[Cite as *State v. Lamb*, 2026-Ohio-4526.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
LOGAN COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE,

v.

TODD A. LAMB,

DEFENDANT-APPELLANT.

CASE NO. 8-25-32

OPINION AND JUDGMENT ENTRY

Appeal from Logan County Common Pleas Court
Trial Court No. CR 24 07 0134

Judgment Affirmed

Date of Decision: November 16, 2026

APPEARANCES:

Stephen E. Palmer **for Appellant**

Nathan Yohey **for Appellee**

WILLAMOWSKI, J.

{¶1} Defendant-appellant Todd A. Lamb ("Todd") appeals the judgment of the Logan County Court of Common Pleas, arguing that (1) inadmissible hearsay was introduced at trial; (2) his right of confrontation was violated; (3) the trial court gave inaccurate jury instructions; (4) he was deprived of his right to the effective assistance of counsel; (5) seven of his convictions were not supported by sufficient evidence; (6) seven of his convictions were against the manifest weight of the evidence; and (7) cumulative errors deprived him of a fair trial. For the reasons set forth below, the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} Todd owned and operated a company called Screaming Eagle Boats ("Screaming Eagle") that manufactured boats in Bellefontaine, Ohio. In 2018, Todd changed the name of his company from Screaming Eagle to Spectre Powerboats ("Spectre"). His wife, Karen Lamb ("Karen"), was involved in the routine operations of this company, performing a number of administrative functions and frequently collecting payments. Between filing the articles of incorporation for Screaming Eagle in 2015 and declaring personal bankruptcy several years later, Todd drew funds into his business through seven transactions with purchasers, lenders, and other business entities that led to the criminal charges brought against him in this case.

{¶3} In the first transaction, a customer named Michael Evans Caradimitropoulo ("Michael") was looking to purchase a high performance boat and reached out to Todd. In December of 2017, Michael signed a build agreement ("agreement") for a custom thirty-foot Screaming Eagle boat with two Mercury 400R engines that was to cost approximately $194,000.00. While the agreement did not expressly provide a completion date, Michael testified that Todd indicated that his boat would be finished by May of 2018.

{¶4} Under the agreement, Michael was to pay the $194,000.00 price of the boat in five installment payments by March 1, 2018. Michael testified that he made the first payment of $10,000.00 to reserve the build slot and then made the second payment of $35,000.00 in December of 2017 to begin the build process. But before Michael made the third payment of $115,000.00, his beach house suffered some damage. As a result, he did not believe that his property would be ready to accommodate his new boat in May of 2018.

{¶5} Michael then communicated with Todd about delaying the completion date of the boat while the condition of his property was being addressed. The Lambs indicated that the boat completion could be delayed but that they would need $25,000.00 of the third scheduled payment to cover the costs of the motors. For this reason, Michael sent another payment of $25,000.00 in January of 2019.

{¶6} When Michael sought to restart the build, Todd offered to upgrade Michael's boat from a thirty-foot vessel to a thirty-two-foot vessel at no additional

cost. Todd also sent an email to Michael that indicated the completion of the vessel could be timed with the start of the next boating season. Based on these new arrangements, Michael and Spectre Powerboats entered into a new agreement on July 19, 2018 for a thirty-two-foot boat with Mercury 400R engines that cost of $194,000.00. Michael then made a fourth payment of $62,000.00 in July of 2018.

{¶7} Todd issued a receipt that stated this $62,000.00 payment was applied to the cost of the Mercury 400R engines. While Todd was recovering from a surgical procedure, Karen emailed Michael pictures of two Mercury engines along with a message that read as follows: "I just wanted you to know that your motors have arrived! I've attached pictures of them, and the serial numbers are 2B583436 and 2B585472. They will be covered up and in the crates until we are ready for them. I'm also attaching a receipt for your payment." (Ex. 15). Todd also began texting him pictures and videos of the progress that had been made in building his boat.

{¶8} In April of 2019, Michael made a fifth payment of $11,650.00. Todd told Michael that this sum was for jack plates and a trailer. Michael testified that these parts of the boat were added towards the end of the construction process and that he believed that the boat was "very close to the end of the build." (Tr. 247). In or around May of 2019, Michael told Todd that he was traveling through Ohio and wanted to stop by Spectre to see the progress that had been made on the boat.

Michael testified that, in response, Todd said, "don't show up to my place, you'll be trespassing." (Tr. 249).

{¶9} Michael stated that he did not receive anything from Spectre in exchange for the $143,650.00 he had paid for his boat. He then clarified that he did not receive the boat motors, trailer, or jack plates even though several of his payments were designated for the acquisition of these specific parts. Michael told Todd to have his attorney draft a settlement agreement that presented a plan to repay the $143,650.00 that had been paid for the boat.

{¶10} Todd and Michael then signed a settlement agreement that stated Todd owed Michael $143,650.00. The boat hull, the motors, and jack plates were listed as collateral in this agreement. Michael received $16,200.00 before Todd stopped making payments in April of 2020. Michael then filed a lawsuit and hired a receiver to take inventory of the Spectre's assets.

{¶11} During this lawsuit, Michael learned that the hull of the boat and the Mercury 400R motors were not in Todd's possession. Special Agent Steven Seitzman ("Special Agent Seitzman") of the Ohio Bureau of Criminal Investigation testified that, during his investigation into this matter, he learned that the Mercury 400R engines that had been purchased by Michael had been sold to someone in Florida. Michael testified that he did not receive any of the proceeds from the sale of the assets that were listed as collateral in the settlement agreement, even though

such agreement stated he was to receive these funds. Michael testified that he had not received anything towards the civil judgment that he received against Todd.

{¶12} In the second transaction, a customer named Dean Anderson ("Anderson") called Todd and discussed the process of building a twenty-two-foot Talon XL boat with two Mercury 300XS engines. In February of 2018, Todd issued a customer quote that stated this boat could be completed at a cost of $129,664.80. Anderson testified that Todd indicated this process could be completed in four to six months.

{¶13} The quote from Todd included a payment schedule under which $3,500.00 was due to secure a build slot; twenty-five percent of the total cost was due one week before construction began; fifty percent of the total cost was due when the project was halfway to completion; and the remaining balance was to be paid when the boat was set for rigging. Anderson then paid $3,500.00 to reserve a build slot for his boat.

{¶14} On May 9, 2018, Anderson received an email from Todd in which he indicated that "he and Karen were in a pinch" and inquired into whether Anderson was interested in investing in their business. (Tr. 314). Todd floated the idea of Anderson investing in three sets of molds that could be used to manufacture Talon boats. Two sets of these molds—the Talon 22 SS and the Talon 22 XL—already existed. But Todd also proposed building molds for a new twenty-six-foot Talon boat.

{¶15} In response, Anderson indicated that he was interested in starting his own business called Talon Powerboats, LLC ("TPL") instead of simply investing in Screaming Eagle. On June 15, 2018, Todd and Anderson signed an agreement in which Anderson agreed to pay $45,000.00 for the Talon 22 SS molds; $45,000.00 for the Talon 22 XL molds; $95,000.00 for the construction of the Talon 26 molds; and $5,000.00 for the Talon brand.

{¶16} Under this arrangement, the molds for the Talon boats would remain in Screaming Eagle's possession but would be owned by TPL. Todd would manufacture the Talon boats in Bellefontaine using these molds while Anderson would sell the Talon boats through TPL. As the owner of the Talon brand, TPL was to be the exclusive seller of the Talon boats that were manufactured in these molds.

{¶17} In July of 2018, Todd asked Anderson if he was interested in purchasing the Screaming Eagle Boat 24 molds so that TPL could also offer a twenty-four-foot Talon boat. On July 17, 2018, Todd and Anderson then signed an agreement in which Anderson agreed to pay $20,000.00 for this set of molds. At this point, Anderson decided to change the boat that he had previously ordered from a Talon 22 XL to a twenty-four-foot boat since he now owned the molds for a vessel of this size.

{¶18} The price for the twenty-four-foot boat was $136,079.00. In addition to the $3,500.00 deposit for the build slot, Anderson was to pay $28,300.00 at the start of the build; $40,025.00 for the Mercury 300XS motors; $52,115.00 when the

build was halfway complete; and the remaining balance when the vessel was set for rigging. The new agreement did not state when Anderson's boat was to be completed, but Anderson testified that Todd indicated that the process would be completed in November of 2018.

{¶19} In August of 2018, Spectre Powerboats posted a picture on Facebook in which Todd can be seen in front of a plug that was used in the initial stages of shaping a mold. The caption under this picture read: "The new Talon 26X coming along nicely." (Ex. 28). Anderson paid roughly $95,934.00 for the construction of this mold.

{¶20} On November 28, 2018, Anderson received the invoice for the final payment that was due when the boat that he had ordered was ready for rigging. After making this final payment, Anderson had tendered a total of $111,196.00 to Spectre. He explained that he ended up paying less than the quoted price of $136,079.00 because he decided to purchase $26,000.00 of hardware directly from vendors. He then had this hardware shipped to Todd's place of business for installation during the rigging process.

