



RECORD ISSUES IN THE DIGITAL ERA

Presented By:

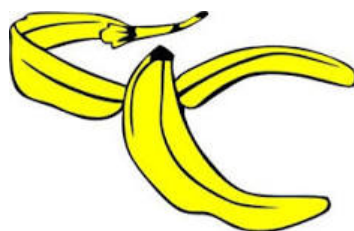
- The Honorable Brendan J. Sheehan, *Administrative and Presiding Judge, Cuyahoga Cty. Common Pleas Court*
- Bruce Bishilany, *Chief Court Reporter, Cuyahoga Cty. Court Reporters*
- Krystal Lawyer, *Criminal Division Manager, Cuyahoga Cty. Clerk of Courts*
- Toni Querry Farkas, *Staff Attorney, Eighth District Court of Appeals*

**MAKING SURE WHAT
YOU INTENDED TO BE
IN THE RECORD IS, IN
FACT, INCLUDED IN
THE RECORD ON
APPEAL**

By Toni Querry Farkas



What is the Record on Appeal?



The **original papers and exhibits thereto** filed in the trial court, the **transcript** of proceedings, if any, **including exhibits**, and a **certified copy of the docket and journal entries** prepared by the clerk of the trial court shall constitute the record on appeal in all cases.

COMPOSITION OF THE RECORD ON APPEAL

Appellate Rule 9(A)(1)

Substitutes/Alternatives:

App.R. 9(C)(1) Statement of the Evidence or Proceedings

- If no recording was made, if transcript is unavailable, or if recording was made but no longer available for transcription, appellant may prepare a statement of the evidence or proceedings from the best available means, including appellant's recollection; served on appellee for objections/proposed amendments
- As settled and approved by trial court, included by trial court clerk in record on appeal
- In lieu of transcript

Agreed Statement under App.R. 9(D)(1)

- Joint signed statement showing how the issues raised in appeal arose and were decided in trial court, setting facts essential to a decision of the issues presented.
- As approved by the trial court (with any additions by trial court), certified and transmitted to the court of appeals by trial court clerk as the record on appeal
- In lieu of the record on appeal; takes the place of all three parts of App.R. 9(A)(1) record

Case Goes Through Three Stages of “Review” at Eighth District:

Administrative counsel

- review for timeliness of appeal/potential fao issues, notice of appeal is compliant, praceipe and docketing statement filed, clarifying type of record, confirming transcript and papers received from trial court, motions, requests to supplement, etc.
- no review of exhibits or transcript for completeness

Screening by staff attorney

- review to ensure briefs/other filings comply with local rules, further review for potential fao issues
- no review of exhibits or transcript for completeness

Panel review

- full review of record

What the Record Looks Like When an Appeal Is Ready for Review by a Panel of the Eighth District



In appeals from the Common Pleas Court, panels also have access to electronic versions of most materials that are part of the record.

Common Issues Related to the Record (not an exhaustive list):

1. A motion or other filing was filed but for some reason was not included in the record forwarded to the Eighth District
2. A document was provided to and considered by the trial court but inadvertently not filed with the trial court or not sought to be admitted as an exhibit
3. Original exhibit/document is missing or incomplete
4. Inadequately marked exhibits
5. Mismarked exhibits (e.g., exhibit number on document does not line up with what is referenced in the transcript)
6. Duplicate, nonidentical exhibits

Common Issues Related to the Record (not an exhaustive list):

7. Exhibits in an unplayable file format, poor sound/video quality
8. Additional materials included on or as part of “exhibits” (e.g., flash drives, bulk exhibits, etc.) that do not appear to have been presented at trial/hearing
9. Confusion as to what was actually shown to the trier of fact and whether what was “admitted” matches what was shown to the trier of fact (e.g., where transcript states only “video played”)
10. Confusion as to what was actually “admitted” (e.g., when exhibits referred to as a group or other than by individual exhibit number)
11. Failure to admit into evidence transcripts of testimony read/played at trial (that were not transcribed as part of the trial transcript)
12. Missing stricken documents/excluded exhibits that are part of alleged error on appeal

Common Issues with the Record (not an exhaustive list):

13. Improper attempts to add materials to the record by attaching documents to notice of appeal, briefs, motion to supplement, that were not introduced below
14. Request to supplement record with filings, transcript, exhibits from juvenile court following bindover (or from another court following a transfer)
15. Ensuring transmission of documents maintained other than in clerk's office or maintained under seal
16. Unavailable transcripts (or unavailable recordings from which to prepare transcript) and use of App.R. 9(C) statement that must be settled/approved by trial court
17. Mistakes in filling out the praecipe
18. How to include a transcript from a prior appeal

Potential Consequences of an Incomplete Record:

May lead to forfeiting an issue for appellate consideration

- For purposes of appellate review, any materials that are not included in the record on appeal do not exist and will not be examined or considered.

Presumption of regularity

- Appellant has burden of establishing error by the trial court.
- When portions of the appellate record are not supplied to the appellate court or are unavailable for review, appellate court generally presumes the regularity of trial court proceedings.

See, e.g., Knapp v. Edwards Laboratories, 61 Ohio St.2d 197, 199 (1980) (“When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court’s proceedings, and affirm.”); *Burke v. Mayfield Brainard Auto Servs., LLC*, 2023-Ohio-446, ¶ 19 (8th Dist.); *State v. Miller*, 2020-Ohio-1209, ¶ 22-24 (9th Dist.) (Where clerk notified defendant that no exhibits were filed as part of the record on appeal and without medical records, appellate court could not say whether the trial court committed prejudicial error in admissibility determination, “we have no choice but to presume regularity in the proceedings and affirm the trial court’s judgment.”); *Freedom Mortg. Corp. v. Petty*, 2011-Ohio-3067, ¶ 67-68 (8th Dist.) (Record on appeal did not contain exhibits magistrate admitted at trial; “[i]n the absence of the exhibits the trial court found to be relevant to its overruling of the magistrate’s decision, this court presumes the regularity of the proceedings below.”).

Potential Consequences of an Incomplete Record:

Possible reversal or remand for hearing or new trial

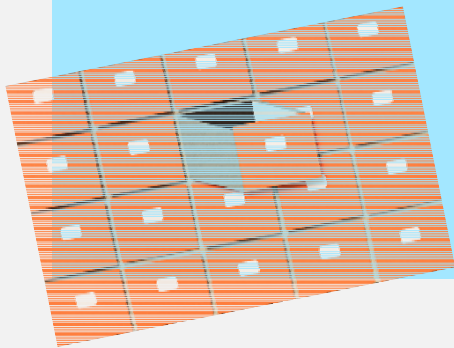
- In criminal/juvenile case, case may be remanded for a hearing to determine whether appellant substantially responsible for incomplete record and a new trial may be ordered if appellant is determined not to be responsible for incomplete record (and missing information is needed to properly evaluate assignment of error).

See, e.g., State v. Jones, 71 Ohio St.3d 293, 297 (1994) (“A criminal defendant must suffer the consequences of nonproduction of an appellate record where such nonproduction is caused by his or her own actions. In the event the defendant’s misconduct is determined not to be the cause of the nonproduction of the appellate record, absence of the record may require reversal of the underlying conviction and the grant of a new trial.”); *State v. Garcia*, 2020-Ohio-3026, ¶ 40 (8th Dist.) (remanding case to the trial court to determine whether defendant-appellant was “substantially responsible” for the inability to produce a complete record in light of missing exhibits; “[i]f [defendant-appellant] is determined to be substantially responsible, ‘his appeal should proceed only on such record as the trial court can settle, or on only those issues for which a [complete] factual record is unnecessary’”), quoting *State v. Tiedjen*, 2019-Ohio-2430, ¶ 28 (8th Dist.); *see also In re A.R.R.*, 2014-Ohio-3367 (11th Dist.) (judgment reversed and case remanded where trial court failed to record in-chambers interview in violation of Juv.R. 37(A) and no one present could recall what happened at the hearing with sufficient particularity to provide an adequate record for meaningful appellate review).

