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

STATE OF OHIO, Plaintiff, v. MICHAEL DOWLING Defendants.	Case No. CR 2024-02-0473-B JUDGE SUSAN BAKER ROSS **STATE'S BRIEF IN OPPOSITION TO DEFENDANT MICHAEL DOWLING'S MOTION FOR ACQUITTAL PURSUANT TO CRIM.R. 29(C)**

The State of Ohio respectfully requests that the Court deny defendant Michael Dowling's Motion for Acquittal Pursuant to Crim. R. 29(C).

When reviewing whether the State has presented sufficient evidence, "[t]he relevant inquiry is whether the prosecution has met its burden of production by presenting sufficient evidence to sustain a conviction. *Akron v. Calhoun,* 2023-Ohio-4840 (9th Dist), ¶ 15, citing *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52 (Cook, J., concurring). "For purposes of a sufficiency analysis, this Court must view the evidence in the light most favorable to the State." *Calhoun,* citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). Courts "do not evaluate credibility, and * * * make all reasonable inferences in favor of the State." *Calhoun,* citing *State v. Jenks*, 61 Ohio St.3d 259, 273, 574 N.E.2d 492 (1991). "The evidence is sufficient if it allows the trier of fact to reasonably conclude that the essential elements of the crime were proven beyond a reasonable doubt." *Id.*

The State submits that under the appropriate standard of review, Dowling's post-trial challenge to the sufficiency of evidence lacks merit and should be denied for the following reasons. Additionally, the State of Ohio incorporates by reference the previous arguments that it made concerning Dowling's Crim. R. 29(A) and 29(B) motions, both of which the Court rejected.

1. **Dowling should not be acquitted following a mistrial where the evidence shows that he was complicit and a second jury can receive a proper complicity instruction.**

   a. **Where there has been a mistrial without a guilty verdict, retrial with a proper complicity instruction will not violate Dowling's Sixth Amendment right to a jury trial.**

Dowling first argues that the Court should acquit him of the forgery and tampering with records predicates to Count 1's Engaging in a Pattern of Corrupt Activity Count because the evidence at trial did not demonstrate that he acted as the principal offender. Instead, the evidence showed complicity and the jury did not receive a complicity instruction. Since the Court did not instruct the jury on complicity, Dowling argues, the Court must only consider a principal offender theory for purposes of his post-mistrial Crim.R. 29(C) insufficiency argument. The Court should reject Dowling's argument.

This is not a case where a jury convicted the defendant on a principal offender theory and then the State argued an alternative basis that was never presented to the jury and that the jury never considered. The State explicitly argued during trial proceedings that the evidence showed that Dowling was complicit in the forgery predicate. See State's 2/14/2025 Br. Opp. To Motion to Dismiss; February 24, 2026 Rough at 131-2; March 9, 2026 Rough at 152). It is also beyond dispute that "a defendant may be convicted of complicity to engage in a crime even when the defendant has only been indicted on the principal offense." *Akron v. Cabell,* 2013-Ohio-5113, at ¶ 17. Though the State did not request a complicity instruction, it alleged a complicity theory against Dowling throughout these proceedings, and the evidence at trial sufficiently demonstrated complicity.

Ultimately, however, the issue is whether Dowling's Sixth Amendment rights were violated. The answer is clearly no. The Court declared a mistrial without a jury having reached a verdict. The question therefore cannot be whether the jury verdict was supported by sufficient evidence. Instead, the issue is "whether the prosecution has met its burden of production by presenting sufficient evidence to sustain *a conviction*." *State v. Russell,* 2026-Ohio-610 at ¶8 (9th Dist.) (emph. added), citing *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997Ohio-52.

