

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 115384
	:	
v.	:	
	:	
BRANDON KING,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART,
AND REMANDED
RELEASED AND JOURNALIZED: August 20, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-24-695872-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Andrew Rogalski, James D. May, and Daniel T. Van, Assistant Prosecuting Attorneys, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Robert McCaleb, Assistant Public Defender, *for appellant*.

DEENA R. CALABRESE, J.:

{¶ 1} Defendant-appellant Brandon King (“King”) appeals the trial court’s denial of his *Batson* challenge, the sufficiency of the evidence, fines imposed at

sentencing, and the imposition of alcohol and drug testing community-control sanctions. For the reasons stated below, we reverse the fine pursuant to R.C. 2929.28(A)(2) for a violation of R.C. 102.03(E) and remand to the trial court for resentencing on Count 8. The remainder of the trial court's orders are affirmed.

I. Relevant Facts and Procedural History

{¶ 2} The charges in this case stem from events that occurred while King was the mayor of East Cleveland ("East Cleveland" or "the City"). The Ohio Ethics Commission ("the Commission") investigated King's conduct as mayor of East Cleveland after receiving several filed complaints. The investigation centered on allegations that King benefitted personally by engaging in business dealings with companies in which he had an ownership interest while acting as mayor of East Cleveland. The companies are King Management Group ("KMG") and American Merchandising Services ("AMS"). The Commission also investigated allegations that King improperly allowed East Cleveland Council Member Ernest Smith ("Smith") to use East Cleveland-owned vehicles and an East Cleveland-funded fuel card for personal use.

{¶ 3} As a result of the investigation, the Commission determined that King violated ethics laws that govern business dealings of elected public officials and presented its findings and conclusions to the Cuyahoga County Prosecutor's Office ("the State"). Consequently, on October 10, 2024, a Cuyahoga County Grand Jury charged King in a 12-count indictment. Smith was also charged for his use of the East Cleveland-owned vehicles and fuel card. King's charges were as follows:

1. Theft in office in violation of R.C. 2921.41(A)(1), a fourth-degree felony;
2. Having an unlawful interest in a public contract in violation of R.C. 2921.42(A)(1), a fourth-degree felony;
3. Having an unlawful interest in a public contract in violation of R.C. 2921.42(A)(1), a fourth-degree felony;
4. Having an unlawful interest in a public contract in violation of R.C. 2921.42(A)(4), a first-degree misdemeanor;
5. Having an unlawful interest in a public contract in violation of R.C. 2921.42(A)(4), a first-degree misdemeanor;
6. Representation by a public official or employee in violation of R.C. 102.03(D), a first-degree misdemeanor;
7. Representation by a public official or employee in violation of R.C. 102.03(D), a first-degree misdemeanor;
8. Representation by a public official or employee in violation of R.C. 102.03(E), a first-degree misdemeanor;
9. Representation by a public official or employee in violation of R.C. 102.03(E), a first-degree misdemeanor;
10. Filing a false disclosure statement in violation of R.C. 102.02(D), a first-degree misdemeanor;
11. Theft in office in violation of R.C. 2921.41(A)(1), a fourth-degree felony; and
12. Soliciting improper compensation in violation of R.C. 2921.43(A)(1), a first-degree misdemeanor.

{¶ 4} The case was tried before a jury in May 2025. Smith’s case was tried at the same time. The jury heard testimony from numerous witnesses, including Connie McDonald (“McDonald”), Molly Bruns (“Bruns”), Todd Clark (“Clark”), Georgina Mavros (“Mavros”), Dr. Patricia Blochowiak (“Blochowiak”), Justyn

Anderson (“Anderson”), Eric Brewer (“Brewer”), Barbara Mattei-Smith (“Mattei-Smith”), Charles Iyahen (“Iyahen”), and James Hood (“Hood”). The relevant testimony and evidence presented at the trial were as follows.

A. State’s Witnesses

1. Connie McDonald

{¶ 5} McDonald testified that she is a special investigator with the Commission and was the lead investigator on this case. McDonald’s investigation centered around allegations that two of King’s family businesses, KMG and AMS, were doing business with East Cleveland while King was the mayor. Specifically, KMG was renting office space and parking spaces to East Cleveland, and AMS was providing products and services to East Cleveland.

{¶ 6} McDonald testified about her investigation of KMG. She found KMG’s articles of organization that were first filed in 2000 and showed that King owned a 50 percent interest in KMG and each of his two brothers owned 25 percent shares. King was the managing partner and tax-matters partner. An amendment signed by King was filed on December 13, 2018, two years after King became mayor, to designate April Thompson as the managing partner and tax-matters partner effective February 28, 2019. The amendment also stated that King “after effective date herein shall remain available to assist with management issues and tax matters, however shall have no leasing authority.” McDonald noted that these amendments did not divest King of his interest in KMG or remove him from the business. She

also learned that East Cleveland paid KMG rent for office space and parking spaces for the Domestic Violence Department (the “DVD”).¹

{¶ 7} On January 11, 2019, the lease between KMG and East Cleveland was amended. April Thompson signed on behalf of KMG, and Deborah Black signed for the DVD. The amendment was backdated to October 1, 2018. East Cleveland continued to make rental payments to KMG after King became mayor.

