EXHIBITS (ME169)
Also see Photographs; Public Records; Business Records; Due Process/Evidentiary Matters.

Authentication
Copies; Transcriptions; Summaries
Chain of Custody
Other issues

Criminal Rule 26 -- Substitution of Photographs for Physical Evidence.
Evidence Rule 901 -- Requirement of Authentication or Identification.
Evidence Rule 902 -- Self-Authentication.
Evidence Rule 903 -- Subscribing Witness' Testimony Unnecessary.
Evidence Rule 1001 -- Contents of Writings, Recordings and Photographs: Definitions.
Evidence Rule 1002 -- Contents of Writings, Recordings and Photographs: Requirement of Original.
Evidence Rule 1003 -- Contents of Writings, Recordings and Photographs: Admissibility of Duplicates.
Evidence Rule 1004 -- Contents of Writings, Recordings and Photographs: Admissibility of Other Evidence of Contents.
Evidence Rule 1005 -- Contents of Writings, Recordings and Photographs: Public Records.
Evidence Rule 1006 -- Contents of Writings, Recordings and Photographs: Summaries.
Evidence Rule 1007 -- Contents of Writings, Recordings and Photographs: Testimony or Written Admission of Party.
Evidence Rule 1008 -- Contents of Writings, Recordings and Photographs: Function of Court and Jury.

R.C. 2945.75(B) -- Requisites for proof of prior conviction.

Authentication

State v. Troisi, 179 Ohio App. 3d 326, 2008-Ohio-6062 – On a tip, police raided a grange hall where knock-off fashion merchandise was being sold. Defendant was convicted of trademark counterfeiting. (1) In the view of the majority, an element of the offense was that the trademark affixed to the

knock-off was identical or substantially identical to a trademark registered with the United States trademark and patent office. Proof of this element required certified copies of the authentic trademarks or other evidence of the trademarks at issue as registered. (2) Prosecution was largely under the direction of a Cleveland police sergeant, also employed as the "regional director" of a private company specializing in the investigation of intellectual property crimes, such as trademark counterfeiting. He was the state's expert witness. Court views introduction of proof of authentic trademarks as a necessary part of the foundation for his testimony. (3) Defendant was also convicted of possessing criminal tools, specifically the car she used to bring the merchandise to the grange hall, and the totes used to carry it inside. This conviction is also reversed because there was insufficient proof on the counterfeiting charge.

State v. Brown, 151 Ohio App. 3d 36, 2002-Ohio-5207, ¶36 -- "...(W)e hold that in sexual predator determination hearings, a trial court may rely on unauthenticated evidence as long as that evidence indicates some indicia of reliability." See accompanying discussion on due process, authentication, and application of the Rules of Evidence.

State v. Lake, 151 Ohio App. 3d 378, 2003-Ohio-332 -- Calibration solution certificates were not properly authenticated. No witnesses testified as to authenticity and they were not self-authenticating as they were not certified as correct by the custodian or other authorized person.

State v. Strauser, Mahoning App. No. 03 MA 70, 2004-Ohio-1729 -- Copy of an official document was not properly authenticated by inclusion in a batch of documents attached to a generic authentication form that did not individually identify the document in question.

State v. Tibbetts 92 Ohio St. 3d 146, 159-160, 2001-Ohio-132 -- No error in admission of an excerpt from a surveillance camera videotape. The person who prepared the dubbed tape did not testify, but both the owner of the business using the camera and a police officer testified to the authenticity of both the original 24-hour tape and the two-minute excerpt on the copy.

State v. Morrow (2000), 138 Ohio App. 3d 38 -- An Ohio livestock dealer's license is a public record for purposes of Evid. R. 803(8)(a). Though it is not self-authenticating, foundational requirements for admission are minimal. Testimony of investigator as to how he obtained the license and appearance of being an official form was sufficient.

St. Paul Fire & Marine Insurance Co. v. Ohio Fast Freight, Inc. (1982), 8 Ohio App. 3d 155, 157-158 -- Authentication is a condition precedent to

admission of a document. If a document is not self-authenticating, this generally involves the testimony of a witness able to establish that the document is what it purports to be.