Potential Consequences of an Incomplete Record:

When it comes to ensuring a complete appellate record, shenanigans will not be tolerated.

See, e.g., State v. Harper, 2013-Ohio-5217, ¶ 1, 7-13 (9th Dist.) (Where city had video in its file, knew defendant was making every effort to make the video part of the appellate record, but it did not supplement the appellate record to include the video because the prosecutor believed it was the appellant's duty to do so, court held, "We are compelled to reverse because the . . . prosecutor's office chose to keep a critical exhibit admitted at trial—a video of the alleged incident—in a desk drawer rather than making it a part of the record on appeal. Because the appellate record as it stands does not contain sufficient evidence of the offense, we reverse the judgment of the trial court and discharge defendant-appellant . . . from further prosecution.").



Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

Trial/Hearing

1. Provide clear descriptions of what is being shown to jury, testified to, etc. on the record so what was presented appears in, and is clear from, the transcript

- E.g., use words/unambiguous identifiers to describe what is happening in the courtroom and identify the specific portions of video shown
 - Important both for making sure that admitted exhibit matches what was presented to the trier of fact and if for some reason an exhibit is lost or needs to be recreated
- Videotaped testimony/reading of deposition testimony (ensure portions played/read admitted as an exhibit or otherwise certified and included as part of the record)

See, e.g., Conway v. Ford Motor Co., 48 Ohio App.2d 233, 237-238 (8th Dist.) (mere filing of deposition transcript of a witness does not make it part of the proceedings).

Example:

- Transcript of video deposition filed with trial court
- Only portions of video deposition played for jury
- Portions played were not transcribed as part of transcript, were not marked as an exhibit, and nothing was stated in record as to what portions played
- On appeal, appellants filed a motion to supplement the record with highlighted portions of transcript; appellee objected, claiming highlighting was inaccurate and included testimony not presented at trial
- Because parties could not agree, were ordered to proceed in accordance with App.R. 9(E) – had to ask trial court to resolve dispute as to which portions of highlighted testimony were presented during trial and certify it as a supplemental record
- Within the trial court's discretion to order relief requested if it deems action is necessary or appropriate to complete the record

Court of Appeals of Ohio, Eighth District
County of Cuyahoga
Andrea Rocco, Clerk of Courts

EVANGELOS STAMATOPOULOS, ET AL.
Appellee

COA NO. 101439
LOWER COURT NO. CV-12-786907
CV-12-786314
COMMON PLEAS COURT

-vs-
ALL SEASONS CONTRACTING, INC.
Appellant

MOTION NO. 476994

Date 07/23/14

Journal Entry

Motion by appellee to reconsider judgment dated July 21, 2014 is granted in part. The parties agree that a portion of the trial proceedings was not recorded and certified by the official court reporter. Appellant is therefore granted leave to supplement the record. However, based on appellee's objections and the inability to secure a certified copy of the subject testimony due to the trial court reporter's failure to record and certify it as part of the trial proceedings, the parties are instructed to proceed in accordance with App.R. 9(E) with regard to this portion of the trial proceedings. The highlighted supplemental transcript shall be submitted to the trial court and appellee shall provide the court with objections, if any, that specifically identify which portions of the highlighted text appellee contends were not presented at trial. The trial court shall then determine which portions of the highlighted transcript were presented during trial and certify it as the supplemental record pursuant to App.R. 9(E). Appellee's request for a remand is denied as unnecessary because App.R. 9 vests the court with the authority to certify the record of trial proceedings during the pendency of an appeal. The trial court shall review and certify the supplemental record on or before August 15, 2014 and the certified supplemental record shall be filed with the clerk of courts by that date. Appellant's brief is due 23 days after the supplemental record is filed with this court.

RECEIVED FOR FILING
JUL 23 2014
CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By *[Signature]* Deputy

[Signature]
PATRICIA A. BLACKMON
Presiding Judge

CA101439
8517027

Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

2. Make sure all exhibits are “admitted” and properly marked

- **Generally, exhibits that are introduced at trial are not part of the record unless formally “admitted” into evidence** (or proffered and stricken/excluded) by the trial court.

See, e.g., State v. Marshall, 2025-Ohio-2283, ¶ 23-26 (9th Dist.) (autopsy photographs presented during coroner’s testimony that were not admitted into evidence were not part of record on appeal); *Urban Partnership Bank v. Mosezit Acad., Inc.*, 2014-Ohio-3721, ¶ 20, fn. 9 (8th Dist.) (reviewing court cannot consider an exhibit unless record demonstrates that the exhibit was formally admitted into evidence in the lower court); *State v. Zhovner*, 2013-Ohio-749, ¶ 12 (3d Dist.) (mere presentation of manual during trial does not make it part of the record); *Prymas v. Byczek*, 2010-Ohio-1754, ¶ 21 (8th Dist.) (despite reference to lease agreement throughout hearing, lease agreement was not part of the record on appeal because it was not admitted into evidence).

But if the trial court reviewed or relied upon material when rendering a decision, an argument can sometimes be made that it should be part of appellate record even if was not “admitted” as an exhibit.

See, e.g., In re Estate of Reeck, 21 Ohio St.3d 126, 127, (1986) (holding that it was “appropriate” to supplement the record with insurance policy where insurance policy was before the trial court when it decided the case and omission of policy from the record was inadvertent); *King v. Niswonger*, 2014-Ohio-859, ¶ 9-11 (2d Dist.) (where deposition transcript was not included in the appellate record, but it was clear that the trial court reviewed the deposition transcript and considered it when rendering its decision, appellate record was supplemented to include the transcript in accordance with App.R. 9(E)).

Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

2. **Make sure all exhibits are “admitted” and properly marked**

- Not just a trial issue – hearings, sentencing proceedings, etc.
- If drawing or other document created during trial to explain or support testimony, consider marking it as an exhibit
- Identify each admitted exhibit separately on the record; no group admission of exhibits
E.g., properly mark both flash drive and files on flash drive
- Accurate and complete Exhibit Inventory List – Cuyahoga Cty. C.P. Loc.R. 29 and Appendix C

Example from a recent case:

EXHIBIT INVENTORY LIST – LOCAL RULE 29

Case No: [REDACTED]
Caption: [REDACTED]
Judge: [REDACTED]