{¶ 8} In spring 2024, East Cleveland City Council voted not to appropriate funds in the budget for the DVD’s lease. King vetoed the city council vote and as part of his veto wrote in the amount of the rent. He then wrote a veto letter dated April 1, 2024, to city council. McDonald stated that this was an ethics violation because King, acting as mayor, was authorizing a payment from East Cleveland to his private business. City council then voted to override King’s veto. In July 2024, East Cleveland made another rental payment to KMG.

{¶ 9} McDonald subpoenaed financial records for KMG as part of her investigation. She learned that the funds East Cleveland paid for the DVD’s lease were deposited into a KMG bank account that listed King as the sole authorized user. She also learned that King signed checks to pay KMG’s expenses from the same account.

¹ Throughout the case, the Domestic Violence Department is also referred to as the Domestic Violence Unit, the Domestic Violence Fund, and the Domestic Violence Network.

{¶ 10} McDonald also testified about the financial disclosure statements King filed with the Commission each year.² The financial disclosure statements filed in 2019 through 2023 stated that King's top two sources of income came from KMG and AMS. The 2024 financial disclosure statement listed KMG and AMS as King's two primary sources of income, but the listings were crossed out. However, King included the two companies in the list of businesses on the same form.

{¶ 11} McDonald also testified about her investigation of AMS. She testified that King filed articles of incorporation with the secretary of state for Brandon King Ltd.'s AMS-05 on February 10, 2004. On December 24, 2007, King filed an amendment that changed the name to American Merchandising Services. On April 5, 2024, he filed a dissolution.

{¶ 12} East Cleveland made payments for purchases from AMS between March 2019 and February 2022. The total amount of the payments was \$5,813.07. This includes a \$578 order for detergent purchased at King's direction.

{¶ 13} McDonald ultimately determined during her investigation that King had violated ethics laws, and the case was referred to the Cuyahoga County Prosecutor's Office.

2. Molly Bruns

{¶ 14} Bruns testified that she is an investigative attorney with the Commission. She was tasked with investigating the financial disclosure statements

² Bruns later testified that the financial disclosure statements are required filings pursuant to R.C. 102.02 for certain public officials and employees to disclose personal financial information and fiduciary relationships.

that King filed with the Commission. As a council member, and later as mayor of East Cleveland, King was required to file a statement annually. King filed statements for 2014 and 2015 as a council member. In 2016, he was appointed as mayor and thus his 2016 statement, filed in 2017, was filed as mayor of East Cleveland.

{¶ 15} Bruns's investigation revealed that King's financial disclosure statements filed for 2014, 2015, and 2016 did not disclose an interest in any businesses, but disclosed KMG and AMS as sources of income. During the same time period, the secretary of state's website indicated that there were between seven and nine businesses in King's name.

{¶ 16} On May 1, 2019, King filed amended versions of his 2014 through 2017 financial disclosure statements. The original statements did not list an interest in any businesses. The amended statements, filed in 2019, disclosed nine businesses, including AMS and KMG. Based on this information, Bruns determined that King's statements originally filed for the years 2014 through 2017 were not accurate.

3. Dr. Patricia Blochowiak

{¶ 17} Blochowiak testified that she is a city council member in East Cleveland. She explained that East Cleveland receives grant money from various sources that is appropriated in East Cleveland's budget. This includes grant money for the DVD. East Cleveland City Council voted against appropriating funds to pay the lease for the office space and parking spaces occupied by the DVD when voting on the proposed 2024 budget because they believed that East Cleveland's payments to King's business were a conflict of interest. King, acting as mayor, vetoed city

council's vote and wrote \$14,181.24, the amount of the DVD's annual rent, into the budget. Council then voted to override King's veto. King then introduced a resolution to city council to change appropriations in the budget.

4. Justyn Anderson

{¶ 18} Anderson testified that he was employed as the deputy clerk of council for East Cleveland for approximately three months in 2023 and for all of 2024. He stated that while Smith was a city council member, Anderson observed an East Cleveland-owned vehicle at Smith's home on a frequent basis. He also observed Smith driving the East Cleveland-owned vehicle for personal use. No other council members drove East Cleveland-owned vehicles during that time.

5. Eric Brewer

{¶ 19} Brewer testified that he was previously the mayor of East Cleveland. He explained the work and the process associated with city council's approval of East Cleveland's annual budget. He also explained that grant money is adopted into East Cleveland's budget and is subject to approval by council. During Brewer's tenure as mayor, an ordinance was passed that restricted certain individuals from driving East Cleveland-owned vehicles home and restricted East Cleveland-owned vehicles for personal use. Per the ordinance, council members were only permitted to keep East Cleveland-owned vehicles at their personal residence by legislative action.

6. Barbara Mattei-Smith

{¶ 20} Mattei-Smith testified that she was the chair for the Financial Planning and Supervision Commission ("FPS Commission") for East Cleveland.