State v. Humphries (1992), 79 Ohio App. 3d 589, 594-595 -- The fact that a document has been furnished in discovery does not relieve defense counsel of the burden of properly authenticating it if he seeks to introduce it into evidence.

Seringetti Construction Co. v. Cincinnati (1988), 51 Ohio App. 3d 1 -- Pleadings and discovery documents must be authenticated to be admitted into evidence. Also see R.C. 2945(B) as to proof of prior conviction in a criminal case.

State v. Jackson (1993) 86 Ohio App. 3d 568 -- No error in admission of nylon stocking used to demonstrate degree to which it might obscure features, though it was not the stocking actually worn by the robber and the degree of similarity was disputed. The admission of experimental or demonstrative evidence is within the discretion of the court, as is the degree of similarity of conditions required as foundation for admission. Also see State v. Bates (1976), 48 Ohio St. 2d 315.

Aurora v. Lesky (1992), 79 Ohio App. 3d 568 -- A document is not properly certified for purposes of admission as a self-authenticating certified copy of a public record if the certification merely states it to be a true and accurate copy of the original without specifically identifying or describing the document being copied and certified. Extrinsic evidence of authenticity is required from a person with the necessary knowledge. Compare State v. Hiler (1994), 96 Ohio App. 3d 271.

State v. Smith (December 31, 1981), Franklin Co. App. No. 81AP-298, unreported (1981 Opinions 4327) -- Certification by the clerk of a judgment entry must be timely and the clerk must certify both the correctness of the copy and the authenticity of the purported signature of the judge.

State v. Clites (1991), 73 Ohio App. 3d 36 -- (1) It was erroneous to admit a document as self-authenticating when the seal was illegible. (2) A deputy of the custodian of records may certify the correctness of copies. (3) Though not error per se, the practice of stapling several copies to a single certification is discouraged.

State v. Vogelsang (1992), 82 Ohio App. 3d 354 -- In a medicaid fraud prosecution held that computer generated records were not properly admitted as public records pursuant to Evid. Rules 803 and 901

(authentication). At page 360: "It is not sufficient for admission of an alleged public record for a witness to state that this is information accessed through a computer operated by a public agency * * * In general, for the public record exception to apply, the record must be one that is required by law to be maintained in the office in question whether originated by or filed in that office, or the nature of the record must be such that there is a duty by the agency to record and maintain the information therein. * * * In general, there must be either an express requirement or implied duty set forth by statute for the public record exception to apply other than with respect to activities of the office or agency." Compare State v. Brown (1994), 99 Ohio App. 3d 604.

State v. Vrona (1988), 47 Ohio App. 3d 145 -- Headnote 3: "Testimony as to a telephone call is admissible where there is a reasonable showing, through testimony or other evidence, that the witness placed or received a call, plus some indication of the identity of the person spoken to. (Evid. R. 901[B][6], construed.) Also see State v. Williams (1979), 64 Ohio App. 2d 271.

State v. Robles (1989), 65 Ohio App. 3d 104 -- It was reversible error to permit an expert witness to base his opinion on the prevalence of the victim's blood type in the population on FBI reports which had not been admitted into evidence. To be utilized such records must be properly authenticated and introduced.

Midland Steel Products Co. v. U.A.W. Local 486 (1991), 61 Ohio St. 3d 121 -- Paragraph three of the syllabus: "Under the silent witness theory, photographic evidence may be admitted upon a sufficient showing of the reliability of the process or system that produced the evidence." Case involved videotape from a surveillance camera. Also see United States v. Clayton (5th Cir. 1981), 643 F. 2d 1071.

State v. Howell (October 20, 1981), Franklin Co. App. No. 81AP-315, unreported (1981 Opinions 3229, 3233) -- As to authentication of photos: "The long established rule in Ohio concerning the admissibility of photographs into evidence is that photographs are admissible when they appear to have been accurately taken, are proven to be correct representations of the subject, which cannot itself be produced, and are of such a nature as to throw light upon the disputed point. Cincinnati, Hamilton & Dayton Railway Co. v. DeOnzo (1912), 87 Ohio St. 109." Also see State v. McFadden (1982), 7 Ohio App. 3d 215, 216; Heldman v. Uniroyal, Inc. (1977), 53 Ohio App. 2d 21, 31.