Party offering	Number/ Letter	Exhibit description	Witness	Admitted	Custodian
State	1-100	Crime Scene Photos	Strick	✓	
State	101	26 Spent 9mm cartridge cases	Strick	✓	
State	102	Swabs suspected blood (marker 25)	Strick	✓	
State	103	Swabs suspected blood (marker 27)	Strick	✓	
State	104	Swabs suspected touch DNA (1-18)	Strick	✓	
State	105	Swabs suspected touch DNA (19-24, 26, 28)	Strick	✓	
State	106	Spent bullet fragment (marker 39)	Strick	✓	
State	107	Glock 26 (s/n AGV8303)	Graves	✓	
State	108	Shotspotter ILS 16:30:45 - Report	Belli	✓	
State	108A	Shotspotter ILS 16:30:45 - Audio 5040	Belli	✓	
State	108B	Shotspotter ILS 16:30:45 - Audio 5038	Belli	✓	
State	108C	Shotspotter ILS 16:30:45 - Audio 5054	Belli	✓	
State	108D	Shotspotter ILS 16:30:45 - Audio 5036	Belli	✓	
State	109	Shotspotter ILS 16:30:53 - Report	Belli	✓	
State	109A	Shotspotter ILS 16:30:53 - Audio 5039	Belli	✓	
State	109B	Shotspotter ILS 16:30:53 - Audio 5049	Belli	✓	
State	109C	Shotspotter ILS 16:30:53 - Audio 5054	Belli	✓	
State	109D	Shotspotter ILS 16:30:53 - Audio 5053	Belli	✓	
State	110	Regina Arrington - Clark Lineup	Regina A	✓	
State	111	Regina Arrington - Fitch Lineup	Regina A	✓	
State	112	Tenesha Arrington - Clark Lineup	Tenesha A	✓	
State	113	Tenesha Arrington - Fitch Lineup	Tenesha A	✓	
State	114	K. Arrington Medical Records	Tenesha A	✓	
State	115	Google Maps Overview	Numerous	✓	
State	116	Google Earth Overview	Numerous	✓	
State	117	Google Earth 935 Parkwood	Numerous	✓	
State	118	CDR Certification - 2168941022	Zilich	✓	
State	119	Interpreting T-Mobile Records Info	Zilich	✓	
State	120	Subscriber Info 2168941022	Zilich	✓	
State	121	CDR Data (Excel) - 2168941022	Zilich/Stampel	✓	
State	121A	CDR Data - 2168941022 with highlights	Stampel	✓	
State	122	CDR Cell Site Mapping PPT	Zilich	✓	
State	123	Paperwork of Sale of Glock 26 to Fitch	Jimmy C.	✓	
State	124	Ballistics Report	Koeth	✓	
State	200	Marinick Body Camera Screenshot 1	Marinick	✓	
State	201	Marinick Body Camera Screenshot 2	Marinick	✓	
State	202	Marinick Body Camera Screenshot 3	Marinick	✓	
State	203	Marinick Body Camera Screenshot 4	Marinick	✓	

(1)

State	204	RTCC footage 1	Det. Johnson	✓	
State	204A	RTCC screenshot	Det. Johnson	✓	
State	205	RTCC footage 2	Det. Johnson	✓	

Defendant's attorney	_____	Judge	_____
Prosecutor	_____	Date	_____

EXHIBITS

	Offered	Received
1-100, Crime Scene Photos	756	756
101, 26 9mm cartridge cases	757	757
102-105, Swabs	757	757
106, Bullet fragment	757	757
107, Glock	757	757
108, Shotspotter report	757	757
108-A-D, Shotspotter audio	757	757
109, Shotspotter report	757	757
109-A-D, Shotspotter audio	757	757
110-113, Photo Lineups	758	758
114, Medical records	758	758
115, 117, Google Maps/Earth	758	758
118, Medical records	758	758
121, 121-A, CDR data	758	759
122, Cell site mapping	758	759
123, Glock paperwork	759	759
124, Ballistics report	759	759
200-203, Body cam screenshots	760	760
204, 205, RTCC Footage 1 and 2	760	760
204-A, RTCC Screenshot	760	760
206, Body camera footage	929	930

Defendant's:	Offered	Received
A, Video	927	930

Court's:

1, Jury question and answer 930

STATE'S EXHIBITS 101-107, 115, 116 ARE IN THE POSSESSION OF THE PROSECUTOR. ALL OTHER EXHIBITS ARE FILED WITH THE COURT OF APPEALS.

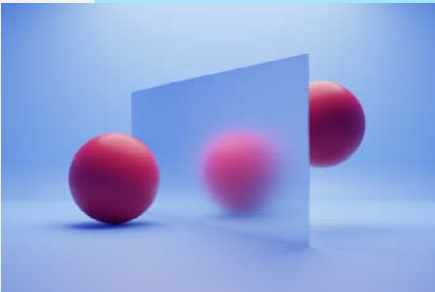
VOLUME INDEX

	PAGES
Volume I of V.....	1-129
Volume II of V.....	230-461
Volume III of V.....	462-709
Volume IV of V.....	710-921
Volume V of V.....	922-1142

Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

3. What is admitted as an exhibit should mirror what was shown to the trial court/jury during trial or hearing

- Edit down bulk exhibits/videos so that only what is used or shown as trial is admitted (e.g., surveillance videos, cell phone dumps, audio recordings, medical records)
- Because it is the “admitted” exhibit that is part of the record, if something more (or different) was in “admitted” exhibit than what was presented during trial or hearing, jury/trial court/appellate court may be able to rely on it. If only a portion of a video is shown during the trial or hearing, make certain the exhibit that is admitted contained only that portion shown (not the video in its entirety or other video files). *See, e.g., State v. Michael Jones*, OSC No. 2024-Ohio-1768 (argued Oct. 29, 2025)



State v. Michael Jones, Ohio Supreme Court No. 2024-Ohio-1768 (argued Oct. 29, 2025)

- Two video clips from body cams of Officers Clarkson and Knapp played during suppression hearing from a DVD marked as Defendant's Ex. B; counsel asked that those videos be admitted into evidence
- Trial court stated: "I'll accept Defendant's Exhibit B as to the Clarkson and Knapp body cams"
- When DVD, marked as Def.Ex.B, was transferred with the record to the COA it contained 13 videos
- Appellate court relied on information from some of the other 11 videos in rendering its decision
- State appealed to Ohio Supreme Court; claimed this was error because the appellate court could not consider materials outside the record
 - Proposition of Law No. 1: "On appeal, a reviewing court is limited to the evidence admitted into the record by the trial court."

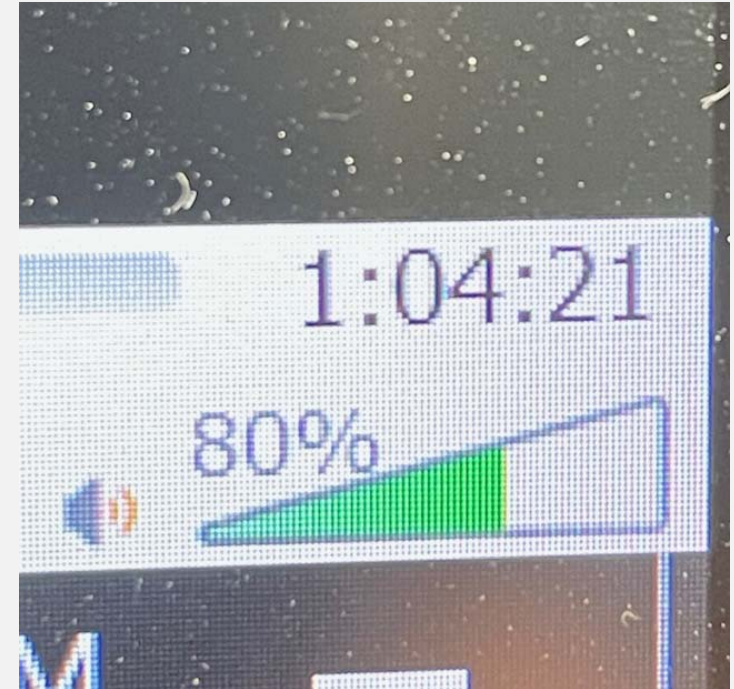
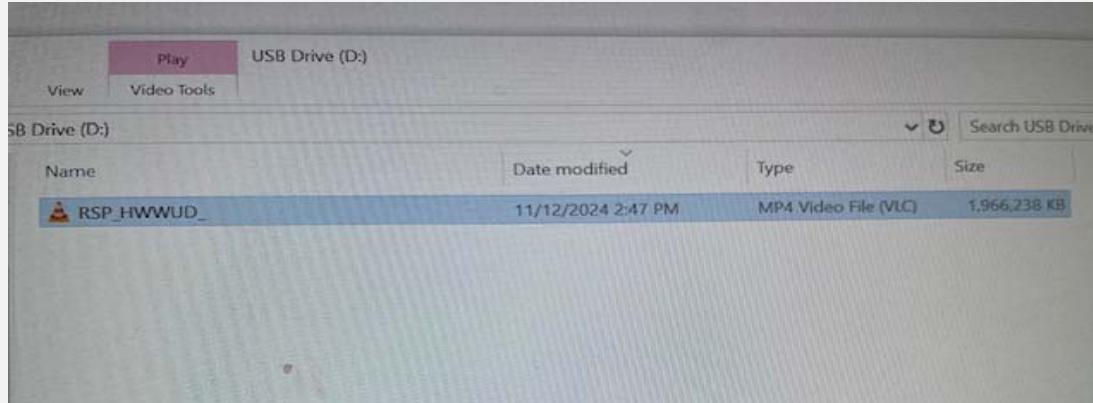