The FPS Commission was impaneled to oversee and monitor activities in East Cleveland because the City was in fiscal emergency. East Cleveland receives money through a federal grant for the DVD. The money is given to East Cleveland to be appropriated by city council. Mattei-Smith identified a rental check sent by East Cleveland to pay the lease to KMG for the DVD's office space in July 2024.

{¶ 21} Mattei-Smith also testified that a special audit by the Ohio Auditor's Office resulted in personal assessments against King and Smith for fuel purchases that Smith charged to an East Cleveland-owned fuel card. East Cleveland's finance director paid the debt to the Ohio Attorney General's Office with East Cleveland funds. That money was ultimately returned to East Cleveland, and King and Smith had not paid the assessments against them as of the date of the trial.

7. Todd Clark

{¶ 22} Clark testified that he is an investigator with the Ohio Auditor of State. He was assigned to investigate a complaint regarding King's and Smith's actions. The investigation focused on the time from January 2018 through March 2022. In October or November 2020, East Cleveland City Council passed a resolution requesting that an East Cleveland-owned vehicle parked at Smith's home be returned to the City. On November 9, 2020, King, acting as mayor, vetoed the resolution. As part of Clark's investigation, he drove to Smith's home in September and October 2021 and observed an East Cleveland-owned vehicle, specifically a white Dodge Durango, parked in the driveway. When he drove to Smith's home in October 2021, Clark observed Smith exit his home, enter the East Cleveland-owned

vehicle, and drive to the local high school to drop a child off there. Smith then drove to a parking lot. Smith spent \$6,791 on an East Cleveland-funded fuel card that was assigned to him to fuel the East Cleveland-owned vehicles, first a Ford Taurus and later a Dodge Durango.

{¶ 23} The investigation resulted in a finding for recovery against King and Smith instructing East Cleveland to collect \$6,791 from them for improper use of an East Cleveland-owned vehicle and an East Cleveland-funded fuel card. When the Ohio Attorney General’s Office attempted to collect the debt from King and Smith, it was ultimately paid by East Cleveland funds. At the time of trial, King and Smith had not paid the debt.

8. Charles Iyehen

{¶ 24} Iyehen testified that he was the finance director for East Cleveland from November 2018 through 2023. During that time, he was often sent invoices from AMS for orders that did not go through the typical prior authorization procedure. AMS was owned by King and his brother. Iyehen testified that April Thompson signed the lease for the DVD office space as the agent for KMG. Iyehen later learned that she is the mother of King’s daughter.

9. James Hood

{¶ 25} Hood testified that he is the deputy director and general counsel at the Commission. He stated that ethics laws apply to grant money because it is considered public funds. The investigation revealed that after city council voted to

override King's veto, East Cleveland issued a check for the DVD's rent payment to KMG.

10. Georgiana Mavros

{¶ 26} Mavros testified that she is a forensic audit manager with the Ohio auditor of state. Her investigation in this case revealed that Smith charged \$6,791 to an East Cleveland-funded fuel card over a four-year period. Smith was the only council member that used an East Cleveland-funded fuel card. She also learned that King vetoed a resolution passed by city council to have Smith return the vehicle to East Cleveland and that Smith continued to use the vehicle and the fuel card. The auditor of state issued a finding of recovery directing Smith, who used the vehicle, and King, who authorized the use of the vehicle, to return the \$6,791 to East Cleveland. East Cleveland later paid the finding for recovery.

B. The Verdict and Sentence

{¶ 27} The jury found King not guilty on Counts 7 and 11 and guilty as charged on the remainder of the indictment.

{¶ 28} On July 9, 2025, the trial court held a sentencing hearing. The trial court sentenced King to three years of community control and probation. As part of the community control, King was ordered to submit to regular alcohol testing, random drug testing, maintain employment, and complete 100 hours of court community work service. The trial court also ordered King to pay a fine of \$3,845.41 on Count 1 and a fine of \$5,813.07 on Count 12, and to pay \$18,194.99 to the Ohio Ethics Commission pursuant to R.C. 102.99(E). King was disqualified from holding

any public office, employment, or position of trust in Ohio for a period of seven years from the date of the conviction on Count 12, and a lifetime ban on Count 1.

{¶ 29} This appeal followed. King raises the following five assignments of error for our review:

1. The trial court erred when it denied the defense's *Batson* challenge to the government's removal of all Black men from the jury.
2. The trial court erred in the imposition of a \$5,813.07 fine on Count 8, a misdemeanor of the first degree.
3. The trial court erred when it imposed an obligation on Mr. King to pay \$18,194.99 to the Ohio Ethics Commission, pursuant to R.C. 102.99(E), despite the fact that the Ethics Commission failed adequately to document the amount of expenses claimed.
4. The trial court erred in imposing alcohol testing and random drug testing conditions in the absence of any suggestion whatsoever, anywhere in the record, that alcohol or drug abuse had any bearing on Mr. King's alleged conduct.
5. The convictions in this case were obtained on insufficient evidence.

II. Law and Analysis

{¶ 30} We consider King's assignments of error out of order for ease of discussion.

A. *Batson* Challenge

{¶ 31} In his first assignment of error, King asserts that the trial court erred when it denied his challenge pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), to the State's removal of a black man from the jury.