Dowling seems to recognize this distinction when strongly emphasizes that his argument hinges on his Sixth Amendment right to a jury trial. (Motion at 3). In making his argument for a jeopardy-attached insufficiency ruling, Dowling relies on a series of cases where juries found defendants guilty of having been a principal offender where the evidence instead demonstrated complicity and no complicity instruction was given. See Dowling Motion at 2-3, citing *Akron v. Cabell,* 2013-Ohio-5113 (9th Dist.), *State v. Peterson,* 2007-Ohio-4979, *State v. Burns,* 2011-Ohio-4230 (8th Dist.), and *State v. Martin,* 2012-Ohio-1519 (4th Dist.). In none of those cases, however, did those courts consider a motion for acquittal after a court declared a mistrial because the jury did not reach a verdict at all. Said differently, he does not cite any case which supports an acquittal under the facts of *this* case. If the jury had returned a guilty verdict on a principal offender theory despite evidence showing that Dowling was complicit, Dowling would have a legitimate Sixth Amendment argument. But since there was no verdict, he does not. Sufficient evidence does support a reasonable jury finding Dowling guilty after a jury receives the proper complicity instruction.

The State submits that this case is therefore distinguishable from *Cabell, supra,* and other cases where a jury returned a guilty verdict as to a principal offender charge without a complicity instruction. And without a guilty verdict, there has been no Sixth Amendment violation since any error can be easily remedied at a retrial where the proper complicity instruction can be given. Dowling fails to cite any authority to the contrary. Because the evidence very clearly does support a reasonable jury finding Dowling guilty based on accomplice liability, the State requests that (1) the Court deny Dowling's motion for acquittal and (2) upon retrial, provide the second jury with the proper complicity instruction.

b. Sufficient evidence shows that Dowling engaged in a scheme to defraud.

Dowling next argues that "there is no evidence that [he] devised a scheme to defraud." (Motion at 7). Dowling also argues that he lacked the necessary *mens rea* for forgery because the State did not prove that Dowling possessed "purpose to defraud, or know[ledge] that [Dowling] was facilitating a fraud." (Motion at 15, citing R.C. 1913.31(A)(2). Dowling contends that the State did not sufficiently prove that Dowling forged the November 2015 Agreement to deceive either the PUCO or IEU-Ohio. (Motion at 15). It should be stressed that the State's theory was that the November 2015 consulting agreement deceived primarily the PUCO, the parties to the PUCO Case, and the public by hiding the true nature of a PUCO settlement within an unsigned "consulting agreement." See e.g., Feb. 4, 2026 Rough at 313, March 9, 2026 Rough at 156-157.

While mainly circumstantial in nature, the evidence does sufficiently show that Dowling engaged in a scheme to defraud. In reviewing the sufficiency of the evidence, the Ninth District holds that "[c]ircumstantial evidence and direct evidence inherently possess the same probative value," and that "a sufficiency review commands the court to make all reasonable inferences in favor of the State." *State v. Thomas,* 2020-Ohio-3538, at ¶ 16, citing *State v. Jenks,* 61 Ohio St.3d 259, 273, 574 N.E. 2d 492 (1991). The Court's jury instructions defined Defraud as "to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another."

Trial evidence showed that PUCO side deals must be publicly disclosed upon an appropriate discovery request. Former PUCO Chair Asim Haque testified that a relevant side deal should be disclosed to him if it existed in the ESP IV case. Feb. 6, 2026 Rough at 92. David Anderson testified that in his experience, side deals get publicly disclosed during the PUCO's discovery process. Feb. 4, 2026 Rough at 108. Further, PUCO Administrative Law Judge Greg Price testified that where there is a proper discovery request, PUCO side deals must be disclosed to all of the parties. Feb. 27, 2026 Rough at 150. And Eileen Mikkelsen also testified that a relevant side deal should be disclosed to the PUCO and that, in her view, the November 2015 consulting agreement should have been disclosed in the ESP IV proceeding. Feb. 18, 2026 Rough at 157-8, Feb. 19, 2026 Rough at 157-158.

The evidence at trial showed that Dowling personally believed that the November 2015 amended consulting agreement operated as a side deal to the ESP IV Case. See State's Exhibit 363, p. 302. It is clear from the face of the unsigned, amended November 2015 consulting agreement that it said nothing about the PUCO, the ESP-IV case, the parties in the ESP-IV case, the Industrial Energy Users of Ohio, or the specific terms of any side deal between FirstEnergy's Electric Distribution Utilities. State's Exhibit 79. It is also clear that in November 2015, Dowling knew about and actually emailed the unsigned amended consulting agreement directly to Randazzo. State's Exhibit 488.

