corrupt or improperly influence a person who meets the definition of "public servant."

Consistent with the bribery statute's plain meaning, Ohio appellate courts have repeatedly interpreted it to require that the person allegedly being bribed was a "public servant" at the time

[4] The State affirmatively disclaimed any allegation or argument that Jones bribed Randazzo in his capacity as a member of the PUCO Nominating Council. (*See* 3/12/2026 Proceedings.)

of the alleged bribe. In *State v. Bissantz*, for example, the Twelfth District held that the trial court had "properly instructed the jury" that it was required to find that the alleged bribe recipient "was a public servant" on "December 30th and December 31st, 1980"—the dates when the alleged bribe in that case occurred. 3 Ohio App.3d 108, 111 (12th Dist. 1982). In *State v. Seneff*, the Eighth District upheld an instruction that required the jury to find that the alleged bribe recipient "was a police officer [and] thus a public servant" "***at the time***" the "valuable thing"—"money compensation in order to influence [the public servant] in the discharge of his duty as a police officer"—was exchanged. (Emphasis added.) 70 Ohio App.2d 171, 172–173 (8th Dist. 1980).[5] And in *Dottore v. Vorys, Sater, Seymour & Pease, L.L.P.*, the Eighth District rejected an OCPA claim that included a predicate act of bribery because the plaintiffs did "not even identify the position held by [the alleged bribe recipients] or their duties" when the alleged bribe took place—which was necessary to establish the defendants' "purposeful corruption or improper influence of a public servant." 2014-Ohio-25, at ¶ 116 (8th Dist.).

In a more recent case involving this issue, *State v. Yavorcik*, the State—represented by Mr. Meyer—tacitly acknowledged that the alleged bribe recipient was required to have been a "public servant" at the time of the alleged bribe. 2018-Ohio-1824 (8th Dist.). There, Yavorcik ran for county prosecutor but lost. The State charged Yavorcik with accepting bribes to drop a potential prosecution. *Id.* at ¶ 28–29. On appeal, Yavorcik argued that the State failed to prove he was a "candidate for public office"—and thus a "public servant"—when the alleged bribe took place because there was no evidence that he filed a nominating petition. (Ex. A, Appellant Br. at 38–40.) In response, the State argued only that "there was ample evidence submitted at trial that Appellant

[5] These cases involved R.C. 2921.02(B) (which applies to the person accepting a bribe) as opposed to R.C. 2921.02(A) (the provision charged here, which applies to the person paying the bribe), but the relevant statutory language and issue are the same.

was a candidate for office ***at the time he accepted bribes***," citing "R.C. 2921.01(B)(3)," the definition of "candidate for public office."[6] (Emphasis added.) (Ex. B, State Br. at 23–24.)

The Court's jury instructions reflected this statutory requirement. (*See* 3/16/2026 Proceedings ("One question for you to decide is whether the defendant had the purpose to corrupt or improperly influence ***a public servant*** with respect to the discharge of the public servant's duty ***at the time*** the defendant promised, offered, or gave any valuable thing or valuable benefit." (emphases added)).) As this instruction—to which the State agreed—makes clear, the jury was required to find that Jones intended to corrupt someone who met the definition of "public servant" when the promise, offer, or gift was made. And Jones could not have intended to corrupt a "public servant" if the person whom he allegedly intended to corrupt was not, in fact, a "public servant."

2. The trial evidence confirmed that Randazzo was not a "public servant" at the relevant time.

Ohio law defines "public servant" as (1) a "public official," (2) a "person performing ad hoc a governmental function," or (3) a "person who is a candidate for public office." R.C. 2921.01(B). Relevant here, "public official" includes "any elected or appointed officer … of the state," and "candidate for public office" means a person who "has been nominated according to law for election or appointment to public office." R.C. 2921.01(A), (B)(3).

The relevant legislative history reveals that the General Assembly considered other definitions of "candidate for public office" and ultimately selected the definition currently provided in the statute, which sets forth the clear triggering events for when a person becomes a "candidate for public office" (such as being "nominated according to law"). In fact, a proposed amendment to the law would have defined "candidate" less precisely to include not only "persons

[6] Ultimately, the Eighth District overturned Yavorcik's conviction because the State failed to prove venue. *Yavorcik* at ¶ 107.

duly nominated for election or appointment," but also those "actively seeking nomination, election, or appointment to public office." H.B. No. 511, Res. 8, Jud. Comm. (March 1972). This amendment failed. *Id.* (failing by a vote of eight committee members to three committee members).