{¶ 32} In this case, the trial court and trial counsel questioned the prospective jurors during voir dire. Several jurors were removed for cause and

pursuant to peremptory challenges. The trial court indicated prior to any peremptory challenges that if any party used a peremptory challenge to excuse a black venire member, that they would be required to give a race-neutral reason immediately. Relevant here is the removal of juror No. 16, who was one of three black venire members and the only black male.

{¶ 33} The trial court and the State questioned juror No. 16 extensively during voir dire. They elicited the following information: juror No. 16 was employed by the City of Cleveland as a commissioner of physical assets and other activities and was formerly the commissioner of neighborhood development. He has worked on and off as a commissioner from 2010 to 2016, and continuously since 2016. His department is funded primarily by federal grants. Juror No. 16's employment involved dealing with public finance and working with city council members. Juror No. 16 is familiar with the Commission because he was required to consult with the Commission when work on his home was funded by the department where he is employed. The State also asked the following questions that explored whether juror No. 16 could be impartial if he was impaneled in this case:

[THE STATE]: Do you still understand that all of the evidence in the case is what comes here in this courtroom and that your experience in Cleveland might be different, and even though you can't, you know, you can't push aside or completely ignore your experience, your decision in this case has to be based just upon the facts in this courtroom with the law that the Judge provides?

Can you accept that?

JUROR NO. 16: Yes, I can.

[THE STATE]: So if you're a juror in this case and back deliberating and one of your fellow jurors asks you to, say, you've got familiarity with municipal governments, you know, how does it really work, or what's the way it's supposed to happen?

What will you do as a juror then?

JUROR NO. 16: It works differently in different cities. So it's — there's — there's the rule of law. There's regulations, and then there's how you do the business of the day, so that comes through a policy.

[THE STATE]: And do you — so would you be able to sort of, for the purposes of deliberation and determining what the evidence is, what the facts are and what the credibility of the evidence is in this case, will you be able to set aside how it works with your department with the City of Cleveland and solely make a decision based upon the facts here in this courtroom and the law that [the trial court judge] gives you?

JUROR NO. 16: Yes. Absolutely.

[THE STATE]: Any pause or anything else along those lines?

JUROR NO. 16: No.

(Tr. 270-275.)

{¶ 34} The State used a peremptory challenge to remove juror No. 16. The State followed the trial court's instructions and gave the following reason for the excusal of juror No. 16:

We are asking this Court to excuse Juror No. 16. We are aware based upon the Court's instruction that Juror No. 16 is African American, so the State of Ohio, the race neutral reason for excusing Juror No. 16 has to do with his role as a commissioner of the neighborhood development.

You will recall that I spent some time asking him questions about what his job duties are. I anticipate that this Court is going to, and this jury is going to hear a lot of evidence about a division of East Cleveland that receives grant money and how that grant money comes to council and has to be appropriated.

A lot of the stuff that Juror No. 16 deals with in his professional capacity is a lot of parallels and a lot of similarities to evidence that I expect this jury to hear, and so it is the juror's profession, his position that is what causes the State of Ohio to exercise this peremptory and has nothing to do with his race.

The State of Ohio has no intention from talking, in conferring with [co-counsel] and Mr. Hood, the State of Ohio does not anticipate using one of its remain[ing] peremptory challenges on any other African American members of the jury.

I would note that there currently are two other African American jurors; No. 1 and No. 9, that are in the box that the State has no intention of using a challenge on.

{¶ 35} King's trial counsel objected to the excusal of juror No. 16, stating as follows:

Yes. My concern has been jurors talk about different bias they learn as children and so forth. That was more probing. I don't recall any probing of the juror that asked him with his profession, could he set that aside and only deal with the facts in this case.

So if the State was concerned about that, I would assume that they would have did more probing to ask him, to give him the same opportunity the other jurors had to express that he was able to set his employment experience aside and only deal with the facts in this case.

It is true that there are two other African Americans, but there's no other African American males in the jury.

{¶ 36} The trial court overruled trial counsel's objection, and juror No. 16 was excused from the venire. The State excused a total of two prospective jurors using peremptory strikes.

{¶ 37} The United States Supreme Court has established that a prosecutor's racially motivated exercise of peremptory challenges violates the Equal Protection Clause of the Fourteenth Amendment. *State v. Gowdy*, 88 Ohio St.3d 387, 391-392

(2000), citing *Batson*, 476 U.S. 79 at 94. The Court also established a three-step, burden-shifting procedure to determine whether a peremptory challenge is race-based. *Id.*

{¶ 38} The United States Supreme Court has explained the *Batson* procedure as follows:

Under *Batson*, once a prima facie case of discrimination has been shown by a defendant, the State must provide race-neutral reasons for its peremptory strikes. The trial judge must determine whether the prosecutor's stated reasons were the actual reasons or instead were a pretext for discrimination.

Flowers v. Mississippi, 588 U.S. 284, 298 (2019), citing *Batson* at 97-98.