Columbus v. Robbins (1989), 61 Ohio App. 3d 324 -- For BAC Verifier test results to be admitted, the prosecution must introduce a properly authenticated calibration solution certificate.

State v. Easter (1991), 75 Ohio App. 3d 22 -- "Batch and bottle affidavits" relating to solutions used to calibrate BAC Verifier were sufficiently authenticated by testimony of troopers familiar with maintenance of records, though they did not have personal knowledge of receipt of documents.

State v. McGlothlin (1988), 44 Ohio App. 3d 211 -- The court may use an uncertified copy of a BMV printout of the defendant's driving record during sentencing.

State v. Greer (1988), 39 Ohio St. 3d 236 -- Paragraph one of the syllabus: "When a document (TV Guide), upon its face, purports to be a particular type of newspaper or periodical publication, its admission into evidence pursuant to Evid. R. 902(6) is not dependent upon whether the material contained in the publication has been verified. If claimed to be unreliable, the document may be impeached after its admission."

State v. Brown (1995), 108 Ohio App. 3d 489, 496-497 -- Court did not abuse its discretion by excluding purported copy of attorney's certificate of good standing which appeared to have been altered.

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Copies; Transcriptions; Summaries

State v. Skimmerhorn, 162 Ohio App. 3d 762, 2005-Ohio-4300 -- At the suppression hearing the state offered a photocopy of a certified copy of the ODH batch solution certificate. The original was at ODH. The certified copy remained at the police station. The trial court properly excluded the exhibit. The officer testified he had compared the copy with the certified copy, but had never seen the original. This did not satisfy the Rules of Evidence. The copy was not self-authenticating. A copy of a seal is not the same as a seal. In these circumstances Evid. R. 1005 latitude on admission of copies for originals may not be further diluted with respect to the admissibility of photocopies under Evid. R. 1003 when public records are involved.

St. Paul Fire & Marine Insurance Co. v. Ohio Fast Freight, Inc. (1982), 8 Ohio App. 3d 155, 157 -- It is improper to deny admission of a duplicate when there is no genuine question raised as to the authenticity of the original and where no other circumstances demonstrate that it would be

unfair to admit a duplicate in place of the original. Also see State v. Easter (1991), 75 Ohio App. 3d 22.

State v. Williams (1982), 7 Ohio App. 3d 160 -- No error found in use of photostatic copies of money allegedly taken in a robbery.

State v. Bridges (August 19, 1982), Franklin Co. Case No. 82AP-193) -- Same holding as to copy of forged check where was sufficient for use by handwriting expert.

Lakeview Dairy Services, Inc. v. Dangler (1989), 65 Ohio App. 3d 753 -- Admission of duplicate copy of a lease was proper where proponent indicated the original had been lost and the authenticity of copy was not in question.

Harleysville Mutual Insurance Co. v. Santora (1982), 3 Ohio App. 3d 257 -- Headnotes 1 and 2: "(1) The tape of a recorded conversation is the 'best evidence' of the conversation provided the recording is admissible, available, and audible. (2) A transcript cannot capture the intangibles of conversation, such as voice tone, emphasis, evasion, faltering, or emotion. Admission of a transcript when the original recording is available violates the best evidence rule and is reversible error."

State v. Rogan (1994), 94 Ohio App. 3d 140, 162-163 -- After lengthy consideration of the use of transcripts as a supplement to tape recordings, the court holds: (1) Properly authenticated transcripts may be used as an aid by the jury in listening to tapes, but may not be sent to the jury room as an exhibit without an agreement between the parties. (2) When the use of transcripts is permitted, the jury must be instructed that the nuances of what they hear takes precedence over what they read. (3) The defendant must be furnished copies of the transcript and tape sufficiently in advance to allow time for review. Also see State v. Crawford (1996), 117 Ohio App. 3d 370, 377-378. (Concurring opinion stresses transcript is a listening aid, but not itself evidence.)

Horning-Wright Co. v. Great American Ins. Co. (1985), 27 Ohio App. 3d 261 -- For a summary to be admitted in accordance with Evid. R. 1006, the documents upon which it is based must be admitted of offered into evidence or their absence explained.