Example from a recent case:

14 THE COURT: There is no
15 objection to the video. [REDACTED] is that your
16 intent to play it?
17 [REDACTED]: Yes, your honor.
18 For purposes of record, the video is cued up
19 at 13:56:32, and the State will play this for
20 about 30 seconds.
21 THE COURT: Thank you.
22 - - -
23 (Video played in open court.)

1	I N D E X			
2	[REDACTED]			
3	Opening Statement on behalf of the State.....	6		
4	Opening Statement on behalf of the Defendant.....	6		
5	Closing Argument on behalf of the State.....	42		
6	Closing Argument on behalf of the Defendant.....	36		
7	WITNESSES			
8	STATE'S:	Direct	Cross	Redirect
9	[REDACTED]	9	17	30
10	DEFENDANT'S:			32/34
11	(None)			
12	E X H I B I T S			
13	STATE'S:		Offered	Admitted
14	1 - body cam footage			
15	(Thurb drive)		36	36
16	DEFENDANT'S:			
17	(None)			
18				
19				
20				
21				
22				
23				
24				
25				

Example from a recent case:



Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

3. What is admitted as an exhibit should mirror what was shown to the trial court/jury during trial or hearing

- Take proper care in converting electronic material to physical exhibit (e.g., same as what was presented, no special software required to access, proper file format; appellate courts cannot convert files into other formats to view and risk altering evidence)

See, e.g., State v. Purvis-Mitchell, 2018-Ohio-4032, ¶ 47-49, fn.4-5 (4th Dist.) (where appellate court was unable to view jail security video played at trial because general media player did not support format, presumed video supported jury's finding).

State v. Purvis-Mitchell, 2018-Ohio-4032, ¶ 47-49, fn. 4-5 (4th Dist.)



- Jail security video
- When DVD containing the video was inserted into the appellate court's media device, file was titled "Rhodes v. Purvis Mitchell, 11Nov16" and listed as an N3R file
- According to <https://security.panasonic.com>, "Since 'N3R' is Panasonic dedicated format, general media player doesn't support this format. However, once you convert data from n3r to mp4 * * * you can play in general media player." See enfaq.security.panasonic.com, accessed August 20, 2018.
- **Because general media player did not support format, appellate court could not view file and presumed video supported jury's verdict**



Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

3. What is admitted as an exhibit should mirror what was shown to the trial court/jury during trial or hearing

- Exercise caution when stipulating to the admission of exhibits

See, e.g., State v. Drain, 2022-Ohio-3697, ¶ 66 (defendant's stipulation to exhibit was invited error; defendant could not argue error she invited was plain error); *State v. Nkoyi*, 2024-Ohio-3144, ¶ 16 (12th Dist.) (invited error doctrine does not permit defendant to stipulate to the admission of exhibit at trial then argue as part of his appeal that trial court erred by admitting that exhibit into evidence).



Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

3. What is admitted as an exhibit should mirror what was shown to the trial court/jury during trial or hearing

- Maintain copies of everything! Make sure you have your own record of exactly what was admitted/excluded. Make sure the trial court and court reporter's record is the same as yours.



Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

4. What goes back to the jury should match what is admitted. Attorneys are responsible for ensuring that all admitted exhibits are sent to the jury, extraneous material is redacted, and excluded exhibits are removed.

- **If it doesn't and prejudicial – mistrial, reversal**

See, e.g., State v. Marshall, 2014-Ohio-4677 (8th Dist.) (trial court did not abuse its discretion in sua sponte ordering mistrial where unadmitted statement, detailing defendant's confession to murder, was erroneously included in box of exhibits delivered to jury deliberation room); *State v. Russell*, 2014-Ohio-2467, ¶ 48-51 (7th Dist.) ("Unadmitted exhibits inadvertently given to the jury during deliberations is grounds for reversal only where the defendant has suffered material prejudice as a result. . . . The same review applies to cases where a defendant's exhibits, properly admitted, were not sent to the jury room for deliberations"; no prejudice shown).

- **If it doesn't and cannot show prejudice – any error likely be forfeited**

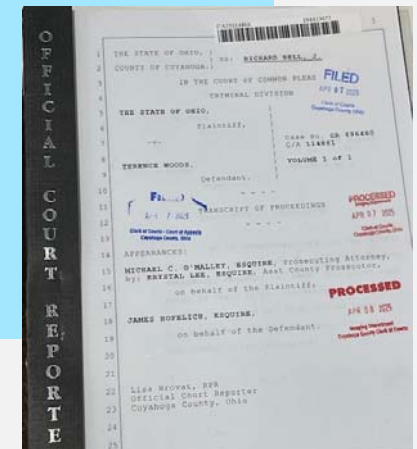
See, e.g., State v. Durham, 251 N.E.3d 788, 801-802 (5th Dist. 2024) ("Because Dunham failed to exercise due diligence to examine the evidence before it was taken to the jury room to ensure that only admissible evidence would be given to the jury, . . . we review the submission of the other versions of [the] report for plain error."); *State v. Froman*, 2020-Ohio-4523, ¶ 95-100 (no prejudice shown where trial court played videotape with enhanced audio, closed captioning, and deleted downtime for the jury and a different version of the exhibit without closed captioning was admitted to "leav[e] it to [the jurors'] own interpretation of what was said").



Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

5. Make sure what is in the trial court record makes its way to the court of appeals: The transcript

- Official, written transcript filed with the clerk of the trial court required. App.R. 9(B); Loc.App.R. 9(G).
See also State v. Bumu, 2017-Ohio-6901, ¶ 19 (1st Dist.); *Hinkle v. Right Way Heating & Cooling*, 2022-Ohio-1649, ¶ 7 (10th Dist.).
- If trial court does not have an official court reporter, may need to obtain an order from the trial court appointing a court reporter as the official court reporter for the case. App.R. 9(B)(2); Loc.App.R. 9(F).