{¶21} Since the final invoice was to come when the vessel was in the final stages of construction, Anderson assumed that his boat was nearing completion in November of 2018. But when he had not received a boat seven months later, Anderson sent a cure letter to Todd via email on June 28, 2019 that requested he comply with the terms of their agreements within thirty days. In response, Todd

sent an email that referred Anderson to Spectre's attorney and told him not to contact the Lambs absent instructions from their attorney. Anderson then initiated a civil proceeding against Todd.

{¶22} During the civil litigation, Todd admitted that he had sold the Mercury 300XS engines that Anderson had purchased to another person. Todd also admitted that he sold the hull of Anderson's vessel to another person, even as TPL had exclusive rights to sell this line of boats. Through this civil action, Anderson was able to recover the molds for the Talon 22 SS, the Talon 22 XL, and the Talon 24 from Spectre's possession. However, Anderson was not able to recover the boat that cost him $111,196.00 or the molds for the Talon 26 that cost him $95,934.00.

{¶23} In the third transaction, a customer named William "Bill" Phelps ("Phelps") signed a build agreement ("agreement") on November 19, 2019 for a thirty-two-foot Spectre boat with two Mercury 450R engines. The price for this boat, after several modifications, was ultimately set at $308,918.50. Over the next year, Phelps made a series of payments that totaled $300,461.50.

{¶24} On February 20, 2020, Todd posted a picture on Facebook with the following caption: "Brand new Mercury 450's just landed at the shop today. Both of these are going on a new 32' Spectre." (Ex. 3). In response, Phelps posted: "Guess who's [sic] 32' they're going on." (Ex. 3). On March 10, 2020, Todd posted a picture of a hull with a "black gelcoated bottom" that fit the description of the custom boat that Phelps had ordered. (Ex. 5). On September 24, 2020, Todd posted

a picture with the following caption: "Bill New 32' Spectre hull with twin 450's seeing sun for the first time." (Ex. 6). In response, Bill Phelps posted: "It's going to be freaking awesome." (Ex. 6).

{¶25} But when Phelps did not receive a boat, he instituted a civil proceeding against Todd. While Phelps had issued a payment to fund the purchase of two Mercury 450R engines, he learned that Todd did not ultimately apply these funds to the purchase of these motors. Through this action, Phelps was able to recover the thirty-two-foot hull of his boat and sold this item for roughly $100,000.00.

{¶26} The fourth transaction was related to a 304E2CR mini hydraulic excavator that Todd obtained through a loan from the Caterpillar Financial Services Corporation ("Caterpillar Financial"). On August 30, 2019, Todd entered into an installment contract with the Ohio Machinery Company, doing business as Ohio CAT, for the purchase of a $41,500.00 mini excavator. In this agreement, Todd made $8,300.00 down payment and borrowed $33,700.00 from Caterpillar Financial to cover the remainder of the purchase price and fees. The mini excavator served as the collateral for this loan.

{¶27} On September 13, 2019, Caterpillar Financial filed a Uniform Commercial Code ("UCC") Financing Statement with the Ohio Secretary of State's Office. Payments were made on this installment contract until December 17, 2020. When Caterpillar Financial contacted him in February 2021, Todd indicated that he

intended to pay off the loan balance. Caterpillar than discovered that a receivership had been filed for Spectre.

{¶28} In May of 2021, Caterpillar Financial learned that the 304E2CR mini hydraulic excavator had been sold to a person named Matt Braun at Diamond Maintenance, LLC in Michigan. Special Agent Seitzman later connected the sale of this mini excavator to a $39,500.00 payment that Spectre received on March 2, 2020. However, Caterpillar Financial did not receive any of the proceeds from this sale. At this time, the loan payoff amount on this machine was $33,566.00.

{¶29} The fifth transaction at issue was related to a 305E2CR mini hydraulic excavator that Todd obtained with a loan from Caterpillar Financial. On October 20, 2020, Todd entered into a rental conversion agreement with Ohio Machinery Company for a $50,000.00 mini excavator. Todd made a $5,000.00 down payment and borrowed $45,500.00 through Caterpillar Financial to cover the remainder of the purchase price and fees. The mini excavator served as the collateral for this loan.

{¶30} On October 23, 2020, Caterpillar Financial filed a UCC Financing Statement with the Ohio Secretary of State's Office. Three payments were made under this agreement through February 2, 2021. At this point, Caterpillar Financial contacted Todd, who indicated that he intended to pay off his loans. However, Caterpillar Financial then learned that the mini excavator had already been purchased by Robert Rabenstein ("Rabenstein") at Rabenstein Electrical in Ohio.

{¶31} Rabenstein testified that he was interested in purchasing a mini excavator for his business and saw an online post in which Todd indicated that he was selling a mini excavator. Rabenstein went to Todd's place of business on December 11, 2020; gave him a check for $48,000.00 to pay for the mini excavator; and took possession of the machine on that date. He later testified that Todd never mentioned that this machine was a subject to a lien.

{¶32} In November of 2021, Rabenstein received a letter that informed him that Caterpillar Financial had a lien on his mini excavator. He testified that he then attempted to contact Todd but could not reach him. Rabenstein then went to Todd's place of business and found that the facility was empty. At this time, the payoff amount for Todd's loan on this machine was $48,760.00. Eventually, Rabenstein entered into a settlement agreement with Caterpillar Financial in which he paid them $25,000.00 to discharge the lien and keep the 305E2CR mini hydraulic excavator.

{¶33} The sixth transaction at issue is a loan of $110,944.00 that Richwood Bank ("Richwood") made with Todd, Karen, and Spectre in 2019. Todd and Karen signed the loan documents individually and on behalf of Spectre. The chief credit officer with Richwood, Brian Gehres ("Gehres"), testified that this loan had a term of seven years and was secured with collateral that was identified in the agreement.

{¶34} Gehres testified that, among other assets, the collateral listed in the agreement included two Mercury boat engines with these serial numbers: 2B585472 and 2B583436. The collateral agreement stated that Richwood was to receive the

proceeds from the sale or transfer these assets. Gehres stated that a UCC Statement that identified this collateral was filed with the Ohio Secretary of State's Office and gave Richwood a lien on these assets.

{¶35} While the loan documents that identified these two engines as collateral were executed in February of 2019, Michael Caradimitropoulo had already received an email from Karen in August of 2018 that stated he had purchased the two Mercury 400R engines with the serial numbers of 2B585472 and 2B583436. Michael was also presented with a receipt for his purchase, though this document did not include the serial numbers for the two engines. At the time the loan was issued, Richwood was unaware that these motors had already been purchased by another person.

{¶36} Gehres testified that Richwood received payments on this loan through January of 2023. At this point, the principal and interest that was owed to Richwood on this loan was roughly $100,000.00. The Mercury 400R engines with the serial numbers 2B585472 and 2B583436 had not only been purchased by Michael before the loan in August of 2018 but were also sold after the loan to another person in Florida in November of 2020. While these engines were subject to the collateral agreement, Richwood did not receive any proceeds from the sale of these assets.

{¶37} The seventh transaction at issue was a business arrangement with Robert Kenney ("Kenney") and his company, DR Performance. Kenney had a lifelong interest in boats and became interested in Spectre after he saw one of their

vessels online. He called the company and spoke with Karen about his interest in becoming a dealer for their boats. Kenney and his business partner, Dane Sweatman ("Sweatman"), traveled to Todd's place of business in Bellefontaine, Ohio to talk with Todd and Karen about potentially making DR Performance a dealer for Spectre boats.

{¶38} On September 13, 2020, Kenney, Sweatman, and Karen signed a dealership agreement. Under this agreement, DR Performance would pay a $10,000.00 deposit per build slot and roughly $100,000.00 for each hull that Spectre manufactured for them. DR Performance was also going to purchase the boat engines through Spectre for Todd to mount on the hulls. After receiving the hull and engines, DR Performance would then complete the process by rigging the vessels and selling the boats. While the agreement was open ended, DR Performance committed to an initial purchase of four boat hulls.

{¶39} Kenney, Sweatman, and Todd then signed a collateral agreement that gave DR Performance a security interest in the molds that Todd used to make the 32 Spectre and the 36 Spectre. Sweatman and Kenney then made a series of payments to Spectre that totaled $148,132.48. Kenney testified that he had not received any hulls by April of 2021 and that Todd had been giving reasons why the hulls were delayed or not yet ready for transport.

{¶40} After Kenney communicated his concerns, Todd responded by indicating that he was influential in his town; that he could "control[]" any

investigation that might be opened; that "it was all just some mistake"; and that he would only speak with Sweatman in the future. (Tr. 461). On May 14, 2021, Kenney had his attorney file a UCC Financing Statement with the Ohio Secretary of State's Office for the molds at Spectre that were listed as collateral in their agreement. However, Kenney was never able to locate the molds. Kenney testified that he learned that Todd had put the molds for the Spectre 36 boats up for sale on Facebook marketplace for $100,000.00.