Further, Ebony Yeboah-Amankwah testified that Dowling was the lead ("on point") in the negotiation process with Sam Randazzo, explaining that he was in that role because he had a better relationship with Randazzo. Feb. 12, 2026 Rough at 127. Yeboah-Amankwah was aware that Dowling was having conversations with Randazzo as early as January 2015. Feb. 17, 2026 Rough at 184. To that point, in a January 2015 email between Dowling and Leila Vespoli, Dowling described Randazzo's belief that discovery in PUCO cases could be used to contest settlements between parties and the utilities. State's Exhibit 52. Further, an earlier secretive email discussion between Randazzo and Dowling also showed that Dowling was aware that Randazzo did not want to allow discovery or other communications to reveal the existence of side deals between FirstEnergy and "IEU-Ohio (AKA SAM)." See State's Exhibit 492.

Dowling denies the import (or even existence) of any circumstantial evidence showing that he engaged in a scheme to defraud along with Randazzo. Nevertheless, in conducting a sufficiency review, the court is obligated to weigh all reasonable inferences in favor of the State, giving equal weight to both direct and circumstantial evidence. *Thomas, supra,* citing *Jenks, supra.* In so doing, it is clear that a reasonable juror could find that in negotiating and helping to create an amended consulting agreement between FirstEnergy and Randazzo's IEU-Ohio client that fraudulent concealed its true purpose—i.e., as an undisclosed PUCO side deal—Dowling and Randazzo engaged in a scheme to defraud the PUCO and the parties to the ESP IV case.

c. Sufficient evidence demonstrated that the November 2015 consulting agreement / side deal was spurious.

In an argument that largely bootstraps ones that he made in earlier pretrial motions to dismiss, Dowling also contends that insufficient evidence proved that the November 2015 consulting agreement / side deal was spurious. Dowling's argument lacks merit.

Even a cursory examination of the State's Exhibit 79—the document at issue—shows it to be deceptive. George Jonson testified that a civil settlement agreement (under the Ohio legal standard of care) should (1) identify the parties, (2) state the consideration being exchanged, (3) specify what claims are being released, and (4) be agreed to/settled by the parties to the agreement. Feb. 20, 2026 Rough at 199. He also described the "terms" of a settlement as the elements each party agrees to in order to resolve the legal dispute. *Id.* at 200. Relatedly, he indicated that it is foundational that a settlement include terms that are enforceable. *Id.* at 201. Matt Pritchard likewise testified that in his experience, a settlement involving a PUCO side-deal would be in writing, outline the parties to the agreement, the commitments (such as something being withdrawn or agreement to forbear on future litigation on an issue. Mar. 3, 2026 Rough at pp. 26-27. Pritchard referenced IEU-Ohio's settlement agreement with American Electric Power, State's Exhibit 446, as an example of a valid settlement agreement that contained the elements he had outlined.

State's Exhibit 79 contained none of the elements that Jonson and Pritchard described. It did not identify the actual parties to the ESP-IV case at all. Nowhere was IEU-Ohio mentioned. Nowhere were FirstEnergy's regulated utilities mentioned. It did not clearly state what consideration was being exchanged (i.e., what valuable thing IEU-Ohio was providing in exchange for what valuable thing the FirstEnergy utilities were providing).

It did not specify what claims were being released or what terms were being provided. And in a side-by-side comparison with State's Exhibit 446—the AEP/IEU-Ohio side deal settlement agreement—a jury could reasonably infer the deceptive nature and purpose of State's Exhibit 79.