Transcript

- Checking the right box on the Praeipie: App.R. 9(A) record v. App.R. 9(B) record
 - Praeipie informs the court whether waiting for a transcript or App.R. 9(C) or 9(D) statement to complete record
 - If full transcript already filed below, e.g., with objections to a magistrate's decision, App.R. 9(A) record
 - If you check the wrong box, file an amended praecipie

APPENDIX A
EIGHTH DISTRICT COURT OF APPEALS
LOCAL APPELLATE RULE 9
Praeipie and Docketing Statement

Name of Trial Court: _____

Case Caption: _____ _____ Plaintiff, vs. _____ Defendant	Trial Court Case Number: _____ Trial Court Judge: _____ Date of judgment appealed: _____ The notice of appeal was filed in compliance with: <input type="checkbox"/> App.R. 4(A) (within 30 days); or <input type="checkbox"/> App.R. 4(B) (time extended); or <input type="checkbox"/> App.R. 5 (delayed appeal)
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A. PRAEPIE: REQUESTING THE RECORD

TO THE CLERK OF THE TRIAL COURT:

1. ☐ By checking this box, appellant requests that the clerk of the trial court immediately prepare and assemble the original papers and exhibits filed in the trial court and a certified copy of docket and journal entries under App.R. 9(A). **(If appellant only selects this box, appellant acknowledges that no transcript is required to be prepared.)**
2. ☐ Check this box if you seek the record in this appeal to include one of the following listed below that is necessary for the resolution of the appeal. **(Please select only one of the following below.)**
 - a. ☐ Complete transcript under App.R. 9(B). (Note: the appellant must instruct the court reporter to prepare the transcript.*)
 - b. ☐ Partial transcript under App.R. 9(B). (Note: the appellant must instruct the court reporter to prepare the transcript.*)
 - c. ☐ Statement of evidence or proceedings under App.R. 9(C).
 - d. ☐ Agreed statement under App.R. 9(D).

Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

5. **Make sure what is in the trial court record makes its way to the court of appeals:** **The transcript**

- If a transcript/recording is not available, appellant may need to follow procedures for the trial court to settle/approve an App.R. 9(C) statement to recreate or complete record on appeal.
See, e.g., Hardy v. Fell, 2007-Ohio-1287, ¶ 10-11 (8th Dist.); *State v. Robbins*, 2012-Ohio-3862, ¶ 10 (6th Dist.).
 - Can have a hybrid App.R. 9(B)/App.R. 9(C) record in some instances
- Must generally have a transcript (or transcript alternative) for exhibits to be considered on appeal.
See, e.g., Robinson v. Rehfus, 2022-Ohio-4679, ¶ 11-12 (7th Dist.) (“[T]rial exhibits are to be submitted on appeal as part of a properly filed transcript, which memorializes their introduction and admission into evidence. . . . Without the transcript, the context and related testimony are lacking.”).
- If relying on transcripts that were filed as part of a prior appeal, file a motion with the court of appeals to transfer transcripts from prior appeal to current appeal.

Tips for making sure what you intended to be in the record, is what is really in the record when you get to the court of appeals

5. **Make sure what is in the trial court record makes its way to the court of appeals:** **Exhibits**

- Document who has possession of exhibits/other parts of record, if not in possession of clerk/court reporter and make sure it is transmitted with the record if needed for your appeal.
- Physical evidence and “documents of unusual bulk or weight” not transmitted unless trial court clerk directed to do so. App.R. 10(B); Loc.App.R. 9(E).
- May need to request that documents maintained under seal or other than in clerk’s office be forwarded as part of the record – E.g., presentence investigation report, reports from psychiatric clinic, probation reports, sexual offender assessments, competency reports, documents submitted for in camera review. R.C. 2951.03(D); R.C. 2953.08(F)(1); R.C. 2945.371(H).
- **Double check the record!** Once the record has been filed in the court of appeals, review the record to make sure everything that should be (or that you need for your assignments of error) is in there.



Exhibits – Marking, Offering, Proffering, Best Practice Presentation

PRESENTED BY THE CUYAHOGA COUNTY COURT REPORTERS DEPARTMENT



Cuyahoga County Common Pleas Court Local Rules

29.0 RETENTION AND DESTRUCTION OF RECORD EXHIBITS

- (A) **Scope.** The purpose of this rule is to provide minimum standards for the maintenance, preservation, and destruction of records within the court. The rule applies for the duration of an evidentiary hearing, trial, and appeal time, in accordance with the schedules set forth in Sup.R. 26.01 to 26.05 and R.C. 2933.82.
- (B) **Definitions.**
- (1) **Exhibit.** Any document, device, or item, regardless of physical form or characteristic, created, introduced, produced, proffered, received, or exhibited at an evidentiary hearing or trial.
 - (2) **Inventory List.** A written index created by the record custodian identifying exhibits, depositions, and transcripts.
 - (3) **Permanent Record.** All exhibits, depositions, transcripts, and the inventory list maintained in compliance with this rule.
 - (4) **Record Custodian.** Any person or agency responsible for the care and control of the permanent record.
- (C) **During Hearing or Trial.** The record custodian will receive and hold all exhibits proffered or admitted into evidence during the hearing or trial of any case, and will be responsible for the security and storage of those exhibits, except weapons, ammunition, currency, controlled substances, biological evidence, pyrotechnic or explosive devices, or contraband, as described in R.C. 2901.01 (A)(13).
- (D) **Conclusion of Hearing or Trial.**
- (1) **Evidence Not Retained by Record Custodian.** Weapons, ammunition, currency, controlled substances, biological evidence, pyrotechnic or explosive devices, or any contraband as described in R.C. 2901.01 (A)(13), or oversized demonstrative items of evidence will be retained by the party, counsel, or agency offering such evidence pursuant to all applicable rules and statutes governing the retention of such evidence.
 - (2) **Evidence Retained by Record Custodian.** All other evidence will be retained by the record custodian in conformance with Paragraphs F and G of this rule.
 - (3) **Inventory Procedures for All Evidence.**
 - (a) The record custodian will compile the inventory list of all exhibits by listing the exhibit number or letter with a brief description of the exhibit. The inventory list will state which party or agency representative is retaining the evidence.
 - (b) Each party and the judge or magistrate will sign the inventory list.
 - (c) Each party will receive a signed copy of the inventory list.
 - (d) The record custodian will retain one copy of the inventory list as part of the permanent record.
- (E) **Form of Exhibits.** Any exhibits which are part of the permanent record of the case are limited to 8 ½" x 11" in size (letter size). The party responsible for the exhibit will ensure that oversize or three-dimensional exhibits are reduced by photograph or duplication and approved by the judge or hearing officer for inclusion into the permanent record as an exhibit.