{¶41} Todd had also sent Kenney the hull and 450R Mercury engines for the boat that Phelps had ordered and asked Kenney to complete the rigging process. But when Kenney reached out to Phelps to discuss the price of rigging the boat, Phelps indicated that he had already paid Todd in full for a completed boat. Kenney testified that he then contacted Todd, who "demand[ed]" the return Phelps's boat to his facility but stated that Kenney could retain the 450R engines if he wanted to purchase them.

{¶42} Kenney explained that Mercury had a program that did not require boat manufactures to pay for their engines for one year after delivery. He then testified that Todd indicated that this one-year period was about to expire and that Mercury would be demanding payment. After speaking with Sweatman, Kenney wired $90,000.00 directly to Mercury to pay for the 450R engines that had come with Phelps's boat.

{¶43} After he received the certificate of ownership from Mercury, Kenney sold these engines to a person in California. However, Kenney had not been made aware that Phelps had already paid Todd for these engines. Kenney eventually began to receive calls from investigators who were looking into Todd's activities. After Kenney mentioned these calls during a conversation, Todd just gave him "endless threats." (Tr. 472).

{¶44} On July 9, 2024, Todd was indicted on four counts of grand theft in violation of R.C. 2913.02(A)(2), fourth-degree felonies; one count of aggravated theft in violation of R.C. 2913.02(A)(2), a third-degree felony; one count of theft from a person in a protected class in violation of R.C. 2913.02(A)(2), a first-degree felony; one count of defrauding creditors in violation of R.C. 2913.45(A)(1), a fourth-degree felony; one count of telecommunications fraud in violation of R.C. 2913.05(A), a second-degree felony; and one count of engaging in a pattern of corrupt activity in violation of R.C. 2923.32(A)(1), a first-degree felony.

{¶45} A jury trial on these charges commenced on October 27, 2025. DAt this time, the trial court dismissed the charge of telecommunications fraud on motion of the State. At trial, the State called Michael, Anderson, Phelps, Rabenstein, Gehres, and Kenney to testify. Special Agent Seitzman also testified at trial about the results of his investigation. He indicated that, while the Lambs had filed for personal bankruptcy, the Ohio businesses involved in these transactions had been dissolved by the time of trial.

{¶46} Special Agent Seitzman further testified that his investigation concluded that the total known losses incurred by the victims identified in this case was $937,862.99. He also testified that, during his investigation, he examined Spectre's business account at Richwood and the Lambs' personal account at Fifth Third Bank. He stated that he observed "a lot of commingling between the accounts," making it "difficult to follow some of the money." (Tr. 564).

{¶47} On October 29, 2025, the jury returned verdicts of guilty on all eight of the remaining charges against Todd. The trial court issued its judgment entry of sentencing on December 1, 2025.

{¶48} Todd filed his notice of appeal on December 19, 2025 and raises the following seven assignments of error:

First Assignment of Error

> **The Trial Court violated Appellant's rights to Due Process and a fair trial under the Fourteenth Amendments [sic] to the United States Constitution and Article I, Sections 10 and 16 of the Ohio Constitution by admitting extensive inadmissible hearsay through the out-of-court statements of non-testifying codefendant Karen Lamb.**

Second Assignment of Error

> **The Trial Court violated Appellant's rights under the Confrontation Clause of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution by admitting testimonial out-of-court statements from non-testifying co-defendant Karen Lamb through surrogate witnesses and documentary evidence.**

Third Assignment of Error

The Trial Court violated Appellant's right to due process under the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution by instructing the jury that it could draw inferences from facts proven by the 'greater weight of the evidence,' thereby improperly lowering the State's burden of proof in a criminal case.

Fourth Assignment of Error

Trial counsel rendered ineffective assistance by failing to provide constitutionally effective representation, in violation of Appellant's rights under the Sixth and Fourteenth Amendments to the United States Constitution and comparable provisions of the Ohio Constitution.

Fifth Assignment of Error

The Trial Court erred and thereby deprived Appellant of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and comparable provisions of the Ohio Constitution by overruling Appellant's Crim. R. 29 motion for judgment of acquittal, as the State failed to offer sufficient evidence to prove each and every element of the charges beyond a reasonable doubt.

Sixth Assignment of Error

The Trial Court erred by finding Appellant guilty and thereby deprived Appellant of due process of law as guaranteed by provisions of the Ohio Constitution because the verdict of guilty was against the manifest weight of the evidence.

Seventh Assignment of Error

The cumulative effect of multiple errors deprived Appellant of a fair trial, in violation of the Sixth and Fourteenth Amendments to the United States Constitution and comparable provisions of the Ohio Constitution.

For the sake of clarity, we will examine the fifth and sixth assignments of error together in one analysis.

First Assignment of Error

{¶49} Todd argues that several statements introduced at trial constituted inadmissible hearsay.

Legal Standard

{¶50} "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C).

> Hearsay is inadmissible under Evid.R. 802, unless a particular statement fails to meet the two-part definition in Evid.R. 801(C), or fully satisfies the conditions for nonhearsay prior statements under Evid.R. 801(D)(1) or (2), or falls within one of recognized exceptions under Evid.R. 803 or 804.

State v. Richcreek, 2011-Ohio-4686, ¶ 22 (6th Dist.). Evid.R. 801(D)(2) addresses several classes of out-of-court statements that do not qualify as hearsay.

{¶51} Under Evid.R. 801(D)(2)(d), "[a] statement is not hearsay if . . . [t]he statement is offered against a party and is . . . a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship. . . ." For Evid.R. 801(D)(2)(d) to apply, the agent or servant did not need to have "specific authorization to make" the statement at issue and only needed authorization "to take action regarding the matter to which the statement relates." *State v. Parham*, 2019-Ohio-358, ¶ 54 (10th Dist.).

Standard of Review

{¶52} In general, an appellate court reviews a trial court's decision as to the admissibility of out-of-court statements for an abuse of discretion. *State v. Berry*, 2021-Ohio-1132, ¶ 100 (3d Dist.). However, if no objection is raised to the admission of these statements at trial, all but plain error is forfeited on appeal. *State v. Cook*, 2020-Ohio-3411, ¶ 23 (3d Dist.).

> For plain error to apply, the trial court must have deviated from a legal rule, the error must have been an obvious defect in the proceeding, and the error must have affected a substantial right. . . . Under the plain error standard, the appellant must demonstrate that there is a reasonable probability that, but for the trial court's error, the outcome of the proceeding would have been otherwise.

(Citation omitted.) *State v. Bradshaw*, 2023-Ohio-1244, ¶ 21 (3d Dist.). "Plain error is recognized 'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.'" *State v. Treece*, 2025-Ohio-4319, ¶ 15 (3d Dist.), quoting *State v. Long*, 53 Ohio St.2d 91, 97 (1978).

Legal Analysis

{¶53} On appeal, Todd points to the testimony that Michael gave about an email that he received from Karen. This email read as follows:

> Hi Mike,
>
> I just wanted to let you know your motors have arrived! I've attached pictures of them, and the serial numbers are 2B583436 and 2B585472. They will stay covered up and in the crates until we are ready for them. I'm also attaching a receipt for your payment.

> I'm not sure if you are aware, but Todd [Lamb] just had surgery this past Tuesday July 31st. He had 2 hernia repairs and they removed his gallbladder. He is recovering as well as can be expected, even though the gallbladder was way worse than the surgeon anticipated, and the hernia repairs are very painful. Todd wanted you to know that once he is back to his old self, he is going to get started on your boat.
>
> Hope all is well with you. Have a great weekend!
>
> -Karen

(Ex. 15). Attached to this email were two pictures of the Mercury engines on pallets and a receipt that was signed by Todd. This receipt stated that Michael's recent $62,000.00 payment "will be applied to the new Mercury 400R offshore motors for his new 32' Spectre Powerboat. . . ." (Ex. 18A).

{¶54} Todd asserts that the statements in this email were inadmissible hearsay because Karen did not testify at trial. In his brief, he admits that no objection was raised to this testimony at trial. For this reason, we will review these arguments for plain error only. In response, the State argues that Karen sent this email in her capacity as "agent or servant" within the meaning of Evid.R. 801(D)(2)(d) and that her statements were, therefore, admissible as nonhearsay.