Randazzo was not a "public official" on December 19, 2018, when Jones informed Randazzo that FirstEnergy would make the $4.3 million payment. (Ex. 179.) Nor was Randazzo a "public official" on January 2, 2019, when the $4.3 million payment was made. (Ex. 2726 at 2.) Instead, the undisputed evidence demonstrated that Governor DeWine appointed Randazzo as the PUCO chair on February 4, 2019, and, following confirmation by the Ohio Senate, his term began on April 11, 2019. (Ex. 3338.)

Randazzo also was not a "candidate" for the PUCO chair position—i.e., a person "nominated according to law for … appointment"—until well after January 2, 2019. The undisputed evidence established that, as of December 19, 2018, Randazzo had not been contacted by the Governor-Elect about the chair position. (Ex. 179.) Randazzo did not even apply to be the PUCO chair until January 17, 2019. (Ex. 2707 at 12.) It was not until January 31, 2019—43 days ***after*** Jones promised to pay the $4.3 million and 29 days ***after*** FirstEnergy wired that payment—that Randazzo became a "candidate." That is when Randazzo was "nominated" by the PUCO Nominating Council. (*See* Ex. 2707 at 1 (showing that Nominating Council voted to submit Randazzo as nominee to the Governor on January 31, 2019).) Indeed, before the Nominating Council selects the nominees, individuals who have submitted applications are called "applicants" or "possible appointees." *See* Adm.Code 4901:7-1-04(G); Adm.Code 4901:7-1-05(D); R.C. 4901.021(E).

3. The State's arguments to the contrary are meritless.

Faced with the conclusive evidence that Randazzo was not a "public servant" at the time of the alleged bribe, the State has focused on language in the bribery statute that makes the statute applicable "whether before or after the public servant … is elected, appointed, qualified, employed, summoned, or sworn." R.C. 2921.02(A). The State has argued that the bribery statute cannot be interpreted to require that the bribe recipient must be a "public servant" at the time of the alleged bribe because that "would effectively write … out" the statute's "before or after" clause. (3/9/26 Proceedings.) The State is incorrect.

The statute plainly prohibits paying bribes with the purpose to corrupt people who meet the statute's definition of "public servant." The "before or after" clause does not expand the statute's reach to apply limitlessly, as the State would have it, "before or after" the bribe recipient even ***becomes a public servant*** under the statute's definition.[7] Rather, the "before or after" clause concerns the significance of certain events (being elected, appointed, employed, etc.) that may occur before or after a person has become a "public servant" in a given case. The "before or after" clause addresses the fact that a person may meet the definition of "public servant" before one of the specified events has occurred. And the clause clarifies that, in such a case, it is not a defense that the specific event has not yet occurred. The clause does ***not*** make the statute unlimited in time and erase the requirement that the bribe recipient must be a "public servant" at the time the promise, offer, or gift is made.

A few examples make this clear:

- First, imagine a bribe is paid to a candidate who has been officially nominated but not yet appointed. The "before or after … appointed" language makes clear that the statute still applies even though the candidate was not yet appointed. What matters is that she is still a "public servant" because she meets the definition of a "candidate for public office" under R.C. 2921.01(B)(3).

- Second, imagine a bribe is paid to a member of the Governor's cabinet after the Governor appoints him but before he has begun working. The "before or after …

[7] As the statute provides, a person can become a public servant in various ways—e.g., by the person's being "elected," "employed," or "nominated according to law," or more generally by the person's becoming an "agent," "advisor," or "consultant" of the State. *See* R.C. 2921.01(A), (B).

employed" language makes clear that the statute still applies even though he has not received his first paycheck or started his first day on the job. Again, what matters is that he is a "public official" (and thus a "public servant") because he already is an "appointed officer" under R.C. 2921.01(B)(3).

