

[Cite as *Cleveland v. Maxwell*, 2004-Ohio-6098.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84365

CITY OF CLEVELAND

Plaintiff-appellee :

vs. :

BARRY MAXWELL

Defendant-appellant :

JOURNAL ENTRY
and
OPINION

DATE OF ANNOUNCEMENT
OF DECISION

: NOVEMBER 18, 2004

CHARACTER OF PROCEEDING

: Criminal appeal from
: Cleveland Municipal Court
: Case No. 03TRD075621

JUDGMENT

: AFFIRMED.

DATE OF JOURNALIZATION

APPEARANCES:

For plaintiff-appellee :

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KENNETH A. ROCCO, J.:

{¶ 1} In this case assigned to the accelerated calendar, defendant-appellant Barry Maxwell appeals from the order of the Cleveland Municipal Court that denied his motion to suppress evidence. The purpose of an accelerated appeal is to permit this court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶ 2} As the result of a traffic stop of his vehicle, Maxwell was cited for three violations of the Cleveland Codified Ordinances (“CCO”): 1) 435.10, obstructed license plate;¹ 2) 435.07(A), driving with a suspended license; and, 3) 435.27(B)(1), failure to wear a seat restraint. The police officer noted on the citation that Maxwell’s vehicle license plate was “obstructed” by a “large emblem covering [its] letters.”

{¶ 3} After the municipal court denied his motion without an oral hearing,² Maxwell entered pleas of no contest to each of the charges. He now asserts in his assignment of error that the denial of his motion was improper because the police officer lacked probable cause to stop him. In effect, Maxwell challenges the factual basis for the stop.

¹In pertinent part, this section requires persons who are operating a motor vehicle to display the license plate “fastened in such a manner, and not covered, obscured or concealed***by any foreign substance or material, to be readable in its entirety from left to right.”

²Maxwell did not request an oral hearing on his motion. Thus, he cannot challenge the municipal court’s decision to decide the motion only on the parties’ briefs. *Bedford Heights v. Menefee* (Nov. 10, 1999), Cuyahoga App. No. 76184.

{¶ 4} The trial court functions as the fact finder, however, when deciding a motion to suppress evidence. *Rocky River v. Saleh* (2000), 139 Ohio App.3d 313. Therefore, this court accepts as true the facts before the trial court, and examines the law to determine whether the trial court's decision was correct. *State v. Davenport*, Cuyahoga App. No. 83487, 2004-Ohio-5020.

{¶ 5} The existence of probable cause requires facts and circumstances within the knowledge of the officer that are reasonably trustworthy and sufficient to cause a prudent officer to believe the suspect was committing an offense. *Id* at *P.9. Probable cause exists when a police officer observes a violation of an ordinance which requires license plates to be unobstructed. *State v. Durfee* (Mar. 6, 1998), Lake App. Nos. 96-L-198, 96-L-199. CCO 435.10, since it is written in the conjunctive, does not permit "partial" obstruction of a vehicle's license plate.

{¶ 6} Subsequent checks of that license plate and of the license of the vehicle's driver do not violate a person's constitutional right to be free from unreasonable searches. *Davenport*, *supra* at *P.12.

{¶ 7} Based upon the law as applied to the facts, the municipal court's decision was correct.

{¶ 8} Appellant's assignment of error, accordingly, is overruled.

Affirmed.

It is ordered that appellee recover of appellant 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 Cleveland Municipal Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

Appellate Procedure.

KENNETH A. ROCCO

JUDGE

JAMES J. SWEENEY, J. and

ANN DYKE, P.J. CONCUR

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).