{¶ 39} The United States Supreme Court has stated that appellate review should give great deference to the trial court's determination, stating that "[s]ince the trial judge's findings in the context under consideration here largely will turn on evaluation of credibility, a reviewing court ordinarily should give those findings great deference." *Flowers* at 303, citing *Batson* at 98, fn. 21. "On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous." *Id.*, citing *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008). This court has previously found that "generally striking only one prospective juror who belongs to a protected group is not enough to draw an inference [of discriminatory intent] without other evidence." *State v. Moore*, 2024-Ohio-1783, ¶ 19 (8th Dist.), quoting *Nguyen v. Frauenheim*, 45 F.4th 1094, 1101 (9th Cir. 2022), citing *Wade v. Terhune*, 202 F.3d 1190, 1198 (9th Cir. 2000).

{¶ 40} In *Flowers*, the United States Supreme Court identified examples of evidence a defendant can present to support a claim that a prosecutor's peremptory strikes were made on the basis of race. *Flowers* at 301-302. The list is as follows:

- statistical evidence about the prosecutor's use of peremptory strikes against black prospective jurors as compared to white prospective jurors in the case;
- evidence of a prosecutor's disparate questioning and investigation of black and white prospective jurors in the case;
- side-by-side comparisons of black prospective jurors who were struck and white prospective jurors who were not struck in the case;
- a prosecutor's misrepresentations of the record when defending the strikes during the *Batson* hearing;
- relevant history of the State's peremptory strikes in past cases; or
- other relevant circumstances that bear upon the issue of racial discrimination.

Id., citing *Foster v. Chatman*, 578 U.S. 488 (2016); *Snyder*; *Miller-El v. Dretke*, 545 U.S. 231 (2005); *Batson*, 476 U.S. 79.

{¶ 41} In this case, King asserts that the trial court erred when it denied his *Batson* challenge for two reasons. First, King asserts that the State did not question juror No. 16 about whether he could set aside his work experience if he was impaneled as a juror in this case. However, the record reflects that the State did ask juror No. 16 these exact questions. In addition, although the State questioned juror No. 16 more than any other juror about his employment, he was also the only juror whose employment was similar to the evidence presented in this case.

{¶ 42} Second, King asserts that the trial court erred when it denied his challenge to the State’s excusal of juror No. 16 because he was the only black male venire member. King concedes that two black venire members remained; however, he urges this court to extend *Batson* to prohibit excusal of a juror based on both race and gender. Indeed, *Batson* has been extended to prohibit gender-based peremptory challenges in *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994). However, as King concedes, *Batson* has never been extended to prohibit peremptory challenges of a venire member based on the intersectionality of race and gender. *See Moore*, 2024-Ohio-1783, at ¶ 23 (8th Dist.).

{¶ 43} Even if King could meet his burden to establish a prima facie case for race discrimination, the State offered a race-neutral reason for excusing juror No. 16. The State argued that there were many parallels between juror No. 16’s employment experience and the evidence that would later be presented to the jury. In fact, King concedes in his appellate brief that juror No. 16’s prior employment has “‘parallels’ and ‘similarities’ to this case.” Thus, we find the State’s race-neutral reason for excusing juror No. 16 is supported by the record.

{¶ 44} King asserts that he was prejudiced by the trial court’s voir dire procedure. We do not agree. There is no dispute that the trial court did not follow the usual three-step procedure mandated by *Batson* in this case. The trial court notified counsel prior to any peremptory excusals that any dismissal of a black venire member would require the State to immediately give a race-neutral reason for the strike. The State, when it sought excusal of juror No. 16, gave its race-neutral

reason for the strike before any *Batson* challenge was raised by King. The trial court then gave King an opportunity to respond prior to ruling on the proposed excusal. Therefore, King had an opportunity to make a prima facie case of discrimination prior to the trial court's ruling. We agree that the trial court's procedure was not typical; however, King has not demonstrated any prejudice caused by the trial court's atypical procedure.

{¶ 45} We cannot say that the trial court's ruling on King's *Batson* challenge was clearly erroneous. Therefore, King's first assignment of error is overruled.

B. Sufficiency of the Evidence

{¶ 46} In his fifth assignment of error, King asserts that the convictions in this case were obtained on insufficient evidence and asserts five separate reasons that the evidence was insufficient. First, King asserts that the evidence was insufficient to prove a "purpose to deprive" in Count 1. Second, King asserts that the evidence was insufficient to prove that he "employed the authority" of his office to secure authorization of a public contract in Counts 2 through 5. Third, King asserts that the evidence was insufficient to prove that he used his role to "secure a thing of value" sufficient to create a substantial and improper influence on him, as charged in Counts 6, 8, and 9. Fourth, King asserts that the evidence was insufficient to prove that he "knowingly" filed a false statement in Count 10. Fifth, and last, King asserts the evidence was insufficient to prove that he knowingly gave Smith "any compensation" other than what was legally permitted to perform his official duties.