{¶55} In this case, the prosecution presented evidence that Karen was an integral part of the operations of the business and that Todd "leaned on Karen to take care of administrative tasks" for the business. (Tr. 475-478). *See City of Hamilton v. Premier Auto Mart, Inc*., 2019-Ohio-2493, ¶ 19 (12th Dist.). The testimony at trial indicates that, in her capacity at the business, Karen issued

invoices for the work that Todd had reportedly performed; signed a dealership agreement negotiated by Todd; signed a promissory note alongside Todd on behalf of the business; attended meetings with Todd; was able to write checks that drew on the company account; and communicated with customers about the payment process.[1]

{¶56} Turning to the email at issue, we note that Karen sent this message from her company email account as part of the administrative functions that she performed while working for the business. This email was sent to confirm a payment that was made pursuant to an agreement that Michael had with the company. In part of the email, Karen indicated that she was relaying a message from Todd to Michael. Further, attached to the email was a receipt that had been signed by Todd and that confirmed Michael's most recent payment was going to be specifically applied to the Mercury 400R engines for his boat. Having reviewed the relevant evidence in the record, we conclude that the challenged evidence was nonhearsay under Evid.R. 801(D)(2)(d).[2]

{¶57} The State also argues that the email was also admissible pursuant to Evid.R. 801(D)(2)(c) as a statement from an authorized person and Evid.R. 801(D)(2)(e) as a statement from a co-conspirator. However, we need not consider

[1] One question asked by defense counsel suggested that Karen was also a co-owner of the business, but this was not expressly confirmed by the witness.

[2] We also note that the State introduced a picture from Todd's place of business that depicts two Mercury engines on a shelf. In this picture, the serial numbers from the email, though blurry, can be made out on the packaging for these engines. Written on the packaging next to these serial numbers was the following phrase: "Mike Evans 32' Spectre." (Ex. 40).

these arguments to conclude that Todd has failed to demonstrate that the admission of this evidence constitutes plain error. Accordingly, the first assignment of error is overruled.

Second Assignment of Error

{¶58} Todd argues that his right of confrontation was violated by Michael's references to his communications with Karen.

Legal Standard

{¶59} "The Confrontation Clause guarantees the right of defendants in criminal cases 'to be confronted with the *witnesses* against him.'" (Emphasis sic.) *State v. Little*, 2016-Ohio-8398, ¶ 17 (3d Dist.), quoting U.S. Const., Amend. VI. In turn, a witness is a person who "bear[s] testimony." *Crawford v. Washington*, 541 U.S. 36, 54 (2004), quoting 2 N. Webster, An American Dictionary of the English Language (1828). For this reason, "the Confrontation Clause applies only to testimonial statements." *State v. Muttart*, 2007-Ohio-5267, ¶ 59.

{¶60} "To rank as 'testimonial,' a statement must have a 'primary purpose' of 'establish[ing] or prov[ing] past events potentially relevant to later criminal prosecution.'" *Bullcoming v. New Mexico*, 564 U.S. 647, fn. 6 (2011), quoting *Davis v. Washington*, 547 U.S. 813, 822 (2006). Thus, if the speaker was essentially making "an out-of-court substitute for trial testimony," the statement is testimonial. *Michigan v. Bryant*, 562 U.S. 344, 358 (2011). In determining whether a statement is testimonial, courts generally examine whether the utterance was made "which

would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Little* at ¶ 24, quoting *Crawford* at 52.

Standard of Review

{¶61} Appellate courts apply a de novo standard of review to challenges that allege Confrontation Clause violations. *State v. Burns*, 2026-Ohio-544, ¶ 14 (3d Dist.). However, the failure to raise an objection to an alleged violation of a defendant's right of confrontation at trial forfeits all but plain error on appeal. *State v. Thomas*, 2020-Ohio-5379, ¶ 16 (3d Dist.).

Legal Analysis

{¶62} Todd did not object at trial to the evidence that he now challenges as violative of his right of confrontation on appeal. For this reason, we review his arguments for plain error only. On appeal, Todd identifies a number of instances at trial where different witnesses described various administrative functions that Karen performed in their dealings with Screaming Eagle or Spectre.

{¶63} However, Todd only identifies one instance in which a witness relayed a statement from Karen at trial. During his testimony, Kenney stated: "And when I started to pull back, Todd became increasingly aggressive, and then he started putting Karen on the phone to make these collection calls: You've got to do this, you told us you were going to do this." (Tr. 460). Even if we assume that this was a testimonial statement that was admitted in violation of the Confrontation Clause, we note that this was one statement in a three-day trial on eight different charges

with multiple victims. On appeal, Todd has not advanced an argument that establishes how the outcome of this proceeding could have been different in the absence of this one statement. In short, we do not find any prejudice.

{¶64} In the remainder of the trial testimony that Todd identifies in support of this argument, witnesses were describing various actions that Karen undertook. These actions included attending meetings, giving payment instructions, receiving payments on Venmo, answering the phone, depositing checks, giving her contact information to a lender, and emailing documents. But in these descriptions, the witnesses did not communicate out-of-court statements that were made by Karen or assertions that she arguably made as substitutes for trial testimony. Since these identified portions of the trial record do not contain testimonial statements, they ultimately do not implicate the Confrontation Clause. Since Todd's arguments herein fail to establish plain error, the second assignment of error is overruled.

Third Assignment of Error

{¶65} Todd argues that his convictions should be reversed because the trial court's jury instructions contained an erroneous statement.

Legal Standard

{¶66} "The purpose of jury instructions is to guide the jury in deciding questions of fact based on the applicable substantive law." *State v. Sexton*, 2026-Ohio-2636, ¶ 46 (2d Dist.). "A trial court's instructions to a jury must correctly, clearly, and completely state the law applicable to the case." *State v. Orians*, 2008-

Ohio-6185, ¶ 10 (3d Dist.). "The relevant principle for jury instructions is not one of abstract correctness, but is whether an instruction—even if a correct statement of law—is potentially misleading." *State v. White*, 2015-Ohio-492, ¶ 52.

{¶67} "When a jury instruction is challenged as being incorrect, an appellate court 'must determine whether the jury charge probably misled the jury in a matter materially affecting the complaining party's substantial rights.'" *State v. Graham*, 2026-Ohio-1924, ¶ 32 (3d Dist.), quoting *State v. Frye*, 2018-Ohio-894, ¶ 105 (3d Dist.). In making this determination, an appellate court is not to examine the challenged wording in isolation but must examine the jury instructions as a whole. *State v. Smith*, 2023-Ohio-3015, ¶ 47 (3d Dist.).

{¶68} A reviewing court will not reverse a conviction based on errant wording in a jury instruction if the charge, in its totality, otherwise communicates a sufficiently fair and clear expression of the law to the jurors. *State v. Rentschler*, 2023-Ohio-3009, ¶ 84 (3d Dist.). "Furthermore, there is a strong presumption in favor of the adequacy of jury instructions." *State v. Leeper*, 2024-Ohio-4965, ¶ 42 (3d Dist.), quoting *State v. Wegmann*, 2008-Ohio-622, ¶ 104 (3d Dist.).

{¶69} "Crim.R. 30(A) governs requests for and objections to jury instructions in criminal cases . . . ." *State v. Grant*, 2023-Ohio-2720, ¶ 66 (3d Dist.), quoting *State v. Jamar*, 1988 Ohio App. Lexis 3476, *3 (3d Dist. Aug. 19, 1988). This provision reads, in its relevant part, as follows:

> On appeal, a party may not assign as error the giving or the failure to give any instructions unless the party objects before the jury retires to consider its verdict, stating specifically the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Crim.R. 30(A). Thus, "[a]bsent plain error, the failure to object to improprieties in jury instructions, as required by Crim.R. 30, is a waiver of the issue on appeal." *Graham*, 2026-Ohio-1924, at ¶ 39 (3d Dist.), quoting *State v. Underwood*, 3 Ohio St.3d 12, 13 (1983).

Legal Analysis

{¶70} On appeal, Todd asserts that the trial court made an erroneous statement while explaining inferences to the jury in the following instruction:

> To infer, or to make an inference, is to reach a reasonable conclusion of fact which you may but are not required to make from other facts which you find have been established by direct evidence. You may infer a fact only from other facts that have been proven *by the greater weight of the evidence*. Whether an inference is made rests entirely with you.

(Emphasis added.) (Tr. 668). Todd argues that the italicized statement improperly brought language from a civil standard of proof into a criminal context. *See State v. Young*, 2008-Ohio-5046, ¶ 24 (7th Dist.) (In general, "[g]reater weight of the evidence is equated with preponderance of the evidence."). However, Todd acknowledges in his brief that he did not timely object to the jury instructions that were provided at trial. Thus, we will review his argument for plain error only.

{¶71} In *State v. Coe*, this Court considered a case in which the defendant challenged the following jury instruction:

> You may infer a fact or facts only from other facts or circumstances that have been proven by the greater weight of the evidence but you may not make inferences from a speculative or remote basis that's not been established by the greater weight of the evidence.

Coe, 1998 Ohio App. Lexis 2628, *2 (3d Dist. June 4, 1998). Our prior decision concluded that this "singular instruction [was] . . . erroneous" because the correct standard was "beyond a reasonable doubt" and the challenged jury instruction should have been "limited to civil cases." *Id.* at *4, quoting *Sullivan v. Louisiana*, 508 U.S. 275, 277-278 (1993) and 1 Ohio Jury Instructions 5.10, 115-116 (1996).

