

NO. 2009- 09 - 2131

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NOS. 92455

STATE OF OHIO

Plaintiff-Movant

-vs-

WELTON CHAPPELL

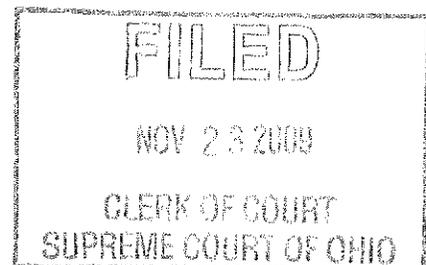
Defendant-Respondent

MOTION TO STAY

Counsel for Plaintiff-Appellant
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CUYAHOGA COUNTY PROSECUTOR

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Cleveland Ohio 44131



STATE'S MOTION TO STAY

I. Summary of argument

Proceedings in this case should be stayed in the trial court until this Court decides whether it should exercise jurisdiction. Chappell has admitted that he downloads movies that are playing theaters and then sells the movies. He admits that software on his computer allows him to do this. Hundreds of DVDs and CDs were removed from Chappell and almost \$7,000 in cash. The State's case has been dismissed because the trial court and appeals court held that the State failed to charge an offense in the State of Ohio.

Now defense counsel is requesting that the above items be returned to Chappell because there is no longer a criminal case. The State requests a stay from this Court before allowing the evidence that may be used against Chappell be returned to him.

II. Procedural history

Chappell was indicted for criminal simulation and possession of criminal tools. Ultimately, the entire case has been dismissed through pretrial procedures on the claim that the State failed to present a defined crime in Ohio.

III. Law and analysis

Under S. Ct. Prac. R. 4(A), a party may request a stay of an appellant court decision. The State respectfully requests a stay in this matter because defense counsel is requesting that the items discovered during the search be returned.

If this Court believes this case is worthy of review and ultimately agrees with the State's position, the evidence that Chappell wants returned will be lost if ordered returned prior to trial.

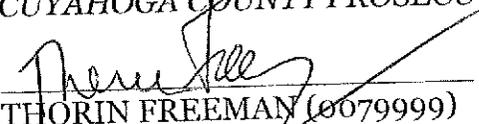
IV. Conclusion

A stay is necessary to preserve possible evidence in a case where Chappell admits to selling copied movies from the internet. The State respectfully requests a stay of the appeals decision and any trial court action.

Respectfully submitted,

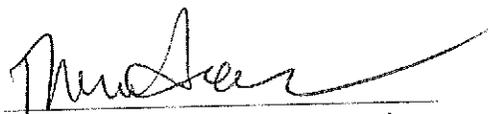
WILLIAM D. MASON
CUYAHOGA COUNTY PROSECUTOR

By:


THORIN FREEMAN (0079999)
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SERVICE

A copy of the foregoing Motion to stay with exhibit has been sent via ordinary mail postage prepaid this 20th day of November 2009 to Joseph McGinness 6100 Rockside Woods, North Suite 210 Cleveland Ohio 44131.

A handwritten signature in black ink, appearing to read "Thorin Freeman", written over a horizontal line.

Thorin Freeman (0079999)
Assistant Prosecuting Attorney