Columbus v. Curtis (1987), 39 Ohio App. 3d 22 -- Where a computer printout is relied upon to summarize records, it must bear the date it was generated.

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Chain of Custody

State v. Hunter, 169 Ohio App. 3d 65, 2006-Ohio-5113, ¶15-20 -- Rape kit collected in 1995 led to prosecution a decade later after it was put through BCI's CODUS system. Defendant challenged chain of custody as the state did not call the person who broke the seal on the rape kit, the person who collected the samples, and the person who delivered the rape kit to the police. The court concludes that the victim's testimony, hospital records, and the evidence submission sheet were sufficient.

State v. High (2001), 143 Ohio App. 3d 232, 247-249 -- Discrepancy as to the exact time a rape kit was picked up at the hospital goes to weight and not admissibility since there was no basis to conclude evidence was contaminated or altered.

State v. Wilkins (1980), 64 Ohio St. 2d 382, 389 -- "A strict chain of custody is not always required in order for physical evidence to be admissible...In order to establish sufficient relevance of clothing to the crime the offeror of the evidence must show that there is identity between the clothing and the crime, that the clothing is in substantially the same condition as it was at the time of the crime, and that it is probative of an element of the crime." Also see State v. Downs (1977), 51 Ohio St. 2d 47; State v. Williams (1981), 2 Ohio App. 3d 289, 290; State v. Moore (1973), 47 Ohio App. 2d 181, 183; Avon Lake v. Anderson (1983), 10 Ohio App. 3d 297.

In re Lemons (1991), 77 Ohio App. 3d 691, 693 -- "The state bears the burden of establishing the proper chain of custody; however it is not an absolute duty...In order to meet its burden, the state need only prove that it is 'reasonably certain that substitutions, alteration or tampering did not occur'...The state need not negate all possibilities of substitution or tampering...Moreover, a chain of custody can be established by direct testimony or by inference...The issue of whether there exists a break in the chain of custody is a determination left up to the trier of fact...Any breaks in the chain of custody go to the weight afforded to the evidence, not to its admissibility..." (Citations omitted.) Also see State v. Barzacchini (1994), 96 Ohio App. 3d 440, 457-458; State v. Brown (1995), 107 Ohio App. 3d 194, 199-200.

State v. Shade (1996), 11 Ohio App. 3d 565 -- Error to bar the testimony of a chain of custody witness disclosed by prosecutor the day before trial began. Though court noted pattern of omitting witnesses from lists provided on discovery, it did not find omission here was willful.

State v. Boddie (December 3, 1981), Franklin Co. App. No. 81AP-521, unreported (1981 Opinions 3891) -- Alteration or change in condition related to testing does not render an exhibit inadmissible provided the alteration is justifiable, does not change the exhibit so that it no longer demonstrates the conditions sought to be shown by its admission and where the altered condition does not mislead the jury. Also see Fabian v. State (1918), 97 Ohio St. 184; State v. Stewart (1963), 1 Ohio App. 2d 260.

State v Barker (1978), 53 Ohio St. 2d 135 -- No harm in admitting exhibit damaged by prosecutor during closing argument where the jury was instructed as to "alteration."

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Other issues

State v. Cierchi, 182 Ohio App. 3d 753, 2009-Ohio-2249, ¶50-54 – Securing writings by deception in violation of R.C. 2913.43 requires introduction of the actual writing. Charge was based on issuance of mortgage.

State v. Brady, 119 Ohio St. 3d 375, 2008-Ohio-4493 – Attorney was appointed as an expert witness in a kiddie porn prosecution. The FBI raided his home and seized his laptop and the digital image exhibits was preparing for use at trial. Trial court sustained a motion to dismiss. Court of Appeals affirmed. Reversed. Court could consider matters beyond the face of the indictment in ruling on motion to dismiss premised on claim federal child pornography statutes deprived the defendant of his right to expert assistance, since the motion could be decided without deciding the general issue. Expert could do his work at the prosecutor's office. Appears the result will be limited to opinion testimony without exhibits if exhibits themselves would amount to kiddie porn.