{¶72} In deciding whether this erroneous phrase was reversible, this Court noted "that the trial court instructed the jury on several occasions of its duty to apply a reasonable doubt standard to the evidence presented by the State." *Coe* at *4. This Court then drew the following conclusion:

> [W]e cannot say that there was reversible error in the charge to the jury. When reviewing the context of the overall charge, one erroneous instruction was insufficient to mislead the jury or to taint the entire pool of instructions when, otherwise, the proper instructions regarding the reasonable doubt burden of proof and evidentiary standard were provided to the jury.

Coe at *6-7. After concluding that this error was not reversible, this Court then pointed out that Coe failed to object to this instruction at trial and waived all but plain error on appeal. *Id*. at *7. For this reason, the decision in *Coe* additionally

found that the inclusion of this challenged statement in the jury instructions did not rise to the level of plain error. *Id*.

{¶73} We turn to applying the reasoning in *Coe* to the facts of the case presently before us. As the State concedes in its brief, the language in the jury instructions challenged by Todd "has been found erroneous." (Appellee's Brief, 16). In evaluating the impact of this errant phrase, we note that, at the beginning of the jury instructions, the trial court stated the following:

> The defendant is presumed innocent until his guilt is established beyond a *reasonable doubt*. The defendant must be acquitted unless the State produces evidence which convinces you beyond a *reasonable doubt* of every essential element of the offense charged.
>
> *Reasonable doubt* is present when after you have carefully considered and compared all of the evidence you cannot say you are firmly convinced of the truth of the charge. *Reasonable doubt* is a doubt based on reason and common sense. A *reasonable doubt* is not a mere possible doubt because everything relating to human affairs or depending upon moral evidence is open to some possible or imaginary doubt. Proof beyond a *reasonable doubt* is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his or her own affairs.

(Emphasis added.) (Tr. 667). In this instruction, the trial court properly conveyed a correct explanation of the State's burden of proof in a criminal case to the jurors.

{¶74} Further, in the instructions for each charge, the trial court emphasized that the verdict "must be not guilty" if the jury "find[s] that the State failed to prove beyond a reasonable doubt any one of the essential elements of the offense . . . ."

(Tr. 684). Altogether, the jury instructions went on to mention that the State had to prove the charges beyond a reasonable doubt at least sixteen more times.

{¶75} In summary, the trial court correctly explained the State's burden of proof at the outset of the jury instructions and repeatedly emphasized that the State had to prove each element of each offense beyond a reasonable doubt. Given this larger context, Todd has failed to demonstrate that the errant phrase in the jury instructions was prejudicial under the standard for plain error. *See also State v. Simpson*, 2011-Ohio-4578, ¶ 16 (1st Dist.); *State v. Scott*, 2009-Ohio-4961, ¶ 66 (7th Dist.); *State v. Doan*, 2000 Ohio App. Lexis 713, *22 (12th Dist. Feb. 28, 2000). Accordingly, the third assignment of error is overruled.

Fourth Assignment of Error

{¶76} Todd asserts that he was denied his right to the effective assistance of counsel at trial.

Legal Standard

{¶77} "Ohio law presumes that a licensed attorney's representation was competent." *State v. Morgan*, 2024-Ohio-625, ¶ 13 (3d Dist.). "In order to prove an ineffective assistance of counsel claim, the appellant must carry the burden of establishing (1) that his or her counsel's performance was deficient and (2) that this deficient performance prejudiced the defendant." *State v. McWay*, 2018-Ohio-3618, ¶ 24 (3d Dist.), quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

{¶78} To establish deficient performance, the appellant must demonstrate that defense "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *State v. Howton*, 2017-Ohio-4349, ¶ 35 (3d Dist.), quoting *Strickland* at 687. "In general, matters that fall within the ambit of trial strategy or debatable tactics do not constitute ineffective assistance of counsel." *State v. Schmidt*, 2026-Ohio-2678, ¶ 27 (3d Dist.).

{¶79} To establish prejudice, the defendant must demonstrate that, in the absence of trial counsel's deficient performance, a reasonable probability exists that the outcome of the proceeding would have been different. *State v. Huffman*, 2026-Ohio-1618, ¶ 55 (3d Dist.). "If the appellant does not establish one of these two prongs, the appellate court does not need to consider the facts of the case under the other prong of the test." *State v. Gear*, 2023-Ohio-1246, ¶ 50 (3d Dist.).

Legal Analysis

{¶80} Todd begins by identifying three instances in which defense counsel was purportedly ineffective for failing to raise an objection at trial. Before we turn to these arguments, we note that the decision not to object is generally a matter of trial strategy and will not typically constitute deficient performance. *State v. Stinebaugh*, 2024-Ohio-2677, ¶ 65 (3d Dist.). In particular, "the decision not to challenge isolated remarks is generally a matter of trial strategy because objecting

or moving to strike to such testimony may only attract more attention to unfavorable evidence." *State v. Matthews*, 2024-Ohio-5558, ¶ 42 (3d Dist.).

{¶81} First, Todd asserts that defense counsel was deficient because he did not object at trial to the admission of evidence that has already been challenged in this appeal as inadmissible hearsay or as violative of the Confrontation Clause. But under the first assignment of error, we concluded that the evidence Todd challenged on hearsay grounds was admissible under Evid.R. 801(D)(2)(d). "The failure to raise a meritless objection to admissible evidence does not constitute deficient performance." *State v. Grant*, 2023-Ohio-2720, ¶ 62 (3d Dist.).

{¶82} Further, under the second assignment of error, we examined the evidence that Todd challenged on appeal as violative of his right of confrontation for plain error. Some of this evidence did not constitute plain error because it simply did not implicate the Confrontation Clause. Defense counsel was not deficient for failing to raise a meritless objection to this evidence at trial. *Grant* at ¶ 62. We then concluded that, even if the rest of the evidence that Todd identified in this prior argument was admitted in error, he still failed to establish prejudice under the standard for plain error.

{¶83} Importantly, "the prejudice standards for plain-error and ineffective-assistance-of-counsel claims are the same . . . ." *State v. Cervantes*, 2022-Ohio-2536, ¶ 58 (3d Dist.). Since Todd could not establish prejudice under the standard for plain error, he cannot establish prejudice under the standard for ineffective

assistance of counsel with the same argument. For these reasons, Todd's first argument is without merit.

{¶84} Second, Todd asserts that the State mischaracterized some evidence during closing arguments and that defense counsel was deficient for failing to object to these statements. "The test regarding prosecutorial misconduct in opening statements or closing arguments is whether the conduct or remarks were improper and, if so, whether they prejudicially affected substantial rights of the defendant." *State v. Caudill*, 2025-Ohio-787, ¶ 39 (3d Dist.). This analysis focuses on "the fairness of the trial, not the culpability of the prosecutor." *Schmidt*, 2026-Ohio-2678, at ¶ 51 (3d Dist.), quoting *Smith v. Phillips*, 455 U.S. 209, 219 (1982).

{¶85} On appeal, Todd initially points out that, during closing arguments, the prosecutor referenced facts that were established by an email that Karen sent to Michael. Under the first assignment of error, we concluded that the contents of this email were admissible under Evid.R. 801(D)(2)(d). Further, the prosecutor did not misstate or mischaracterize the contents of these evidentiary materials. Based on our resolution of the first assignment of error, we conclude that defense counsel was not deficient for choosing not to raise a meritless objection to this statement.

{¶86} Todd also asserts that the State's closing arguments improperly attributed Karen's actions to him. On one occasion, the prosecutor asserted that the evidence established that Todd was aware of the actions that Karen took in furtherance of his crimes. In this statement, the prosecutor was rebutting a line of

argument in which the Defense suggested that Todd may have been unaware of some of Karen's activities. Since Todd has not identified a statement in which the prosecutor mischaracterized the evidence, he cannot establish defense counsel was deficient for failing to raise a meritless objection.

{¶87} Todd also asserts that, during closing arguments, the prosecutor improperly stated that Michael's name appeared on the Mercury engines that he had purchased. In response, the State indicates that the prosecutor was showing Exhibit 40 to the jury at the time of this statement. Exhibit 40 is a picture in which Michael's name can be seen written on the packaging of two Mercury engines that are on a large shelf. Since this argument fails to establish that the prosecutor mischaracterized evidence, defense counsel was not deficient for failing to raise a meritless objection during closing arguments. Thus, the second argument is without merit.