- Finally, imagine a statute that makes it illegal to give a gun to a criminal defendant, "whether before or after the defendant is arrested, fingerprinted, booked, or arraigned." And imagine "criminal defendant" was defined as "a person under indictment or otherwise subject to criminal charges." What matters is whether the gun recipient meets the definition of "criminal defendant" at the time they are given a gun. The "before or after" clause simply establishes that whether the gun recipient was arrested, fingerprinted, etc., does not affect the analysis. The clause does not make the statute unlimited in time and criminalize giving a gun to someone who has not yet been charged (even if they eventually are indicted), because at that time the person did not meet the definition of "criminal defendant."

The State's unlimited-in-time interpretation of the bribery statute's "before or after" clause is also wrong for another reason: it would make the General Assembly's decision to include a specific definition of "candidate for public office" within the definition of "public servant" meaningless. Again, the General Assembly defined "candidate for public office" as (among other things) someone who "has been nominated according to law for election or appointment to public office." R.C. 2921.01(B)(3). As explained above, the General Assembly considered and rejected a broader, vaguer definition: someone "actively seeking nomination, election, or appointment to public office." H.B. No. 511, Res. 8, Jud. Comm. (March 1972).

This choice is significant because it narrowed the definition of "candidate for public office" to include only those who have been nominated according to law, a point in time that is readily identifiable—unlike the difficult-to-apply category of those "seeking" nomination. Indeed, while Randazzo may have qualified as a "candidate for public office" on December 19, 2018, under the ***failed*** amendment's definition—as someone "seeking" nomination—he indisputably did not qualify under the ***enacted*** amendment's definition. The enacted definition thus illustrates the legislature's intent to draw a bright line defining when the bribery statute does and does not apply.

The State's interpretation would erase the definition's bright line and render the legislature's careful definition of "candidate for public office" meaningless. If the bribery statute can apply to people who are not public servants (i.e., actual public officials or candidates), there would have been no need to provide such a careful, bright-line definition of "candidate for public office" at all. After all, a specific starting point for a candidate's liability under the bribery statute—being nominated according to law—would have been unnecessary if the "before or after" clause meant that even future public servants were covered by the statute, as the State wrongly asserts.

The State has also argued that applying the statute only where the defendant seeks to corrupt someone who meets the definition of "public servant" "would encourage people to get their bribes in before the formal notification has been offered to the agency, and that simply cannot be the law, nor can it be … what the legislature intended." (3/9/26 Proceedings.) But since due process "requires that the language of a criminal statute must be sufficiently definite," it is not only normal, but ***necessary*** for bribery statutes to draw bright lines. *State v. Earlenbaugh*, 18 Ohio St. 3d 19, 21 (1985). And by specifically defining "public servant" as it has, the General Assembly has made clear which categories of persons would trigger liability under the Ohio bribery statute.

Despite the State's parade of horribles, the General Assembly's bright-line rule is hardly unusual. The federal bribery statute, for example, makes it a crime to corruptly give, offer, or promise anything of value to any "public official" or to a "person who has been selected to be a public official"—both of which are defined terms, similar to "public servant" in the Ohio bribery statute. 18 U.S.C. § 201. Crucially, a "person who has been selected to be a public official" is defined as "any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed." *Id.* § 201(a)(2). So if Randazzo had become a FERC commissioner instead of a PUCO commissioner, the $4.3 million payment ***still*** would not have been a bribe under the federal statute—because Randazzo did not meet the definition of "person who has been selected to be a public official" when the payment was promised or made. *See also*, *e.g.*, MCLS § 750.117 (under Michigan law, a payment cannot be a bribe unless it is made "after the election or appointment" of the public servant in question).

In any event, "[o]bjections to the policy implications of applying" a statute "as written are properly addressed to the General Assembly, not to the courts." *State v. Bryant*, 2020-Ohio-1041, ¶ 22 (reversing conviction; "in construing a statute, this court's duty is to give effect to the General Assembly's intent ***as expressed in the language it enacted***"); *Kaminski v. Metal & Wire Prods. Co.*, 2010-Ohio-1027, ¶ 61 ("it is not the role of the courts to establish their own legislative policies or to second-guess the policy choices made by the General Assembly"). Here, then, the Court must apply the definition "candidate for public office" that was signed into law—which, despite the State's apparent misgivings about "formal[ities]," hinges on whether the person in question "has been nominated according to law." R.C. 2921.01(B)(3).