Importantly, other witnesses with a deep and sophisticated knowledge of utility regulation were likewise confused by or concerned about whether State's Exhibit 79 was actually a settlement of a PUCO case:

- Jason Lisowski testified it did not look like a settlement agreement, noting the underlying contract and payments did not "come across as a settlement agreement," and emphasizing it was unsigned. Feb. 11, 2026 Rough at 286. He also testified the exhibit does not mention a settlement, has no signatures, and has no date. *Id.* at 44.
- Ebony Yeboah-Amankwah testified that she raised concerns about the form of the document because it did not appear to have terms that would represent a settlement. Feb. 17, 2026 Rough at 189.
- Matt Brakey testified that, based on his experience, settlements should have enforceable terms, and that he did not see any terms in State's Exhibit 79 that he could recognized as connected to the ESP IV case. Feb. 9, 2026 Rough at 86-87. Nor had he ever seen another example of a PUCO settlement that appeared to be a consulting agreement. *Id.* at 87.

Dowling wrongly argues that the November 2015 consulting agreement does not satisfy the spurious element because they merely contain false information. He bases his argument on two cases, neither of which actually supports his argument. In *State v. Leatherwood,* 1994 Ohio App. LEXIS 2993 (9th Dist. July 6, 1994), the Ninth District held that a defendant who had concealed his criminal record from the Lorain County Sheriff's Office during a criminal background check should not have been convicted of forgery. The *Leatherwood* Court explained that "[w]hile the information contained in the form issued by the Sheriff was false, and it was false based upon some involvement on the part of appellant, *the form itself* was genuine." *Id.* at *6 (emphasis added). Likewise, in *State v. Bosak,* 1984 WL 4541 (8th Dist. March 8, 1984), the Eighth District held that a defendant had been improperly convicted of forgery when he lied to a state trooper during a vehicle inspection about the amount of repairs that defendant had done to his car. The Eighth District explained that a "distinction must be drawn between *'spurious' writings* and writings which are what they purport to be, but which may contain false information." *Id.*

There is also good reason to doubt whether *Leatherwood* and *Bosak* are even good law. One year after *Bosak,* the Supreme Court of Ohio held that a defendant's alteration of a lottery ticket to create the impression that it has never been cashed and may still be redeemed, and the presentation of such ticket for purposes of receiving cash, knowing that it has been so altered, constitute forgery under R.C. 2913.31(A)(2). *State v. Ferrette*, 18 Ohio St.3d 106, 18 Ohio B. 139, 480 N.E.2d 399, paragraph 2 of the syllabus (1985) (rejecting the argument that the tickets were not "spurious" as defined by the statute because they were what they purported to be, but merely contained a false statement.)

Unlike *Leatherwood* or *Bosak,* the fraudulent amended consulting agreements here do not simply contain false information. Contrasted to the legitimate government documents containing unique pieces of false information supplied by the defendants in *Leatherwood and Bosak,* the amended consulting agreement at issue in this case appears to be something completely different than what it actually is. It appears to be X, when in reality it is Y. Specifically, it appears to be a consulting agreement, *see, e.g.,* Exhibit 79, when in reality it is a side agreement to a multimillion-dollar legal settlement in a Public Utilities Commission of Ohio utility electric security plan case.

In similar contexts, Ohio courts have held that creating a bogus lease, contract or legal document can satisfy the elements of Forgery. For example, in *State v. Bergsmark,* 2004-Ohio-5753 (6th Dist), the Court upheld a defendant's Forgery conviction under R.C. 2913.31(A)(2), based on a sham lease agreement for an uninhabitable apartment where no rent was ever paid. The defendant had the lease prepared in order to help a City of Toledo employee deceive the city to keep his job, which required the employee to maintain residency within the city. *Id.* at ¶ 26-29. Similarly, in *State v. Trammell,* 2013-Ohio-4615 (2d. Dist), the Court upheld a defendant's conviction for Forgery under R.C. 2913.31(A)(2) where the defendant entered into contracts with Montgomery County that he never intended to honor, and did not perform the contracted services. The *Trammell* court upheld the defendant's forgery convictions where "Trammell signed the contracts and purported that they were genuine, when he never intended to comply with the terms." *Id.* at ¶ 79.