{¶88} Third, Todd asserts that defense counsel was deficient for failing to object to a jury instruction that erroneously brought a phrase from civil law into the criminal context. However, under the third assignment of error, we found that Todd failed to demonstrate that the inaccurate phrase he identified in the jury instructions rose to the level of plain error. Importantly, "the prejudice standards for plain-error and ineffective-assistance-of-counsel claims are the same . . . ." *Cervantes*, 2022-Ohio-2536, at ¶ 58 (3d Dist.). Since Todd failed to establish that he was prejudiced by the errant phrase in the jury instructions under the standard for plain error, he

cannot establish that he was prejudiced under the standard for ineffective assistance of counsel claims with the exact same argument. Thus, Todd's second argument is without merit.

{¶89} Finally, Todd asserts that the cumulative effect of the three alleged instances of ineffectiveness was to deny him a fair trial.

> '[A] conviction will be reversed when the cumulative effect of errors in a trial deprives a defendant of a fair trial even though each of the numerous errors does not individually constitute cause for reversal.' [*State v.*] *Graham*, 2020-Ohio-6700[,] ¶ 169. . . . As applied to a claim for ineffective assistance of counsel, '[e]ach assertion of ineffective assistance of counsel going to cumulative error depends on the merits of each individual claim; when none of the individual claims of ineffective assistance of counsel have merit, cumulative error cannot be established simply by joining those meritless claims together.' *Graham* at ¶ 170.

State v. Payne, 2024-Ohio-4698, ¶ 97 (10th Dist.). However, we have already found that each of Todd's individual ineffective assistance of counsel claims lacked merit. These individually meritless claims are not cumulatively prejudicial. Since Todd's arguments fail to establish that he was deprived of his right to the effective assistance of counsel, his fourth assignment of error is overruled.

Fifth and Sixth Assignments of Error

{¶90} Todd asserts that his convictions for theft and defrauding creditors are not supported by sufficient evidence and are against the manifest weight of the evidence because the evidence does not support the conclusion that he acted purposely.

Legal Standard

{¶91} "A sufficiency-of-the-evidence analysis examines whether the State has carried its burden of production at trial." *State v. Whitt*, 2025-Ohio-424, ¶ 16 (3d Dist.). "On review, an appellate court is not to consider whether the evidence at trial should be believed but whether the evidence, if believed, could provide a legal basis for the finder of fact to conclude that the defendant is guilty of the crime charged." *State v. Daniels*, 2024-Ohio-1536, ¶ 13 (3d Dist.).

> Accordingly, the applicable standard 'is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.'

State v. Reed, 2024-Ohio-4838, ¶ 30 (3d Dist.), quoting *State v. Plott*, 2017-Ohio-38, ¶ 62 (3d Dist.).

{¶92} In contrast, "[a] manifest-weight analysis examines whether the State has carried its burden of persuasion at trial." *State v. Carroll*, 2024-Ohio-1626, ¶ 58 (3d Dist.). On review, "an appellate court's function . . . is to determine whether the greater amount of credible evidence supports the verdict." *State v. Harvey*, 2020-Ohio-329, ¶ 12 (3d Dist.), quoting *Plott*, at ¶ 73.

> Appellate courts "must review the entire record, weigh the evidence and all of the reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts in the evidence, the factfinder 'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'"

State v. Randle, 2018-Ohio-207, ¶ 36 (3d Dist.), quoting *Plott* at ¶ 73, quoting *State v. Thompkins*, 78 Ohio St. 3d 380, 387 (1997).

{¶93} To establish a conviction for theft in violation of R.C. 2913.02(A)(2), the State must prove that the defendant, "with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services . . . [b]eyond the scope of the express or implied consent of the owner or person authorized to give consent[.]" R.C. 2913.02(A)(2).[3] In turn, Ohio Revised Code defines "owner" as

> any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license, or interest is unlawful.

R.C. 2913.01(D). Further, "deprive" is defined as

> (1) Withhold[ing] property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;
>
> (2) Dispos[ing] of property so as to make it unlikely that the owner will recover it;
>
> (3) Accept[ing], us[ing], or appropriate[ing] money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.

[3] While Todd was charged with four counts of grand theft, one count of aggravated theft, and one count of theft from a person in a protected class, he only challenges the purposeful element that these violations of R.C. 2913.02(A)(2) share. For this reason, we did not set forth the elements that these offenses do not share. Similarly, Todd only argues in his brief that the State failed to establish that he acted purposely. For this reason, we only examine the convictions that require the State to prove the defendant acted purposely.

R.C. 2913.01(C). To establish "a violation of R.C. 2913.02(A)(2), the State must prove that at the time the defendant exceeded the scope of consent of the owner of the money, he had the intent to deprive the owner of the money." *State v. Kerr*, 2015-Ohio-2228, ¶ 19 (6th Dist.), quoting *State v. Coleman*, 2003-Ohio-5724, ¶ 29 (2d Dist.). In this analysis, the

> [c]ompletion of a significant amount of the work under a contract 'precludes an inference that the defendant exceeded the scope of the owner's consent with intent to deprive the owner of the money (R.C. 2913.02(A)(2)).' *Kerr*, . . . 2015-Ohio-2228, at ¶ 20, quoting *Coleman*, . . . 2003-Ohio-5724, at ¶ 40. Conversely, minimal performance on a contract does not prevent a finding of intent required to support a theft conviction under R.C. 2913.02(A)(2). *Kerr* at ¶ 22.

State v. Delmonico, 2020-Ohio-3368, ¶ 38 (8th Dist.).

{¶94} Finally, to establish a conviction for defrauding creditors in violation of R.C. 2913.45(A)(1), the State must establish that the defendant, "with purpose to defraud one or more of the person's creditors . . . [r]emove[d], conceal[ed], destroy[ed], encumber[ed], convey[ed], or otherwise deal[t] with any of the person's property[.]" R.C. 2913.45(A)(1). The Ohio Revised Code defines "defraud" as "knowingly obtain[ing], by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another." R.C. 2913.01(B).

Legal Analysis

{¶95} On appeal, Todd asserts that his six convictions for theft and his conviction for defrauding creditors are not supported by sufficient evidence because

the State failed to produce evidence that he acted purposely in the seven transactions that led to these convictions. The Ohio Revised Code states that

> [a] person acts purposely when it is the person's specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender's specific intention to engage in conduct of that nature.

R.C. 2901.22(A). Because Todd only challenges one element of these offenses, our analysis will *only* examine whether a rational trier of fact could conclude from the evidence at trial that he acted with the purpose to deprive the owner in each of these seven transactions.

{¶96} *First Theft Conviction*: This theft charge arose from Todd's dealings with Michael Caradimitropoulo. At trial, Michael testified that he ultimately ordered a thirty-two-foot custom boat with two Mercury 400R engines that was to cost roughly $194,000.00. Under the agreement, Michael was to pay for the boat in five stages. He testified that Todd sent him pictures of the progress that was being made on a boat that was being constructed.

{¶97} Michael's testimony indicates that he issued successive payments for the boat. Further, Michael's testimony indicates that, at one point, he asked Todd to delay the delivery of his boat. Todd indicated that he could comply with this request but would still need part of the next payment to be made on schedule so that he cover the costs of the Mercury 400R engines that had been ordered for the boat.

{¶98} After Michael completed payment for these engines, Karen sent him an email that contained pictures of the Mercury 400R engines that he had purchased. She stated that the serial numbers for his engines were 2B583436 and 2B585472. Further, Karen also attached a Receipt of Payment that had been signed by Todd. This receipt stated that Screaming Eagle had received a $62,000.00 payment from Michael that was "applied to the new Mercury 400R offshore motors. . . ." (Ex. 18A). The State also introduced a picture from Todd's place of business in which Michael's name can be seen written on the packaging of two Mercury engines that were on shelves.

{¶99} Michael also affirmed that Todd requested payment for the jack plates and a trailer, suggesting that "the boat's almost finished." (Tr. 248). But when Michael sought to visit Spectre to view the progress on the boat, Todd told him not come to his business and that any visit would be trespassing. Michael testified that he did not receive a boat or his Mercury 400R engines, even though he made the required payments in the amount of $143,650.00.

{¶100} Todd and Michael signed a settlement agreement that listed the boat hull, trailer, 400R Mercury engines, and the jack plates as collateral, specifying that the proceeds from any sale of these assets was to go towards the sum that Todd owed Michael. However, Michael testified that the boat hull and 400R Mercury engines were not found in Todd's inventory after a receiver was appointed. Michael

also stated that he did not receive any proceeds from the sale of these items that were listed as collateral.

{¶101} Special Agent Seitzman testified that he learned, by searching for the serial numbers that Michael had received, that his 400R engines were later sold to a person in Florida. However, Special Agent Seitzman testified that the whereabouts of the custom boat that Todd had been constructing for Michael were unknown. Viewing the evidence in this case in a light most favorable to the prosecution, a rational trier of fact could conclude that Todd acted with the requisite purpose in this transaction. *See State v. Capone*, 2006-Ohio-1537, ¶ 35-36 (8th Dist.).