{¶ 47} We have previously found that “[a]n appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt.” *State v. Spencer*, 2024-Ohio-5809, ¶ 15 (8th Dist.), citing *State v. Murphy*, 91 Ohio St.3d 516 (2001). The appellate court views the evidence “in a light most favorable to the prosecution” to determine whether “any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *Spencer* at ¶ 15, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), at paragraph two of the syllabus. The inquiry is whether the prosecution has met its “burden of production” at trial. *State v. Dyer*, 2007-Ohio-1704, ¶ 24 (8th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 390 (1997). “In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law.” *Cleveland v. Williams*, 2024-Ohio-3102, ¶ 10 (8th Dist.), quoting *Thompkins* at 386; see also *Cleveland v. Neal*, 2024-Ohio-1467, ¶ 26 (8th Dist.). Appellate courts are not to assess “whether the State’s evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction.” *Dyer* at ¶ 24.

1. Theft in Office

{¶ 48} First, we address King’s assertion that the evidence was insufficient to prove a “purpose to deprive” in Count 1.

{¶ 49} In Count 1, King was found guilty of theft in office in violation of R.C. 2921.41(A)(1). R.C. 2921.41(A)(1) states, “No public official or party official shall commit any theft offense, as defined in division (K) of section 2913.01 of the Revised Code, when . . . the offender uses the offender’s office in aid of committing the offense or permits or assents to its use in aid of committing the offense[.]” In this case, the relevant theft offenses, from among those found in R.C. 2913.01(K), are set forth in R.C. 2913.02(A)(1) through (3), which provides as follows:

(A) No person, with *purpose to deprive* the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent; [or]

(3) By deception[.]

(Emphasis added.)

{¶ 50} In this case, the evidence supports King’s conviction on Count 1. The record reflects that the following was established at trial: While King was mayor of East Cleveland, he vetoed city council’s decision not to appropriate funds for the DVD’s rent payment. After city council voted to override King’s veto, a rent payment was issued by East Cleveland to KMG. At that time, KMG was owned, in part, by King and he benefitted financially from the payment. The evidence shows that King, acting as a public official, knowingly obtained control over public funds without authorization or consent.

{¶ 51} King does not dispute that KMG received the lease payment after city council voted to override the payment. He asserts that the DVD's grant money was managed by East Cleveland, but was not East Cleveland's money, and thus there was no purpose to deprive East Cleveland of money. However, King does not provide any legal authority to support this contention.

{¶ 52} When viewed in a light most favorable to the prosecution, the evidence is sufficient to establish that King had the "purpose to deprive" East Cleveland of the rent payment.

2. Having Unlawful Interest in a Public Contract

{¶ 53} Second, King asserts that the evidence was insufficient to prove that he "employed the authority" of his office to secure authorization of a public contract in Counts 2-5. Counts 2 and 3 involve violations of R.C. 2921.42(A)(1) and Counts 4 and 5 involve violations of R.C. 2921.42(A)(4). In addition, Counts 2 and 4 involve KMG's business dealings with East Cleveland and Counts 3 and 5 involve AMS's business dealings with East Cleveland.

{¶ 54} R.C. 2921.42 provides, in relevant part, as follows:

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest;

...

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or

governmental agency or instrumentality with which the public official is connected[.]

{¶ 55} In this case, the evidence supports King’s convictions on Counts 2-5.

The record reflects that the following was established at trial: King had an interest in both AMS and KMG and both companies were involved in public contracts with East Cleveland. Further, King, acting as mayor of East Cleveland, vetoed city council’s decision not to appropriate funds for the lease payment to KMG on behalf of the DVD. After city council overrode the veto, KMG continued to bill East Cleveland for the office space and to accept the lease payment. In addition, the record reflects that the lease payment was deposited into a bank account controlled exclusively by King. The record also reflects that East Cleveland did not purchase supplies from AMS until King became mayor. After he became mayor, AMS repeatedly invoiced and accepted payments from East Cleveland. In addition, King, acting as mayor of East Cleveland, directed the purchase of cleaning supplies from AMS. Thus, King employed the authority of his office to secure public contracts.

{¶ 56} When viewed in a light most favorable to the prosecution, the evidence is sufficient to support a finding that King “employed the authority” of his office to secure authorization of public contracts in Counts 2-5.

3. Representation by a Public Official or Employee

{¶ 57} Third, King asserts that the evidence was insufficient to prove that he used his role to “secure a thing of value” sufficient to create a substantial and improper influence on him, as charged in Counts 6, 8, and 9.

{¶ 58} Count 6 involved a violation of R.C. 102.03(D) and Counts 8 and 9 involved violations of R.C. 102.03(E). R.C. 102.03 provides, in relevant part,

(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

{¶ 59} In this case, the evidence supports King's convictions on Counts 6, 8, and 9. The record reflects that the following was established at trial: For Count 6, King vetoed city council's decision not to appropriate funds for the DVD's rent payment to KMG. KMG continued to accept rent payments from East Cleveland for the DVD's office space and parking spaces after city council overrode the veto. For Count 8, AMS sold cleaning products to East Cleveland while King was mayor. This included \$578 for detergent that East Cleveland purchased from AMS at King's direction. For Count 9, testimony at trial established that the rental contract between KMG and the City was renewed while King was mayor.