State v. Jackson, 102 Ohio St. 3d 380, 2004-Ohio-3206 -- Ballots may be used as exhibits in a ballot tampering prosecution. Article V, Section 2 of the Ohio Constitution aspires to ballot secrecy, but is not self-executing. Ballot secrecy applies to election proceedings and not the admission of evidence in criminal trials.

State v. Rangel (2000), 140 Ohio App. 3d 291 -- Expert testimony wasn't necessary to establish that a social security card and a green card were false. Majority finds a BMV clerk had adequate training and experience to testify as to authenticity.

State v. Cowell, Montgomery App. No. C.A. 19119, 2002-Ohio-5126 -- Videotape from cruiser deemed not to establish probable cause to arrest the defendant for D.U.I.: In our review of the videotape, we do not suffer from the same disadvantage that appellate courts often suffer in considering evidence. When evidence is in the form of testimony, the finder of fact is at an advantage, having seen and heard the witnesses testify. With respect to the videotape, however, both we and the trial court have had exactly the same perceptual experience."

State v. York, 154 Ohio App. 3d 463, 2003-Ohio-4629 -- The trial court did not abuse its discretion in refusing to admit the defendant's letters to his dog in support of his insanity plea. The fact the letters had been sent had been testified to. Since the date of letters was uncertain, they were not clearly indicative of his mental condition at the time of the offense.

In re Holmes, 104 Ohio St. 3d 664, 2004-Ohio-7109 -- After argument, the court of appeals overruled the assignments of error because various exhibits had been omitted from the record on appeal. Reversed. Transmission of a complete record was the duty of the clerk, and counsel for appellant did not have "the legal duty to stand over the clerk's shoulder to ensure that all the exhibits were filed." The court of appeals should have uses App. R. 9(E) to correct an imperfect trial court record.

State v. Jackson, 107 Ohio St. 3d 53, 2005-Ohio-5981, ¶71 -- Victim's bloodstained clothing was irrelevant where the cause of death was shots to the head.

State v. Juniper (1998), 130 Ohio App. 3d 219 -- Reversible error where defendant's suppressed statement to the police was mistakenly sent to the jury with other exhibits.

State v. Chinn (1999), 85 Ohio St. 3d 548, 573 -- No abuse of discretion found in admitting an exhibit at the close of the state's case in chief after earlier refusing to do so to facilitate cross-examination by the defense.

State v. McGuire (1997). 80 Ohio St. 3d 390, 396 -- "There is no error in allowing the jury to view or hear for a second time an exhibit properly admitted into evidence." Compare State v. Crimi (1995), 106 Ohio App. 3d 13; State v. Hairston (December 30, 1994), Franklin Co. App. No. 94APA02-205, unreported (1994 Opinions 6401, 6432-6436).

State v. D'Ambrosio (1993), 67 Ohio St. 3d 185 -- Case remanded to Court of Appeals for further consideration of the appropriateness of the death

penalty as they had not had before them various exhibits which should have been considered. Also see State v. D'Ambrosio (1995), 73 Ohio St. 3d 141.

State v. Gotsis (1984), 13 Ohio App. 3d 282, 283 -- "In order to be admissible, audio recordings must be authentic, accurate and trustworthy...Admission into evidence of tape recordings containing inaudible portions is a matter within the sound discretion of the trial court...In determining whether to admit tape recordings, the trial court must assess whether the unintelligible portions are so substantial as to render the recordings as a whole untrustworthy." (citations omitted)

State v. Paxton (1995), 110 Ohio App. 3d 305 -- Videotape was played for jury while the judge was out of the courtroom. Audio portion contained inadmissible hearsay and should have been largely excluded. Curative instruction was insufficient. Mistrial should have been declared.

State v. Holmes (1991), 77 Ohio App. 3d 582 -- Defense objected when prosecution played only portions of a three hour tape relating to drug trafficking. While under the rule of completeness, the defense could request admission of additional portions, admission is conditioned on relevancy and whether they explain or qualify portions admitted.

State v. Sanders (1998), 130 Ohio App. 3d 789, 795 -- Court erroneously excluded from evidence defendant's signature on implied consent form. Lack of impairment of fine motor skills was relevant in an OMVI prosecution.