EXHIBIT INVENTORY LIST – LOCAL RULE 29

Case No. [REDACTED]

Caption: State v. [REDACTED]

Judge. [REDACTED]

Party offering	Number/ Letter	Exhibit description	Admitted	Custodian
State	1	Body Cam: Initial Interaction with [REDACTED]	YES	State
State	2	Body Cam: Conversation with [REDACTED]	YES	State
State	3 to 4	NOT USED	YES	
State	5 to 12	Instagram Photos	YES	State CR
State	13	Photo Line Up: No Selection	YES	State CR
State	14	Photo Line Up: [REDACTED]	YES	State CR
State	15	Photo Line Up: [REDACTED]	YES	State CR
State	16	Body Cam: November 14, 2018 Interview	YES	State
State	17	MHPD: [REDACTED] Interview with [REDACTED]	NO	State
State	18 to 28	Vehicle Process: Hyundai Sonata	YES	State CR
State	29 to 39	Vehicle Process: Chrysler 200	YES	State CR
State	40	Tow Sheet	YES	State CR
State	41-51	GPS locations	YES	State CR
State	52	BCI Lab Report	YES	State CR
State	53	Long Rifle	YES	State CR
State	54	NOT USED		
State	55	Map of Incident and Vehicle Recovery	YES	State CR
State	56	Affidavit	NO	State CR
State	57	Photo Lineup - Clayter: A	YES	State CR
State	58	Photo Lineup - Clayter: B	YES	State CR
State	59	Photo Lineup - Clayter: C	YES	State CR
State	60	Detective [REDACTED] Interview with [REDACTED]	NO	State
State	61	[REDACTED] - Written Statement	NO	State
State	62-71	NOT USED		
State	72-232	Crime Scene Photos	YES	State CR minus 88
State	233-304	Additional Vehicle Process Photos	YES	State CR
State	305	Swab from Hyundai Driver's Door	YES	State
State	306	Swab from Hyundai Wheel	YES	State
State	307	Swab from Hyundai Gear Shifter	YES	State
State	308	Swab from Hyundai Passenger Side	YES	State
State	309	Black Apple Watch Series 3	YES	State
State	310	Item 18 - DNA Standard	YES	State
State	400	Detective [REDACTED] Report: Evidence List	YES	State CR
State	401	EV 1 - Glass from Street	YES	State
State	402	NOT USED		
State	403	EV 3 - 2 Casings	YES	State
State	404	EV 4 - 40 cal shells	YES	State

State	405	EV 5 - Shell Casings	YES	State
State	406	EV 6 - 380 ACP Shell Casings	YES	State
State	407	EV 7 - DNA Swab from Grass	YES	State
State	408	EV 8 - Spent 556 Casings	YES	State
State	409	EV 9 - 556 Shell Casings	YES	State
State	410	NOT USED		
State	411	EV 11 - 2 Shell Casings	YES	State
State	412	EV 12 - Holster	YES	State
State	413	EV 13 - Shell Casing	YES	State
State	414(a)	EV 14 - Magazine with Rounds	YES	State
	414(b)	EV 14 - Empty box of 9mm Rounds	YES	State
State	415	EV 15 - Partial Box	YES	State
State	416	EV 16 - 9mm Round	YES	State
State	417	NOT USED		
State	418	EV 18 - Silver Chip of Paint	YES	State
State	419	EV 9 - Bullet Fragment	YES	State
State	420(a)	EV 20 - 9mm casing	YES	State
State	420(b)	EV 20 - Bullet Fragment	YES	State
State	421-424	NOT USED		
State	425	Bullet from	YES	State
State	426	Picture of Bullet from	YES	State CR
State	427-429	NOT USED		
State	430	Statement	NO	State CR
State	431	Jail Call Image	YES	State CR
State	431(b)	Audio Recording of Jail Call	YES	State
Defense	A	Body Cam: With	YES	State
Defense				

Defendant's attorney

Judge

Prosecutor

Date

Defendant's Attorney

1 THE COURT: Okay. Let's go
2 through the exhibits, and then you can place
3 the stipulations on the record. And I will
4 have you identify the exhibit that you are
5 seeking to admit and give defense counsel an
6 opportunity to make any objection after each
7 exhibit.

8 THE PROSECUTOR: Thank you.

9 THE COURT: Whenever you are
10 ready.

11 THE PROSECUTOR: Your Honor,
12 State's Exhibits 2 and 3 are the Google Maps
13 of East 55th.

14 THE COURT: Any objection?

15 DEFENSE ATTORNEY: No, your Honor.

16 THE COURT: State's Exhibits
17 2 and 3 are admitted without objection.

18 THE PROSECUTOR: Exhibits 4
19 through 57, the crime scene photographs.

20 THE COURT: Any objection?

21 DEFENSE ATTORNEY: No objection.

22 THE COURT: Exhibits 4
23 through 57, crime scene photos, are admitted
24 without objection.

9 ATTY2: And, Your Honor,
10 so to be clear: Other than unless we note an
11 objection on the record, we don't have any
12 objections to any of the exhibits that were
13 used with any of the witnesses during
14 plaintiffs' case.

15 ATTY1: Very good. If
16 that's the case, why don't we do this then to
17 speed things up? Instead of me reading them
18 in, why don't we on our side go through our
19 list, e-mail you guys what we think we
20 offered, and then if that lines up with what
21 you understand, we can just do a written
22 filing or we can even -- we can do it that
23 way. We don't have to stand here and read the
24 numbers in.

25 THE COURT: All right.

1 THE COURT: So at this point
2 all the exhibits which are going to be
3 admitted have been admitted. But as I
4 suspect, they are kind of in piles in
5 different places. I am going to ask that the
6 exhibits which have been admitted are placed
7 up here on what I am calling, as I am sitting
8 here, the right front corner of this bench.
9 Anything that's sitting up here I'll assume
10 has been admitted.

11 Each party should look at the other
12 party's pile to make sure nothing peculiar is
13 in there and then I'll hold on to those
14 overnight and give them to the jury tomorrow.
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EXHIBIT INVENTORY LIST - LOCAL RULE 29

Case No:

Caption:

Judges,

Party Offering	Number Letter	Exhibit Description	Admitted Proffered	Custodian
-------------------	------------------	------------------------	-----------------------	-----------

State	1	Body Camera Footage	✓	Court Reporter
State	2	Surveillance Video	✓	" "
State	3	Witness	✓	" "
State	4	Firearm	✓	State
State	5	Journel Entry	✓	Court Reporter

Defendant's Attorney

Judge/Magistrate

Plaintiff's Attorney

Date _____

Page 1 of 1

29.0 Retention and Destruction of Record Exhibits

(C) During Hearing or Trial. The record custodian will receive and hold all exhibits proffered or admitted into evidence during the hearing or trial of any case.....

(E) Form of Exhibits. Any exhibits which are part of the permanent record of the case are limited to 8 ½" x 11" in size (letter size). The party responsible for the exhibit will ensure that oversize or three-dimensional exhibits are reduced by photograph or duplication and approved by the judge or hearing officer for inclusion into the permanent record as an exhibit



Music

Videos

Exhibit Transcript Samples

Chelsea

CourtReportersAdmin

2024

✓ This PC

> Windows (C:)

> My Passport (D:)

> THUMB DRIVE (E:)

> CCJIS (G:)

> CPBJB (\\CPJCvFP03\HOME) (H:)

> Foreclosure (Q:)

> Audio (R:)

> SHARE (S:)

✓ My Passport (D:)

> Audio

38 items

Invoices New

PlayerProgram

StenoCast

8-6-18am

09-04-2019 Tues AM

2020-85

20180321-090950

20180806-113747

20190610-081442

20190710-091122

20190710-134729

20201109-125931

20240318-072920

25008760912-NIS_PreApproval_

Aldemur v Alshdaifat 102524

AM MIDDAY 20A (3) 0826

BATES_--_380-390_(sent)_(Vadnæ

BILLPD New

Music		HP-PARK-v1.8.9 (1)	4/16/20
Videos		Invoices New	5/29/20
Exhibit Transcript Samples		PlayerProgram	2/19/20
Chelsea		StenoCast	1/3/201
CourtReportersAdmin		8-6-18am	8/6/201
2024		09-04-2019 Tues AM	9/4/201
		2020-85	8/13/20
		20180321-090950	4/2/201
		20180806-113747	8/6/201
		20190610-081442	6/10/20
		20190710-091122	7/10/20
		20190710-134729	7/10/20
		20201109-125931	12/1/20
		20240318-072920	3/18/20
		25008760912-NIS_PreApproval_Letter	4/23/20
		Aldemur v Alshdaifat 102524	11/15/2
		AM MIDDAY 20A (3) 0826	8/26/20
		BATES_--_380-390_(sent)_(Vadnal) (FullSi...	12/16/2
		BUILD M...	5/20/20

The Honorable Brendan J. Sheehan

*Administrative and Presiding Judge
Cuyahoga County Common Pleas Court*

REMEMBER THE 5 P'S

Prior Preparation Prevents Poor Performance

- Do not wait until the end of trial to prepare your exhibits.
- Courtroom technology makes it easy to play video and display pictures directly from your laptops. Do not let technology make you lazy.
- Judges are busy.
- Counsel are responsible for ensuring the evidence admitted is what the jury considers.
- Court reporters do not work for you.