An analogous situation occurred in *State v. Spencer,* 2017-Ohio-59 (5th. Dist), where the court upheld a defendant's R.C. 2931.31(A)(3) forgery conviction for submitting an affidavit of disqualification to the Supreme Court with a falsified, hand-written trial date noted on the affidavit. *Id.* at ¶ 30. "Even though the document itself was what it purported to be — an affidavit of disqualification—* * * the State presented sufficient evidence to support appellant's conviction * * * through evidence that appellant presented the affidavit, knowing that it was false, for the purpose of obtaining a continuance of his trial in

Delaware County Common Pleas Court." *Id.* In each of these situations, much like the purported "amending consulting agreement" in this case, the purportedly legitimate forged legal instruments were executed as a sham to conceal a fraudulent purpose.

Dowling's claims to the contrary are therefore without merit.

2. Sufficient evidence showed that Dowling tampered with records by causing the submission of false AER lobbying forms on behalf of FirstEnergy.

Apart from his argument as to complicity, described above, the key issue pertinent to Dowling's sufficiency challenge to the Tampering with Government Records charges and predicates is that Sam Randazzo did not lobby legislative or executive branch officials on FirstEnergy's behalf. For the following reasons, Dowling's argument is misplaced.

a. Sufficient evidence showed that Dowling caused Sam Randazzo's name to have been omitted as one of FirstEnergy's legislative lobbyists.

Ty Pine testified that to be a registered legislative agent in Ohio, a person must register with the Joint Legislative Ethics Commission (and pay the required fee and file the required notice/registration paperwork). Feb. 20, 2026 Rough at 266, Feb. 23, 2026 Rough at 123. Tony Bledsoe testified that registration is triggered by compensated lobbying—i.e., receiving compensation in exchange for directly communicating with public officials on behalf of a third party (outside of public testimony) to influence legislation or government action for a particular employer. Feb. 27, 2026 Rough at 53. According to Bledsoe, "compensation is broadly defined – it can be gifts loans, travel reimbursements beyond actual necessary, it could even be gifts." *Id.* Bledsoe also testified that a time-threshold requirement applied for at least 5% of a legislative agent's compensated time. Feb. 27, 2026 rough at 84.

State's Exhibit 79 clearly specifies that FirstEnergy intended Randazzo—through his corporate alter-ego SFA-Ohio—was to do lobbying work. The document specified that Randazzo would "participate jointly [with FirstEnergy Service Company Executives] * * * in meetings with the President of the Senate and Speaker of the House to explain needed adjustments to Senate Bill 310 to 'mercantile customers' for an effective date of January 1, 2017." And while Dowling argues that this term benefitted IEU-Ohio (not FirstEnergy), his own exhibit proves that FirstEnergy—and Dowling—affirmatively supported SB 310's opt-out provision. In an April 26, 2016 email, Dowling approved Ty Pine's recommendations for lobbying the 2016 version of the energy mandate legislation. Def. Ex. 2337. Those included FirstEnergy supporting "in a moderately open fashion" the "streamlined opt-out for mercantile customers and above beginning 1/1/19." *Id.* Pine then added: "(Comment from FE on *supporting* opt-out) FirstEnergy continues to support flexibility for energy efficiency programming." *Id.* That same email specified that FirstEnergy would attend meetings with, among others, Industrial Energy Users, house and senate leadership, key legislators and senior staff."

And while Dowling argues that there was no direct evidence that Randazzo met with legislators on the SB 310 issue, circumstantial evidence creates a reasonable inference that he did exactly what the documents said he would. For instance, State's Exhibit 386 was a February 6, 2017 email between Dowling and Randazzo in which Randazzo described his discussions with the Speaker of the House about "what the utilities are trying to do." The email shows Dowling planning to provide Randazzo the same slides "we've been using with legislators" and that he "should have (or soon will) the legislation," indicating he was being looped into FirstEnergy legislative materials and draft bill text. *Id.*

Likewise, in State's Exhibit 125, in a February 6, 2017 email, Dowling discussed briefing Randazzo "on our nuclear effort" because Randazzo was "meeting with Kay[sic] leadership folks as early as tomorrow." In the email, Dowling emphasized that "House and Senate Leadership seek Sam's input and advice." *Id.* In a February 6, 2017 email, Dowling also asked Randazzo to join calls where they would share "slides we've been using with legislators" and that their team "should have (or soon will) the legislation," reflecting direct engagement with advocacy materials and draft bill text. State's Exhibit 386. Another email on September 7, 2018 shows Ty Pine asking Dowling about "Sam's legislative concept paper" and whether to forward it internally (including to FES)," indicating Randazzo was providing written legislative concepts that FirstEnergy was evaluating for the ZEN effort. State's Exhibit 152.