4. The rule of lenity requires acquittal in any event.

At most, the "before or after" clause makes the bribery statute ambiguous. On this view, the statute could mean either (1) that the defendant must intend to corrupt someone who presently meets the definition of "public servant" (as Jones asserts), or (2) that the defendant must intend to corrupt someone who is, has been, or will at some future point become a "public servant" (as the State has asserted). That is where the rule of lenity, which has been codified under Ohio law, comes into play. *State v. Elmore*, 2009-Ohio-3478, ¶ 38 (rule of lenity applies "if the intended scope of the statute is ambiguous"). The rule requires a criminal statute to "be strictly construed against the state, and liberally construed in favor of the accused." R.C. 2901.04(A).

In *Bartrum*, the defendant was convicted of compelling prostitution of a minor. The relevant statute prohibited "paying or agreeing to pay a minor, either directly or through the minor's agent, so that the minor will engage in sexual activity, whether or not the offender knows the age of the minor." *Bartrum* at ¶ 6–9. The issue was that the defendant had agreed to pay $500 to a fictitious minor as part of a set-up by a confidential informant. *Id.* at ¶ 2. The defendant argued that the statute required the minor to actually exist. The State argued that the statute required only an agreement to pay a minor for sex—irrespective of whether that minor was real or fictitious. *Id.* at ¶ 12–15. The court found the statute ambiguous. It noted that, on the one hand, "the statute is silent on whether an actual minor is necessary but provides that the agreement may be made with an agent," and so "one could reasonably assume that the statute should apply even when there is no minor." *Id.* at ¶ 17. But it also observed that "the statute's repeated references to 'the minor' and the nature of the agent-principal relationship indicate that existence of an actual minor is necessary for conviction." *Id*. Applying the rule of lenity, the court adopted the defendant's interpretation and affirmed the Ninth District's reversal of his conviction. *Id.* at ¶ 19.

If the bribery statute is ambiguous, its ambiguity resembles that of the statute in *Bartrum*. There, the question was whether the defendant could be convicted of "agreeing to pay a minor" for sex where the recipient of the payment was not actually a minor. Here, the question is whether Jones can be convicted of promising $4.3 million with the purpose to corrupt a "public servant" where the object of his alleged corruption was not a "public servant." As *Bartrum* shows, the rule of lenity requires this ambiguity to be resolved in Jones's favor. *Id.*; *see also State v. Pendergrass*, 2020-Ohio-3335, ¶ 25 (defendant ineligible for sentence-enhancement provision that was "at least ambiguous"; "Because no sound textual argument resolves the facial ambiguity in the statute in favor of the state's interpretation, at the very least, Pendergrass prevails under the rule of lenity."); *State v. Straley*, 2014-Ohio-2139, ¶ 10, 16 (reversing defendant's tampering conviction because statutory language was ambiguous); *United States v. Hamilton*, 46 F.4th 389, 397 fn. 2 (5th Cir. 2022) (reversing defendant's bribery conviction because statute was ambiguous as to whether it required a quid pro quo).

B. The State failed to offer sufficient evidence of Jones's purpose to corrupt.

The State also was required to prove beyond a reasonable doubt that Jones acted with "purpose to corrupt" when he authorized the $4.3 million payment. R.C. 2921.02(A). "A person acts purposely when it is the person's specific intention to cause a certain result" and that intention "was present in [his] mind" "at the time in question." (3/16/2026 Proceedings.) The State did not meet its burden of proving that Jones had a specific intention to corrupt Randazzo.

1. The undisputed evidence shows that the $4.3 million was settlement money owed to Randazzo's client, IEU-Ohio.

Ebony Yeboah-Amankwah, the FirstEnergy lawyer directly involved in negotiating and drafting the 2015 agreement, testified that it "was a real and valid settlement agreement for the benefit of IEU-Ohio," and that the "supplemental term and compensation" portion of State Ex. 79 (the amended agreement) represented "the settlement portion of the agreement." (2/13/26 Cert. Tr. at 173, 199–200.) Crucially, Yeboah-Amankwah further testified that, in December 2018, there remained a total of $4,333,333 owed under the 2015 agreement, and that "every penny of that $4.3 million was intended for Sam Randazzo's clients, not for Sam Randazzo." (*Id.* at 77–78, 200–201; *see also* Ex. 2669.)