THE *MARSHALL* CASE

Man to be tried a third time in pizza parlor slaying

Published: Jan. 16, 2003 at 3:10 PM EST, 19 News

CLEVELAND (AP) - A man accused of killing a pizza parlor manager in 1997 will have to stand trial a third time, a Cuyahoga County judge ruled Wednesday.

Legal technicalities and errors have negated the two previous murder trials of 28-year-old Charles Marshall III.

Prosecutors said Marshall pulled a .38-caliber pistol on Rocco Buccieri, 27, of Parma, in suburban Garfield Heights and ordered him to open a safe. When Buccieri tried to wrestle the gun from Marshall, he was shot twice, prosecutors said.

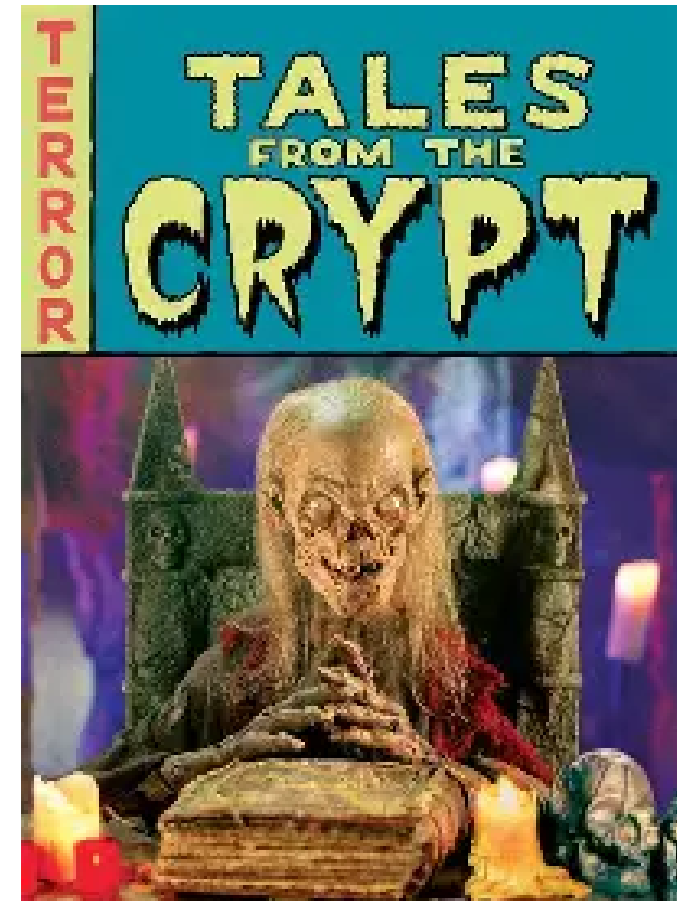
Marshall's first trial ended in a conviction and death sentence.

But the sentence was overturned when Common Pleas Judge Timothy McGinty realized he had failed to give jurors the option of recommending life without parole.

A mistrial was declared in Marshall's second trial when deliberating jurors told the judge that they had received an exhibit regarding testimony never presented at trial - a childhood friend's claim that Marshall had admitted killing Buccieri.

Marshall's lawyers in November asked visiting Judge Joseph Cirigliano to bar a third trial, saying prosecutors were at fault for the mistrial at Marshall's second trial.

Assistant Prosecutor Richard Bombik asked Cirigliano to reinstate the original verdict, saying that a second trial never should have taken place.



KEEP IT FORMAL

- Follow the rules.
- Don't get too comfortable.
- When you are on the record, be **professional**.
- The record is your friend.



Formal vs. Informal



BEST PRACTICES FOR TRANSCRIPTS WITH THE CLERKS OFFICE

Cuyahoga County Clerk
of Courts
Office of Nailah K. Byrd

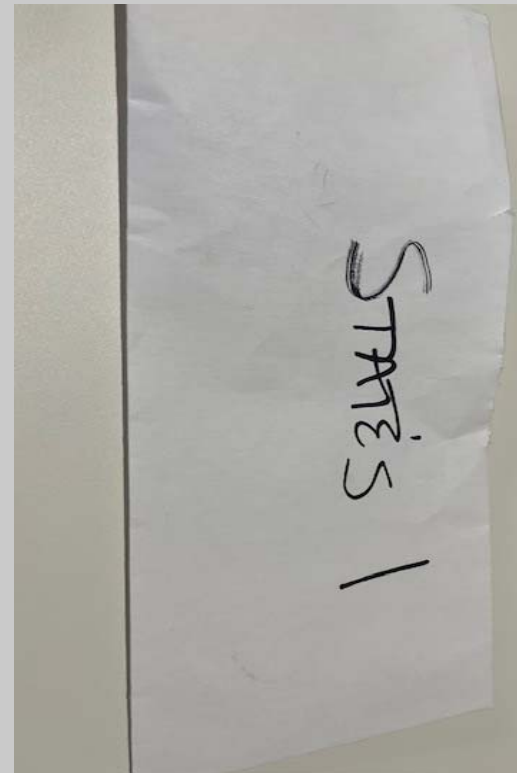
BEST PRACTICES



This presentation will cover what our office believes are best practices for filing transcripts and exhibits.

- Ensure all documents are present and labeled appropriately.
- If a flash drive or disc are provided as an exhibit, a case number and a list of what is on the drive would be helpful.

RECENT EXAMPLES OF EXHIBITS



ISSUES WE HAVE EXPERIENCED



- Flash drives loosely placed with a transcript with no case number or any identifying information are problematic. These items are small and can get lost. Label and place the drive in an envelope. Write the identifying information on the envelope.
- Often, items listed as being submitted to our office on the exhibit list are not present when we receive the transcripts or exhibits.

HARDSHIP CAUSED ON OUR OFFICE WHEN ITEMS ARE NOT FILED CORRECTLY



Important notes:

- When we review the transcripts and items are not present or not identifiable, we must reach out to the Court Reporters for clarification. They will give us what they have, but often items are missing.
- Flash drives not labeled or secured are problematic. Often, we do not know what file corresponds with what flash drive. Remember we receive multiple filings a day.
- These issues cause our team to constantly follow up to ensure items are filed correctly. Often, we have to search multiple areas of the office to try and locate something due to an incorrect or improper or missing label. This causes unnecessary delays.



CONTACT INFORMATION OR
QUESTIONS/CONCERNS?

What do you if there is an error or omission in the record?