{¶ 60} The public contracts involved in Counts 6, 8, and 9 are things of value. When viewed in a light most favorable to the prosecution, the evidence is sufficient to support a finding that King used his role to "secure a thing of value" sufficient to create a substantial and improper influence on him, as charged in Counts 6, 8, and 9.

4. Filing a False Disclosure Statement

{¶ 61} Fourth, King asserts that the evidence was insufficient to prove that he “knowingly” filed a false financial disclosure statement in Count 10. King further asserts that any discrepancies in his financial disclosure statements were the result of misstatements or misunderstandings and not intentional concealment.

{¶ 62} R.C. 102.02(D) states, “No person shall knowingly file a false statement that is required to be filed under this section.” Pursuant to R.C. 2901.22(B):

A person acts knowingly, regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

{¶ 63} In this case, the evidence supports King’s conviction on Count 10. The record reflects that King filed financial disclosure statements in the years 2014 through 2017 that did not list his sources of income or list businesses that he had an interest in as required pursuant to R.C. 102.02(D). During the same years, the secretary of state’s website listed between seven and nine businesses, including KMG and AMS, in King’s name. When viewed in a light most favorable to the prosecution, the evidence is sufficient to support a finding that King “knowingly” filed false financial disclosure statements.

5. Soliciting Improper Compensation

{¶ 64} Fifth, and last, King asserts that in Count 12, the evidence was insufficient to prove that he knowingly gave Smith “any compensation” other than what was legally permitted to perform official duties.

{¶ 65} Count 12 involves R.C. 2921.43(A)(1), which states:

(A) No public servant shall knowingly solicit or accept, and no person shall knowingly promise or give to a public servant, either of the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform the public servant’s official duties, to perform any other act or service in the public servant’s public capacity, for the general performance of the duties of the public servant’s public office or public employment, or as a supplement to the public servant’s public compensation[.]

{¶ 66} In this case, the evidence supports King’s conviction on Count 12. The record reflects that typically East Cleveland city council members did not use city-owned vehicles or city-funded fuel cards. King, acting as mayor, vetoed city council’s resolution requesting that an East Cleveland-owned vehicle used by Smith be returned to East Cleveland. When viewed in a light most favorable to the prosecution, the evidence is sufficient to support a finding that King knowingly gave Smith compensation other than what was legally permitted to perform his official duties.

{¶ 67} We find that for each of the five issues King raises in his fifth assignment of error, when viewed in a light most favorable to the prosecution, the

evidence is sufficient to support the convictions in this case. Therefore, King's fifth assignment of error is overruled.

C. Fine for Violation of R.C. 102.03(E)

{¶ 68} In his second assignment of error, King asserts that the trial court erred when it imposed a \$5,813.07 fine on Count 8. The jury found King guilty of Count 8, representation by a public official or employee in violation of R.C. 102.03(E), a misdemeanor of the first degree. The State concedes that the statutory maximum fine pursuant to R.C. 2929.28(A)(2) for a violation of R.C. 102.03(E) is \$1,000. After reviewing the statute and the facts of the case, we find that the trial court erred when it imposed a fine of \$5,814.07 on Count 8. Therefore, King's second assignment of error is sustained, and the case is remanded to the trial court for resentencing on Count 8.

D. Ohio Ethics Commission Application

{¶ 69} In his third assignment of error, King asserts that the trial court erred when it imposed an obligation on him to pay \$18,194.99 to the Ohio Ethics Commission pursuant to R.C. 102.99(E).

{¶ 70} R.C. 102.99(E) provides as follows:

Upon application of the Ohio ethics commission, the court shall order a person who is convicted of a violation of section 102.021, 102.03, or 102.04 of the Revised Code to pay the costs incurred to investigate and prosecute the case. The amount ordered under this division shall not exceed the amount a person unlawfully secured, solicited, or accepted; the amount a person received as improper compensation, as an unlawful honorarium, or from the unlawful sale of goods or services; or the amount otherwise applicable under section 102.021, 102.03, or 102.04 of the Revised Code. These costs are in addition to any other

cost or penalty provided in the Revised Code or any other provision of law.

{¶ 71} Two investigators from the Commission conducted investigations in this case. On June 6, 2025, the Commission filed an application pursuant to R.C. 102.02(G)(2) and 102.99(E) with the trial court requesting that King be ordered to pay the costs incurred by the Commission's staff to investigate and prosecute the case. Attached to the application was an itemization and summary of the costs incurred by the Commission associated with the investigation and prosecution of the case. The costs incurred by the two investigators were \$12,521.85 and \$5,673.14, for a total of \$18,194.99. On July 9, 2025, the trial court granted the Commission's application and ordered King to pay the Commission \$18,194.99 pursuant to R.C. 102.99(E).

{¶ 72} King asserts that the statute specifies that the Commission can recover costs associated with investigating violations of R.C. 102.021, 102.03, or 102.04, but that the Commission's application appears to also attempt to recover costs associated with other violations. King further asserts that the Commission failed to adequately document the amount of expenses claimed, meaning that the Commission's application possibly included costs associated with Count 7, for which he was found not guilty.

{¶ 73} King concedes that he did not object to the Commission's application to recover costs. Indeed, the record reflects that King did not file a response to the

Commission's application and did not raise any objections to the Commission's application during the sentencing hearing.