This testimony—from a witness to whom the State had granted immunity—was not disputed in any respect. Indeed, it was even corroborated by another State witness, Matt Brakey, president of IEU-Ohio member Brakey Energy. Brakey confirmed that Randazzo, as counsel for IEU-Ohio, had "reached [a] settlement with FirstEnergy" in 2015 that included cash payments from FirstEnergy. (2/6/26 Proceedings.) He also confirmed that "under no circumstances was Sam Randazzo entitled to any money in any of [the] settlement agreements for IEU members." (*Id.*)

No rational juror could find beyond a reasonable doubt that Jones intended to corrupt Randazzo by authorizing payment under a pre-existing settlement agreement that was intended to be distributed in its entirety to Randazzo's client.

2. Randazzo secretly stole the $4.3 million payment owed to IEU-Ohio.

The State and defense alike agree on the critical point that Randazzo secretly stole the $4.3 million payment. (2/6/26 Proceedings; 3/4/26 Proceedings.) Obviously, Randazzo could not have stolen the money if it had belonged to him.[8]

The State offered exactly zero evidence that Jones had any knowledge that Randazzo had been stealing or would steal the money intended for his clients. Indeed, the State's forensic expert "found no evidence that Mr. Jones or Mr. Dowling knew anything at all about the 14 accounts that Sam Randazzo had control over." (3/4/26 Proceedings.) She also confirmed that there was absolutely no evidence that any of the money Randazzo stole went from Randazzo to Jones. (*Id.*)

The State's evidence affirmatively established that even those closest to Randazzo had no idea he was stealing his clients' money—not Randazzo's longtime assistant, Debbie Ryan, who assisted Randazzo in administering his clients' settlements (Ryan Tr. at 67); not Randazzo's mentee and client, Matt Brakey (2/6/26 Proceedings); and not Randazzo's law firm colleague, Matt Pritchard (3/3/26 Proceedings).

[8] Randazzo stole from other settlement payments as well. Courtney Beckett, the State's forensic accounting expert, testified that Randazzo similarly stole settlement funds from AEP owed to IEU-Ohio by "transferr[ing] some of that money to his own account." (3/4/26 Proceedings.)

3. The evidence affirmatively shows that Jones had a legitimate purpose for authorizing the payment.

Although the defense had no obligation to offer a legitimate, non-corrupt purpose for the payment, it did so here: "It was a benefit to accelerate the payments at the time" because "the company was desiring to accelerate expenses from 2019 into 2018." (Dowling Tr. at 300–301.) That was because FirstEnergy "was having a good year financially, and [the company's] earnings per share was close to or above guidance"; "when that situation occurs, it makes good financial sense to move expenses," which is "helpful for managing [the company's] finances in future years." (*Id.* at 507–508.) Jones sought to confirm that making the payment would be in FirstEnergy's best interest for these reasons. (*Id.* at 298, 301.)

The State's own witness Jason Lisowski, FirstEnergy's Chief Accounting Officer and Controller, confirmed as much and testified that accelerating such a payment so that it could be expensed in 2018 was a "legitimate business decision" and helped Jones bring FirstEnergy within earnings guidance for the year. (2/11/26 Cert. Tr. Excerpt at 209.) Thus, the State's own evidence demonstrated—again, without any dispute—that Jones's decision to pre-pay the settlement expense was a legitimate one.

Although the Court must view the evidence in the light most favorable to the prosecution, the State cannot avoid acquittal by asking the Court to make unreasonable inferences—the mere possibility that facts required for conviction might theoretically be true is not enough. *See United States v. Gen. Elec. Co.*, 869 F.Supp.1285, 1301 (S.D. Ohio 1994) (Rule 29 standard "not so heavily weighted in favor of the prosecution that ... the Court must blindly and uncritically accept that every inference the prosecution argues can reasonably be drawn from the circumstantial evidence in the record.").[9] Indeed, acquittal is required if the evidence supports "reasonable probabilities of equal weight, one innocent and the other guilty." *Id.*; *see also United States v. Delay*, 440 F.2d 566, 567–568 (7th Cir. 1971) (same). Here, the State's evidence of Jones's purpose did not rise even to the level of an equal probability of guilt, and acquittal is thus necessary.

