

[Cite as *Cleveland v. Heckathorne*, 2016-Ohio-8059.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 104420

---

**CITY OF CLEVELAND**

PLAINTIFF-APPELLEE

vs.

**CYRUS D. HECKATHORNE, JR.**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
**VACATED**

---

Criminal Appeal from the  
Cleveland Municipal Court  
Case No. 2016 CRB 002250

**BEFORE:** Stewart, J., E.A. Gallagher, P.J., and Kilbane, J.

**RELEASED AND JOURNALIZED:** December 8, 2016

**ATTORNEY FOR APPELLANT**

Brian R. McGraw  
55 Public Square, Suite 2100  
Cleveland, OH 44113

**ATTORNEYS FOR APPELLEE**

Barbara A. Langhenry  
Director of Law  
City of Cleveland Law Department  
601 Lakeside Avenue, Room 106  
Cleveland, OH 44114

Jennifer M. Kinsley  
Assistant City of Cleveland Prosecutor  
Justice Center, 8th Floor  
1200 Ontario Street  
Cleveland, OH 44113

MELODY J. STEWART, J.:

{¶1} Defendant-appellant Cyrus Heckathorne, Jr. was tried and convicted of violating a Cleveland Codified Ordinance that requires the licensing of private vehicles for hauling waste. On appeal, Heckathorne argues that the city failed to present sufficient evidence that he was “engaged in the business” of hauling waste, which is an element of the offense. The city concedes the error. Finding merit to the appeal, we vacate the conviction.

{¶2} Heckathorne was issued a citation for violating the prohibition on hauling solid waste without a license pursuant to Cleveland Codified Ordinances 551.19, which states:

(a) No person shall engage in the business of collecting, transporting, carrying or hauling solid waste in the City unless such vehicle so engaged is licensed and displays the appropriate sign plate issued by the City. Such a license shall be obtained from the Commissioner of Assessments and Licenses, be valid for a period not to exceed one (1) year and expire on April 30 of every year. The Director of Public Service shall determine the annual fee therefor, with the approval of Council.

{¶3} At trial, the police officer who issued the citation testified that he pulled Heckathorne over after observing scrap and shelving in the back of his pick-up truck; believing Heckathorne was in violation of the ordinance. As part of its case, the city introduced a body-cam video of the interaction between Heckathorne and the officer where Heckathorne could be heard stating that, “[he has] been doing this for a very long time.” However, the officer did not give any testimony indicating whether Heckathorne

was in the “business” of hauling solid waste, nor did the city offer any evidence in this regard. Heckathorne testified that on the day he was stopped, he was hauling scrap as a favor to his friend who had recently cleaned out a shed. After hearing the testimony, the court found Heckathorne guilty of the violation and sentenced him to pay a fine of \$1,000.

{¶4} When reviewing the sufficiency of the evidence, appellate courts examine the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the elements of the offense proven beyond a reasonable doubt. *State v. Smith*, 8th Dist. Cuyahoga No. 103483, 2016-Ohio-5512, ¶ 39, citing *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. A reviewing court is 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.” *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997).

{¶5} In order to convict a person of the offense of hauling solid waste without a license in violation of ordinance 551.19, the city must show that the offender was “engaged in the business” of hauling waste. The term business is not defined in the city’s ordinances. “In the absence of a definition of a word or phrase used in a statute, the words are to be given their common, ordinary, and accepted meaning.” *Donaker v. Parcels of Land (In re Foreclosure of Liens for Delinquent Land Taxes by Action in Rem)*, 140 Ohio St. 3d 346, 2014-Ohio-3656, 18 N.E.3d 1151, ¶ 12, citing *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948), paragraph five of the syllabus.

According to *Black's Law Dictionary* (10th Ed.2014), the term “business” signifies “[a] commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain.”

{¶6} A review of the trial transcript shows that the city offered no evidence, either direct or circumstantial, regarding whether Heckathorne’s livelihood involved hauling solid waste, or whether Heckathorne received any compensation for hauling waste in this instance. In fact, Heckathorne testified that he was hauling the materials as a favor to a friend. Heckathorne did not mention whether he was paid by his friend, and the city made no inquiry. Accordingly, the evidence was insufficient to sustain the conviction.

{¶7} Judgment vacated.

It is ordered that appellant recover of appellee 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.

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

---

MELODY J. STEWART, JUDGE

EILEEN A. GALLAGHER, P.J., and  
MARY EILEEN KILBANE, J., CONCUR