{¶102} Turning to the manifest-weight analysis, Michael testified that he did not make the final payment on the boat but clarified that he only refused to make this final payment once Todd had informed him that his boat was not going to be completed or delivered. His testimony indicates that he did not initially contact law enforcement but instead negotiated a settlement agreement with Todd to recover his lost funds. Michael stated that Todd paid $16,200.00 towards this debt but then stopped making payments. *See State v. Barnthouse*, 2019-Ohio-5209, ¶ 15 (1st Dist.) (repaying a small fraction of the funds did not negate the intent to deprive).

{¶103} Further, Michael indicated that several of the communications he received came from Karen. However, he also testified that Todd was the person who threatened to call the police if he (Michael) came to Spectre; and was the person who said that no boat was going to be delivered. Todd was also the person who

signed the settlement agreement and the receipt for the Mercury 400R engines. Having examined the relevant evidence, we conclude that Todd's argument fails to establish that this conviction is against the manifest weight of the evidence.

{¶104} *Second Theft Conviction*: This theft charge arose from Todd's dealings with Dean Anderson. At trial, Anderson testified that he ultimately ordered a 24 Talon boat with two Mercury 300XS engines that was to cost roughly $136,079.00. Under the agreement, Anderson was to pay for the boat in several stages as the construction of the vessel progressed into different phases. The State produced documentation that established that Anderson made successive payments as were required by the agreement.

{¶105} Anderson stated that the final invoice he received was for rigging the vessel and suggested that the boat was nearing completion. Anderson also identified a picture from Todd's place of business that depicted a pallet that held two Mercury 300XS engines. In the picture, the pallet with the engines was marked "Dean Anderson, 24-foot." (Tr. 431). Todd also signed a receipt for a $40,025.00 payment from Anderson that was "for the cost of (2) new Mercury 300XS motors." (Ex. 40).

{¶106} Anderson also testified that, after Todd mentioned that he was trying to raise capital, they entered into a business arrangement in which Anderson's company would have the exclusive right to sell the Talon boats manufactured by Todd. Anderson then purchased several molds that would be used to build the Talon boats and paid $95,000.00 to have Todd craft the new Talon 26 molds. During

Anderson's testimony, the State introduced a picture that Todd posted on Facebook that depicted a plug that was used in the initial phases of making a new mold. The caption under this picture read: "The new Talon 26X coming along nicely." (Ex. 28).

{¶107} However, Anderson stated that he paid for his boat but never received the vessel or his Mercury 300XS engines. During a civil proceeding that was instituted against him, Todd admitted that he had sold Anderson's boat and his Mercury 300XS engines to other people. At trial, Anderson identified a picture of two Mercury 300XS engines that Todd listed for sale on a Facebook page called Race Boats for Sale. The post listed these engines for $45,000.00 and stated that these "Brand new" motors were "the last pair" that Todd had. (Ex. 41). He then testified that he never received any of the proceeds from the sale of these assets and never received the molds for the Talon 26X that Todd agreed to make.

{¶108} Anderson also indicated that Todd did not return any of the money—over $200,000.00—that he had received for the Talon 24 boat or the Talon 26X mold. Special Agent Seitzman testified that his investigation established that Anderson's boat was sold to a person in Arizona; that the Mercury 300XS engines that Anderson had purchased through Todd ended up with someone in New Jersey; and that the 26 mold was never built. Viewing the evidence in this case in a light most favorable to the prosecution, a rational trier of fact could conclude that Todd

acted with the requisite purpose in this transaction. *See State v. Dalton*, 2009-Ohio-3149, ¶ 33 (11th Dist.).

{¶109} Turning to the manifest-weight analysis, Anderson testified that he did not see a picture of a mold being shaped around the plug. Rather, he just saw the picture of the plug with the caption: "The new Talon 26X, coming along nicely." (Tr. 335). Anderson also stated that he did not have the serial numbers for the engines that he purchased. However, he mentioned that, when he visited Spectre, Todd took him to a rack, pointed at some engines, and indicated that these were the engines that Anderson had purchased. Having examined the relevant evidence, we conclude that Todd's argument fails to establish that this conviction is against the manifest weight of the evidence.

{¶110} *Third Theft Conviction*: This theft charge arose from Todd's dealings with Phelps. At trial, Phelps testified that he ordered a thirty-two-foot Spectre boat with two Mercury 450R engines that was to cost $308,918.50. He testified that this sum included the purchase of the two Mercury 450R engines. While he tendered nine payments over the course of a year that totaled $300,461.50, Phelps never received a completed boat from Todd.

{¶111} Special Agent Seitzman testified that, during his investigation, he examined Spectre's account at Richwood Bank and the Lambs' personal account at Fifth Third Bank. He stated that, on March 20, 2020, a payment of $40,000.00 from Phelps went into Spectre's bank account. The balance in this account before this

wire transfer was $7,149.43. On March 23, 2020, Karen then wrote a check for $24,000.00 to Todd that was deposited into their personal account. On March 25, 2020, $24,786.00 was wired from the Lambs' personal account to Mad River Title Company as part of a real estate transaction. *See Delmonico*, 2020-Ohio-3368, at ¶ 47 (8th Dist.).

{¶112} Further, Kenney testified that he had signed an agreement under which his company, DR Performance, would serve as a dealer for boats manufactured by Todd. Kenney stated that Todd asked him to complete the rigging process for Phelps's boat because he (Todd) did not have time to finish this vessel on time. Kenney then communicated with Phelps about the costs of rigging the boat and learned that Phelps had already paid Todd the full price for a completed boat. Todd then took Phelps's boat back from DR Performance.

{¶113} However, Kenney testified that Todd told him that DR Performance could purchase the Mercury 450R engines that were delivered with Phelps's boat if they paid him $90,000.00 to give to Mercury. Kenney explained that Mercury gave manufacturers one year to pay them for their engines and that Todd had told him that Mercury was demanding payment for these 450R engines. Kenney indicated that he refused to pay Mercury for the engines indirectly through Spectre because of the issues that he was having with Todd.

{¶114} Instead, Kenney wired $90,000.00 directly to Mercury; received a certificate of origin for these engines; and then sold the Mercury 450R engines to a

person in California. He indicated that he was not aware at that time that Phelps had already paid Todd for these Mercury 450R engines. Viewing the evidence in this case in a light most favorable to the prosecution, a rational trier of fact could conclude that Todd acted with the requisite purpose in this transaction.

{¶115} Turning to the manifest-weight analysis, Phelps testified on cross-examination that the receipts or invoices that he received for his payments did not list the specific parts that were purchased with each payment. He also acknowledged that the agreement was for a completed boat rather than specific parts. He also indicated that he did not receive any paperwork that indicated he was the owner of the individual parts that were purchased to build his boat, but he did mention that "[d]ocumentation . . . were pretty well absent in this." (Tr. 208).

{¶116} At trial, Phelps testified that he was able to recover a damaged hull after filing a civil lawsuit against Todd and was able to sell this part for around $100,000.00. His testimony indicates that this hull was damaged because it was not stored properly. The evidence at trial indicates that Todd continued to accept installment payments from Phelps even though he only completed the hull. The hull was only worth less than one-third of the sum that Todd took from Phelps. *See Delmonico*, 2020-Ohio-3368, at ¶ 43 (8th Dist.); *State v. Smith*, 2005-Ohio-6551, ¶ 16-18 (12th Dist.) (completing a small fraction of the work does not negate the intent to deprive). Having examined the relevant evidence, we conclude that Todd's

argument fails to establish that this conviction is against the manifest weight of the evidence.

{¶117} *Fourth Theft Conviction*: This theft charge arose from an installment contract through which Todd obtained a 304E2CR mini hydraulic excavator that cost $41,500.00. At trial, a customer support account manager with Caterpillar Financial, Otisha Veals ("Veals"), testified that Todd made a down payment of $8,300.00; and borrowed $33,700.00 to finance the remainder of the purchase price. Veal testified that Caterpillar Financial retained a security interest in this machine and filed a UCC Financing Statement with the Ohio Secretary of State's Office on September 13, 2019. The State introduced a copy of the installment contract that contained Todd's signature. This agreement stated that Todd would not "sell, assign, [or] transfer" the collateral "except in our [Caterpillar Financial's] favor." (Ex. 53A).

{¶118} Caterpillar later learned that Todd sold this mini excavator to Matt Braun of Diamond Maintenance, LLC in Michigan. Veal testified that none of the proceeds of the sale of the machinery went to pay the balance that remained on Todd's loan. Special Agent Seitzman testified that he investigated this transaction and was able to link Braun's purchase of this mini excavator to a $39,500.00 check that Todd received on March 2, 2020. The loan payoff amount at this time was $33,566.00. Viewing the evidence in this case in a light most favorable to the prosecution, a rational trier of fact could conclude that Todd acted with the requisite

purpose in this transaction. *See State v. Kimble*, 1993 Ohio App. Lexis 2871, *2 (11th Dist. June 4, 1993).