Further, evidence also showed that in late 2018, Randazzo helped FirstEnergy Solutions craft some of the key concepts that ultimately were incorporated into HB 6. Eileen Mikkelsen testified that in late 2018 there were meetings and discussions with Sam Randazzo focused on potential Ohio legislation to provide financial relief for the nuclear plants, including what FirstEnergy Solutions' ideas were for moving legislation forward. Feb. 18, 2026 Rough at 65, 170-172. See also State's Exhibits 165, 166, Defendant's Exhibit 2608.

Evidence also showed that Randazzo specifically lobbied on behalf of FirstEnergy for passage of the changes to the SEET test in the 2019 budget legislation. In State's Exhibit 248, a July 19, 2019 text exchange between Jones and Dowling, Dowling recognized that the "Senate kept SEET in – thanks to ty [Pine] and Sam Randazzo."

Likewise, evidence showed that Randazzo lobbied extensively for FirstEnergy during the drafting and consideration of HB 6 legislation. Eileen Mikkelsen testified that Randazzo was involved in drafting portions of HB 6. Feb. 18, 2026 Rough at 86, 277; Feb. 19, 2026 Rough at 11. See also State's Exhibit 241. Ty Pine likewise testified that Randazzo drafted portions of HB 6, including working on the decoupling provision that benefitted FirstEnergy. Feb. 23, 2026 Rough at 18, 126. Ms. Mikkelsen also testified about Dowling texting her that he had been on the phone extensively with Randazzo about the HB 6 "audit issue," and that FirstEnergy Solutions had been against an audit provision in HB 6's nuclear subsidy. Feb. 18, 2026 Rough at 102-104.

Don Schneider testified that during the Summer of 2019, he provided Randazzo with a rebuttal paper to an American Petroleum Institute Study. Mar. 4, 2026 Rough at 289, 291-292; see also State's Exhibit 479, 480. In Ex. 479, Schneider—who at the time was still Chairman of the Board of FirstEnergy Solutions—thanked Randazzo for his "willingness to address the Senate." At the time, Schneider believed that without the HB 6 subsidy, "our only recourse would be to shut those nuclear power plants down." Mar. 4, 2026 Rough at 296. Evidence also showed that during the period when HB 6 was being considered, FirstEnergy Solutions continued to rely on FirstEnergy for shared services, including governmental affairs services. Feb. 18, 2026 Rough at 104, Mar. 4. 2026 Rough at 271.

Finally, evidence also showed that FirstEnergy paid Randazzo over $43,000 per month in "consulting payments" between January 2015 all the way through January 2018. See Def. Ex. 3267. Schneider, however, testified that he took steps to end Randazzo's consulting contract with FirstEnergy Solutions in 2014. Mar. 4, 2026 Rough at 256-258. Given that there was no evidence that Randazzo was doing any legitimate consulting for

FirstEnergy Solutions after 2014, a reasonable inference can be made that FirstEnergy paid Randazzo past that point primarily for helping the company with legislative lobbying.

Dowling's argument that in 2019, Randazzo simply worked on behalf of the DeWine administration as PUCO Chair in drafting and advocating for provisions in HB 6 is unavailing. Dowling does not dispute that the provisions in HB 6 that Randazzo worked on uniquely benefited FirstEnergy and FirstEnergy Solutions (decoupling, nuclear subsidy). Evidence also established that it was inappropriate for a PUCO Chairman to advocate for legislation that financially benefits a single company. Feb. 6, 2026 Rough at 101. If Dowling were challenging the manifest weight of the evidence following conviction, his argument might be proper for consideration. But as a challenge to mere sufficiency, a reasonable jury was entitled to infer that Randazzo worked on behalf of FirstEnergy—and not the DeWine administration—to advocate for HB 6 legislation that benefitted the company that had paid him millions of dollars.

b. Sufficient evidence showed that Dowling caused Sam Randazzo's name to have been omitted as one of FirstEnergy's executive lobbyists.