{¶ 74} This court has previously found that “[a] party cannot raise new issues or arguments for the first time on appeal; failure to raise an issue before the trial court results in a waiver of that issue for appellate purposes.” *State v. Smith*, 2020-Ohio-1026, ¶ 13 (8th Dist.); *see also State v. Washington*, 2026-Ohio-740, ¶ 13 (8th Dist.), and *State v. Dorroh*, 2021-Ohio-12, ¶ 39 (8th Dist.).

{¶ 75} King urges this court to review his third assignment of error for plain error. However, King raises the plain-error argument for the first time in his appellate reply brief. This court has previously found that “an appellate court will not consider an argument presented for the first time in appellant’s reply brief.” *Long v. KeltanBW, Inc.*, 2024-Ohio-2359, ¶ 8 (8th Dist.), citing *State v. Whitaker*, 2022-Ohio-2840, ¶ 52. Therefore, we decline to review for plain error because King raised the argument for the first time in his appellate reply brief.

{¶ 76} We find that King waived any argument that the trial court erred when it granted the full amount requested by the Commission’s application pursuant to R.C. 102.99(E) because he did not raise an objection to the Commission’s application with the trial court. Thus, King’s third assignment of error is overruled.

E. Conditions of Community Control

{¶ 77} In his fourth assignment of error, King asserts that the trial court erred when it imposed regular alcohol testing and random drug testing as conditions of his community control.

{¶ 78} We review the trial court’s imposition of community-control sanctions under an abuse-of-discretion standard. *State v. Ballish*, 2026-Ohio-503, ¶ 10, citing *State v. Talty*, 2004-Ohio-4888, ¶ 10; see also *Lakewood v. Hartman*, 86 Ohio St.3d 275 (1999). An abuse of discretion occurs when a court exercises “its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority.” *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶ 79} Until recently, courts typically applied the test laid out in *State v. Jones*, 49 Ohio St.3d 51 (1990), to determine whether community-control conditions reasonably relate to the goals of misdemeanor sentencing. The test directs that courts consider whether a condition of probation “(1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation.” *Id.* at 53

{¶ 80} After *Jones*, the Ohio General Assembly overhauled misdemeanor sentencing and, in R.C. 2929.26 through 2929.28, enumerated nonexhaustive lists of residential, nonresidential, and financial sanctions that the court may impose. *Ballish* at ¶ 15. In *Ballish*, the Ohio Supreme Court declined to apply the *Jones* test in certain cases, finding that

[b]ecause misdemeanor sentencing is a function of statute and the General Assembly has enumerated conditions that a sentencing court may impose, we decline to apply the *Jones* test to conditions that the legislature has expressly authorized. Instead, when a condition of probation has been expressly authorized by statute, we review a

sentencing court's imposition of such conditions only under an abuse-of-discretion standard.

Ballish at ¶ 24.

{¶ 81} The *Ballish* Court clarified that “the test articulated in *Jones* remains relevant to those conditions devised by a sentencing court that are not expressly authorized by law.” *Ballish*, 2026-Ohio-503, at ¶ 26.

{¶ 82} In this case, the trial court imposed alcohol testing and random drug testing as conditions of King's community control. As noted above, Ohio's misdemeanor sentencing, in R.C. 2929.26 through 2929.28, lists authorized conditions of community control. R.C. 2929.27(A)(8) specifically authorizes a sentencing court to impose a “term of drug and alcohol use monitoring, including random drug testing.” In addition, R.C. 2929.25(C)(2) authorizes that “[i]n the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior, the court may impose additional requirements on the offender.”

{¶ 83} The *Ballish* Court also stated that “a court will not be found to have abused its discretion in fashioning a community-control sanction as long as the condition is reasonably related to' the goals of probation.” *Ballish* at ¶ 10, quoting *State v. Chapman*, 2020-Ohio-6730, ¶ 8. This court has previously found that the goals of community control are “rehabilitation, administering justice, and ensuring good behavior.” *State v. Mahon*, 2018-Ohio-295, ¶ 7 (8th Dist.), quoting *Talty*, 2004-Ohio-4888, at ¶ 16.³

³ The *Ballish* Court uses the terms probation and community control interchangeably. See *Ballish* at ¶ 1.

{¶ 84} In this case, the imposition of alcohol testing and random drug testing are obviously intended to rehabilitate, administer justice, and ensure good behavior. We, therefore, find that these conditions were appropriate and were not an abuse of discretion. In addition, the sanctions are expressly authorized by R.C. 2929.27(A)(8). Thus, King's fourth assignment of error is overruled.

III. Conclusion

{¶ 85} For the reasons stated above, we reverse the fine imposed pursuant to R.C. 2929.28(A)(2) for a violation of R.C. 102.03(E) and remand to the trial court for resentencing on Count 8. The remainder of the trial court's orders are affirmed.

It is ordered that appellee and appellant share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

DEENA R. CALABRESE, JUDGE

EILEEN T. GALLAGHER, P.J., and
MARY J. BOYLE, J., CONCUR