If **any difference arises** as to whether the **record truly discloses what occurred in the trial court**, the difference shall be submitted to and settled by the trial court and the record made to conform to the truth. If **anything material** to either party is **omitted from the record by error or accident or is misstated**, the parties by stipulation, or the trial court, either before or after the record is transmitted to the court of appeals, or the court of appeals, on proper suggestion or of its own initiative, may direct that omission or misstatement be corrected, and if necessary that a supplemental record be certified, filed, and transmitted. All other questions as to the form and content of the record shall be presented to the court of appeals.

CORRECTING OR SUPPLEMENTING THE APPELLATE RECORD

Appellate Rule 9(E)

How Record May Be Corrected or Supplemented Depends on the Nature of the Error/Omission



A. Only the trial court can resolve disputes as to whether the record truly discloses what occurred.

See, e.g., State v. Schiebel, 55 Ohio St.3d 71, 81-82 (1990) (“A court of appeals can authorize correction or supplementation of the trial court’s record when the accuracy of proposed changes is undisputed, . . . but the court of appeals cannot resolve disputes about the trial court’s record in the course of an appeal.”).

- **Must involve matters that occurred in the presence of the trial court.**

See, e.g., State v. Snider, 2022-Ohio-4566, ¶ 26 (11th Dist.) (trial court could not have approved any submission made by the parties under App.R. 9(D) or 9(E) because discussions at issue were not held before the trial judge).

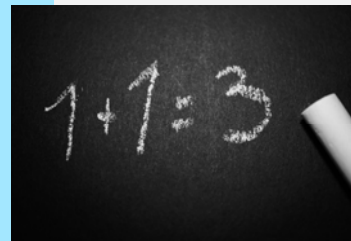
- **How dispute is resolved is in the discretion of the trial court.**

See, e.g., State v. Glowney, 2019-Ohio-3390, ¶ 51-55 (2d Dist.) (“Once the appellate court remands a case to the trial court on an App.R. 9(E) motion, the decision of whether the record of proceedings should be corrected or supplemented is within the discretion of the trial court.”), quoting *State v. Cross*, 2008-Ohio-3240, ¶ 33 (7th Dist.).

How Record May Be Corrected or Supplemented Depends on the Nature of the Error/Omission

B. If item material to either party omitted from the record by error or accident or is misstated, omission or misstatement may be corrected by:

- 1. The parties by stipulation** – e.g., filing a joint motion to supplement, correct or complete the record
 - It must be shown that the material sought to be added was, in fact, before the trial court and properly part of the trial court record.
- 2. The trial court**, either before or after the record is transmitted to the court of appeals
 - After a case has been appealed, the trial court retains jurisdiction to take action in aid of appeal.



How Record May Be Corrected or Supplemented Depends on the Nature of the Error/Omission

B. If item material to either party omitted from the record by error or accident or is misstated, omission or misstatement may be corrected by:

3. The court of appeals, on proper suggestion of a party, e.g., a motion to supplement or correct the record with appropriate support

- A party has an obligation to take prompt action to correct the record upon discovery of an error or omission in the record or risk forfeiting the error
- Must be done by proper motion – not by attaching supplemental material to briefs, forwarding supplemental material to the clerk by letter
- It must be shown that the material sought to be added was, in fact, before the trial court and properly part of the trial court record.

4. The court of appeals, sua sponte



How Record May Be Corrected or Supplemented Depends on the Nature of the Error/Omission

- C. All other questions as to the form and content of the record shall be presented to the court of appeals.**



Some Errors/Omissions in Record Cannot Be Fixed



- Appellate review is limited to the record as it existed at the time the trial court rendered its decision. Supplementation under App.R. 9(E) is not an opportunity to add documents or information that was not before the trial court. **App.R. 9(E) permits the parties to correct or complete the record to reflect what actually happened in the trial court. It is not a means to alter what actually occurred (or did not occur) in the trial court.**

See, e.g., State v. Ishmail, 54 Ohio St.2d 402 (1978), paragraph one of the syllabus (“A reviewing court cannot add matter to the record before it, which was not a part of the trial court’s proceedings, and then decide the appeal on the basis of the new matter.”); *Hakeem Sultaana v. Keefe Supply Co.*, 2021-Ohio-3881, ¶ 16 (11th Dist.) (where there was no evidence notice of quarantine was received, docketed, or considered by trial court, App.R. 9(E) could not be used to add it to appellate record); *State v. Morris*, 2016-Ohio-7417, ¶ 5 (2d Dist.) (“[I]f a document was considered by a trial court but inadvertently not filed, a motion to supplement the record would be appropriate, because the document was before the court. If a document was filed but not included in the record, App.R. 9(E) would also apply. If, however, a document was not filed, and was not considered by the trial court, it cannot be added to the record on appeal by App.R. 9(E). The determinative factor is whether the material was before the trial court; ‘even if both parties request the addition, it must be clearly established that the matter to be added was in fact before the trial court in the proceedings before that court’ before it can be included in the appellate record.”), quoting Painter & Pollis, *Ohio Appellate Practice*, Section 4.19 (2015).

Some Errors/Omissions in Record Cannot Be Fixed

- **If you did not submit a transcript** (or affidavit if transcript not available) **with objections to magistrate's decision when case was in the trial court**, and error assigned on appeal relates to a factual finding, **cannot fix it by ordering a transcript on appeal or through an App.R. 9(C) or 9(D) statement.** See Civ.R. 53(D)(3)(b)(iii); Juv.R. 40(D)(3)(b)(iii); Crim.R. 19(D)(3)(b)(iii); App.R. 9(C)(2), (D)(2); Staff Note to App.R. 9 (July 1, 2013 amendment).
- **If a dispute arises regarding the record and relates to matter as to which the trial judge lacks recollection or occurred outside the presence of the trial judge, trial court may not be in a position to resolve dispute.**



Parties Cannot Supplement the Record By:

- **Sending a letter or email to trial court clerk;** not an “original paper” “filed” with the trial court under App.R. 9(A). *See, e.g., Northstar Medical Research v. Cory Kozlovich*, 8th Dist. No. 114598 (Apr. 1, 2025).
- **Attaching materials that are not in the record to notice of appeal or appellate briefs.** *See, e.g., Richard v. Carmax*, 2023-Ohio-2066, ¶ 10, fn.3 (8th Dist.) (“[E]xhibits solely appended to appellate filings are not properly part of the record and may not be considered on appeal.”); *Cashlink, LLC v. Mosin, Inc.*, 2012-Ohio-5906, ¶ 8 (10th Dist.) (“An exhibit merely appended to an appellate brief is not part of the record, and we may not consider it in determining the appeal.”).
- **Sending a letter to the appellate court** enclosing material that a party claims is missing from the appellate record. *Hicks v. Cleveland Museum of Art*, 2023-Ohio-3633, ¶ 12, fn. 4 (8th Dist.).



Extraordinary Writs and the Record on Appeal

- Writs are generally not a proper means of correcting alleged errors in the record; must follow the procedures in App.R. 9(E). *See, e.g., State ex rel. Martre v. Reed*, 2020-Ohio-4777, ¶ 13.
- Writ of mandamus or procedendo may be appropriate to compel a trial court to act if it fails to act when required under App.R. 9

E.g., if a trial court fails to settle/approve a proposed statement of the evidence under App.R. 9(C)(1) or settle a dispute regarding the record submitted to it under App.R. 9(E)

writ (rit). A court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act.

If You Have a Procedural Question Relating to the Record in the Eighth District Court of Appeals. . .

Call and ask to speak with one of our staff attorneys.

Eighth District Court of Appeals
Staff Attorney Inquiries
(216) 443-6350