Tony Bledsoe testified that an executive agency lobbyist as someone whose main purpose for at least 25% of their compensated time is to promote, oppose, or otherwise influence executive agency decisions through direct communication with specified executive officials and staff (including officials such as the governor, lieutenant governor, and attorney general). Feb. 27, 2026 Rough at 90. Ty Pine distinguished executive lobbying registrations as authorizing lobbying "with [the] governor's administration or executive agencies." Feb. 20, 2026 Rough at 281. In that context, Tony Bledsoe testified that the Public Utilities Commission (a regulatory commission) was treated as an "agency" on the executive-activity reporting form. Feb. 27, 2026 Rough at 43.

Asim Haque testified that he served as a former Chairman of the PUCO and as such, was a member of the governor's cabinet. Feb. 4, 2026 Rough at 116. When he was Chair of the PUCO, Asim Haque testified that Sam Randazzo did meet him some time after October 12, 2015 and urged him to give more money to FirstEnergy as part of the PUCO's Distribution Modernization Rider. *Id.* at 139, 299. The conversation confused Haque, because Haque thought Randazzo represented the Industrial Energy Users of Ohio. *Id.* at 141. Haque expected that in his role representing IEU-Ohio, Randazzo would have been more supportive of giving FirstEnergy less money. *Id.* Haque testified that Randazzo also warned him that his career would be at risk. *Id* at 143. And though the meeting between Haque and Randazzo took place at the end of 2016, trial evidence showed that the PUCO held four more rounds of rehearing on the Distribution Modernization Rider before issuing a final, appealable order on October 11, 2017. See State's Exhibit 249, p. 3.

This evidence was sufficient for a jury to find that between May 31, 2017 and January 22, 2021, Randazzo promoted, oppose, or otherwise influenced executive agency decisions on FirstEnergy's behalf. And since the evidence showed that Randazzo did not appear to do anything else to justify the $43,000 per month that FirstEnergy paid him in "consulting" fees, the 25% threshold of Randazzo's compensated time was easily met.

3. Sufficient evidence establishes that Michael Dowling committed Telecommunications Fraud between May 5, 2015 and June 6, 2018.

Dowling next argues that there is insufficient evidence that he knowingly transmitted or caused the transmission of payments to Sam Randazzo by means of a wire. Dowling's argument lacks merit. As part of the November 29, 2015, email exchanges structuring the payments, Ebony Yeboah-Amankwah explained that "2017 and 2024 are half year payments. I am not sure if you pointed that out to Sam but you may want to draw his attention to it." State's Exhibit 93.

Other email correspondence shows that Dowling was primarily responsible for making the decisions that pertained to paying Randazzo. In State's Exhibit 185, Randazzo emailed Dowling on February 6, 2017 asking "[w]here, if anywhere, do we stand with regard to the discussions on the performance of the side agreement that amended the Sustainability consulting agreement?"

On June 30, 2016, Randazzo emailed Ebony Yeboah-Amankwah and copied Dowling on two emails describing both the invoicing process and the routing instructions for FirstEnergy to wire money to Randazzo's Chase Bank Account for Sustainability Funding Alliance of Ohio. See State's Exhibit 107. In the first email, Randazzo, copying Dowling, says "Ebony, attached is an invoice for the June 1, 2016 supplemental payment. I have been encouraged to send the invoice." The clear implication of Randazzo's email is that Dowling advised Randazzo to transmit the invoice.

All of these facts combine to create a reasonable inference that Dowling caused the transmission of payments to Sam Randazzo by means of a wire between May 1, 2016 and June 6, 2018. From this evidence, a jury could reasonably infer that Dowling was guilty of telecommunications fraud. Dowling's argument lacks therefore merit.

4. Conclusion.

For the foregoing reasons, the State of Ohio respectfully requests that the Court deny defendant Michael Dowling's Motion for Acquittal pursuant to Crim. R. 29(C).

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing has been served by means of the court's electronic system on counsel of record for all parties in this case.

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