The State has failed to produce any evidence that would allow a rational juror to find beyond a reasonable doubt that Jones intended to corrupt Randazzo by making a payment that was contractually owed to Randazzo's client and that everyone believed that Randazzo would, and was required to, distribute to his client in accordance with his fiduciary duty.

IV. Jones Should Be Acquitted of Telecommunications Fraud (Count 3).

Ohio's telecommunications fraud statute, R.C. 2913.05, prohibits sending writings or data by means of wire or telecommunication to execute or further a "scheme to defraud." Bribing a public official, also known as honest services fraud, is not a "scheme to defraud" within the meaning of the federal wire fraud statute on which R.C. 2913.05 is based. *See McNally v. United States*, 483 U.S. 350, 350–356 (1987) (mail and wire fraud statutes do not include honest services fraud schemes, such as bribery or other schemes affecting "intangible right of the citizenry to good government").[10]

At oral argument on Jones and Dowling's motion to dismiss, the State conceded that "whether or not the *McNally* honest services [analysis] applies to Ohio, that's an open issue." (1/16/26 Tr. at 140:25–141:4.) The State implored the Court to defer ruling until the Rule 29 stage,

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[9] Ohio Criminal Rule 29 and Federal Criminal Rule 29 are "virtually identical." *State v. Bridgeman*, 55 Ohio St.2d 261, 264 (1978).

[10] After the Supreme Court decided *McNally*, Congress passed a new statute prohibiting honest services fraud at 18 U.S.C. § 1346. No such statute was enacted by the General Assembly in Ohio. (*See generally* Defs.' Mot. to Dismiss Count 3 (Dec. 26, 2025) (discussing this argument in further detail).)

arguing that dismissal would be based on "hypotheticals about is the State's only evidence going to be honest services fraud, or does the State have more." (*Id.* at 127:13–19.) The State suggested it could prove "other sets of circumstances that can violate the law" rather than honest services fraud. (*Id.* at 131:15–22.) That turned out to be false: at trial, the State confirmed that its only theory that Jones committed telecommunications fraud was based on honest services fraud, arguing in its opening statement that Jones committed "telecommunications fraud [by] using a network, wires in the state of Ohio to transmit bribe money." (2/3/26 Cert. Tr. Excerpt 44–45.) Because bribery (which is synonymous with honest services fraud) cannot form the basis of telecommunications fraud, Jones must be acquitted on Count 3.[11]

Jones should be acquitted of Count 3 for the additional reason that the State did not introduce sufficient evidence of deception. A scheme to 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). And deception requires "knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information." R.C. 2913.01(A).

The State did not introduce evidence that Jones deceived anyone in connection with the January 2, 2019, wire transfer. The Court has already dismissed the theft counts because FirstEnergy admitted and the State conceded that "FirstEnergy agreed to pay and/or consented to" the payment. (5/28/25 Order at 6.) The State did not introduce any evidence that Jones made misrepresentations to or withheld information from any other person or institution in connection with the $4.3 million wire transfer. *See State v. Baumgarden*, 49 Ohio App.3d 24, 25 (12th Dist.

[11] Because the State's telecommunications fraud theory is premised entirely on its bribery charge, Jones is entitled to acquittal on Count 3 for the additional reason that the State has produced insufficient evidence to sustain a bribery conviction.

1988), cause dismissed, 39 Ohio St.3d 707 (1988) (overturning conviction for theft by deception for lack of evidence of deception where defendant "wrote himself thirty-five checks which were always recorded on the company's books" and "evident" in company records). Just the opposite. The State's evidence, both testimony and documents, conclusively established that everyone who was involved in processing this payment knew that it was the remaining money that was due on the settlement agreement with IEU-Ohio. Accordingly, Jones is entitled to acquittal on this count as well.

CONCLUSION

For these reasons, the Court should acquit Jones on each of the four charges pending against him.

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Respectfully submitted,

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