{¶119} Turning to the manifest-weight analysis, Veal testified that Todd made fifteen payments towards the loan he had received for this mini excavator. She stated that Karen was authorized to be involved in discussions about this transaction and participated in several conversations about this loan agreement. Having examined the relevant evidence, we conclude that Todd's argument fails to establish that this conviction is against the manifest weight of the evidence.

{¶120} *Fifth Theft Conviction*: This theft charge arose from the transaction in which Todd obtained a 305E2CR mini hydraulic excavator at a cost of $50,000.00. At trial, Veals testified that Todd made a down payment of $5,000.00 for this machine and borrowed $45,500.00 to finance the remainder of the purchase price and fees in 2020. She further stated that Caterpillar Financial retained a security interest in the mini excavator and filed a UCC Financing Statement with the Ohio Secretary of State's Office on October 23, 2020.

{¶121} The State introduced a copy of the installment contract that contained Todd's signature. This agreement stated that Todd would not "sell, assign, [or] transfer" the collateral "except in our [Caterpillar Financial's] favor." (Ex. 55A). Veals testified that Caterpillar Financial later learned that Todd sold the mini excavator to the owner of Rabenstein Electrical in Ohio and did not use the proceeds of the sale to pay the balance that remained on his loan.

{¶122} Robert Rabenstein testified that he purchased the 305E2CR mini hydraulic excavator from Todd on December 11, 2020 for $48,000.00 and that Todd did not mention that this machine was collateral for a loan. At this time, the payoff amount on Todd's loan for this machine was $48,760.00. Rabenstein's $48,000.00 check was then deposited into Spectre's bank account. Special Agent Seitzman testified that, on December 23, 2020, Todd wrote a check that withdrew $48,000.00 from Spectre's bank account and deposited $48,000.00 into Lambs' personal account.

{¶123} Rabenstein testified that he had to pay an additional $25,000.00 to Caterpillar Financial to settle the lien on the mini excavator, bringing the amount he ultimately paid for this machine to $73,000.00. Viewing the evidence in this case in a light most favorable to the prosecution, a rational trier of fact could conclude that Todd acted with the requisite purpose in this transaction. See *Kimble*, 1993 Ohio App. Lexis 2871, at *2-4 (11th Dist.).

{¶124} Turning to the manifest-weight analysis, Veals testified that Todd was able to receive a loan for this second mini excavator because he had, at that point, been consistent in the payments that he made towards the first excavator that he got from Caterpillar. At trial, Rabenstein testified that he was not aware that UCC Financing Statements were filed for the type of machinery he purchased from Todd and was not aware of the lien on the mini excavator until several months after its purchase.

{¶125} On cross-examination, Rabenstein stated that he did not know whether Karen or Todd endorsed the check he tendered for deposit. He indicated that Karen was at the office when he bought the mini excavator but did not know if she generated the bill of sale for this purchase. Rabenstein stated that he did not attempt to file civil proceedings against Todd and opted instead to file a police report. Having examined the relevant evidence, we conclude that Todd's argument fails to establish that this conviction is against the manifest weight of the evidence.

{¶126} *Sixth Theft Conviction*: This theft charge arose from Todd's business partnership with DR Performance. At trial, Kenney testified that he signed an agreement that made his business, DR Performance, a dealer for Spectre boats. DR Performance initially agreed to order four hulls that would each require a build-slot payment of $10,000.00. Kenney testified that his company issued payments that totaled $148,132.48 but never received anything from Todd in return for these funds. *See Kerr*, 2015-Ohio-2228, at ¶ 21 (6th Dist.).

{¶127} Kenney further testified that, as part of the dealership agreement, DR Performance obtained a secured interest in the molds that Todd used to make the hulls for the 32 Spectre and 36 Spectre boat models. However, the molds were never recovered and DR Performance did not receive the proceeds from the sale of these molds. Kenney testified that he observed that Todd was advertising the sale of a mold for a 36 Spectre boat on Facebook. Viewing the evidence in this case in

a light most favorable to the prosecution, a rational trier of fact could conclude that Todd acted with the requisite purpose in this transaction.

{¶128} Turning to the manifest-weight analysis, Kenney testified that Karen signed the dealership agreement on behalf of Spectre. But he also testified that Todd negotiated the agreement. Kenney explained that Karen and Todd worked together and that Todd leaned on Karen for administrative tasks. He further testified that Todd made it clear to him that he was the owner of the business and controlled its operations. Kenney also testified that he purchased and received one boat from Todd that was to be used as a sales model. Having examined the relevant evidence, we conclude that Todd's argument fails to establish that this conviction is against the manifest weight of the evidence.

{¶129} *Defrauding Creditors Conviction*: This transaction concerned a loan of $110,944.00 that Richwood Bank made with Spectre, Todd, and Karen. At trial, Richwood's chief credit officer, Gehres, testified that this loan was secured by several Mercury engines that were in Todd's possession. The loan paperwork included the serial numbers for the engines that were put forward as collateral. Todd and Karen signed a document that stated they would give the proceeds of any sale of the engines to Richwood.

{¶130} At trial, the State used the serial numbers on the loan paperwork to establish that Michael had already purchased two of the Mercury engines in 2018 before Todd used these same motors as collateral for the loan from Richwood in

2019. Gehres testified that Richwood would not have permitted Todd to use these engines as collateral if they had known that Michael had already purchased them.

{¶131} Gehres also testified that, after learning that the Lambs were in bankruptcy proceedings, Richwood filed a proof claim for the Mercury engines and discovered that the two engines that Michael had purchased had been sold to a third party in Florida. The commercial security agreement stated that the collateral was not to be moved "from its existing location without Lender's prior written consent." (Ex. 51A). Further, any proceeds from the sale of any collateral that was part of the business's inventory were to be "immediately deliever[ed]" to Richwood and were "not [to] be commingled with any other funds." (Ex. 51A). Otherwise, the collateral was not to be sold or transferred.

{¶132} Gehres stated that Richwood did not consent to these sales; did not receive the proceeds from these sales; and was owed roughly $100,000.00 on the loan at issue. Viewing the evidence in this case in a light most favorable to the prosecution, a rational trier of fact could conclude that Todd acted with the requisite purpose in this transaction.

{¶133} Turning to the manifest-weight analysis, Gehres testified that UCC filings with the Ohio Secretary of State's Office were publicly available information that buyers could examine. He also stated that debtors do not have to obtain permission from the bank to sell the collateral, but he indicated that the debtor should still pay the loan off with the proceeds from the sale. His testimony indicated

that the bank did not attempt to locate and obtain the collateral because Richwood determined that recovering these items would be too expensive. Gehres also stated that Richwood had made three other loans to the Lambs that had been repaid. Having examined the relevant evidence, we conclude that Todd's argument fails to establish that this conviction is against the manifest weight of the evidence.

{¶134} In summary, Todd's arguments fail to establish that his six convictions for theft and his conviction for defrauding creditors were not supported by sufficient evidence. Having examined the relevant materials in the record, we conclude that the State produced some evidence from which the jury could find that he acted purposely in the seven transactions that led to convictions in this case. Further, his arguments also fail to establish that his convictions are against the manifest weight of the evidence. Accordingly, the fifth and sixth assignments of error are overruled.

Seventh Assignment of Error

{¶135} Todd asserts that he was denied a fair trial because of the cumulative effect of the alleged errors that he identified in his prior assignments of error.

Legal Standard

{¶136} "The cumulative-error doctrine provides that 'a conviction will be reversed when the cumulative effect of errors in a trial deprives a defendant of a fair trial even though each of the numerous instances of trial-court error does not individually constitute cause for reversal.'" *State v. Belton*, 2016-Ohio-1581, ¶ 169,

quoting *State v. Powell*, 2012-Ohio-2577, ¶ 223. "To find cumulative error, a court must first find multiple errors committed at trial and determine that there is a reasonable probability that the outcome below would have been different but for the combination of the harmless errors." *In re J.M.*, 2012-Ohio-1467, ¶ 36 (3d Dist.).

Legal Analysis

{¶137} On appeal, Todd asserts he was denied a fair trial as the result of the cumulative effect of the errors that he identified in his first six assignments of error. But to establish cumulative error, Todd had to establish that multiple errors occurred at his trial. Since his six prior assignments of error failed to establish the presence of multiple errors at his trial, Todd has also failed to establish cumulative error. *See State v. Greenawalt*, 2025-Ohio-4906, ¶ 124 (3d Dist.). Accordingly, the seventh assignment of error is overruled.

Conclusion

{¶138} Having found no error prejudicial to the appellant in the particulars assigned and argued, the judgment of the Logan County Court of Common Pleas is affirmed.

Judgment Affirmed

ZIMMERMAN, P.J. and WALDICK, J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. *See* App.R. 30.

John R. Willamowski, Judge

William R. Zimmerman, Judge

Juergen A. Waldick, Judge

DATED:
/hls