

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

CITY OF PAINESVILLE,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2015-L-023
TIMOTHY J. KINCAID,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Painesville Municipal Court, Case No. TRD 1407661.

Judgment: Reversed and judgment entered for appellant.

Ron M. Graham, 6988 Spinach Drive, Mentor, OH 44060 (For Plaintiff-Appellee).

Timothy J. Kincaid, pro se, 1910 Mentor Avenue, Painesville, OH 44077 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Timothy J. Kincaid, appeals his conviction for running a stop sign. He contends that he could not be found guilty because the sign was not posted in accordance with the applicable state requirements. For the following reasons, the conviction is reversed.

{¶2} Appellant was driving his motor vehicle on North Doan Road in Painesville, Ohio, approaching the intersection of North Doan and Everett Road. All four directions of traffic approaching that intersection are required to stop, pursuant to

four posted stop signs. Although appellant slowed his vehicle as he neared the intersection, he did not completely stop prior to turning onto Everett Road.

{¶3} Deputy Ron Radovanic of the Lake County Sheriff's Office saw the appellant's failure to stop and cited him for failing to obey a traffic control device, R.C. 4511.12.

{¶4} An abbreviated bench trial was held. Deputy Radovanic testified on behalf of the state and appellant presented the testimony of a licensed land surveyor. The surveyor stated that the bottom edge of the stop sign was forty-seven inches above the top edge of the pavement. Based upon this, appellant argued that the stop sign was unenforceable against him because it was too low.

{¶5} The trial court found appellant guilty, and ordered him to pay a \$25 fine and court costs. Appellant appeals asserting two assignments of error for review:

{¶6} "[1.] The trial court committed prejudicial error in convicting Timothy Kincaid of violating a traffic control device, R.C. 4511.12, despite the express language of the statute, where the undisputed evidence showed that the traffic control device was not in proper position, because the stop sign allegedly disobeyed was mounted less than five feet above the elevation of the near edge of the traveled way.

{¶7} "[2.] The trial court committed prejudicial error in convicting Timothy Kincaid of violating a traffic control device, R.C. 4511.12, despite the express language of the statute, and undisputed evidence that showed that the stop sign allegedly violated was not in proper position, because the required ALL WAY supplemental plaque was absent from the stop sign at an intersection where all approaches were controlled by stop signs."

{¶8} Appellant's first assignment is dispositive of this case. He contends that the trial court could not find him guilty of disobeying a traffic control not posted in accordance with the Ohio Manual of Uniform Traffic Control Devices. Specifically, appellant submits that the stop sign posted was too low.

{¶9} "[T]he goal of traffic laws and regulations is to promote highway safety.' *Maple Heights v. Smith* (1999), 131 Ohio App.3d 406, 408, 722 N.E.2d 607. R.C. 4511.09 provides that '[t]he department of transportation shall adopt a manual and specifications for a uniform system of traffic control devices[.]' This manual is the Ohio Manual of Uniform Traffic Control Devices ('OMUTCD'). *Maple Heights* at 408.

{¶10} "R.C. 4511.07(A) permits local authorities to regulate 'the stopping, standing, or parking of vehicles[.]' However, local authorities 'shall place and maintain traffic control devices in accordance with the [OMUTCD] ***.' R.C. 4511.11(A). Further, R.C. 4511.11(D) mandates that '[a]ll traffic control devices erected on a public road, street, or alley, shall conform to the state manual and specifications.'" *Village of South Russell v. Blair*, 11th Dist. Geauga No. 2005-G-2645, 2006-Ohio-3766, ¶12-13.

{¶11} As noted above, appellant was cited and convicted under R.C. 4511.12. Division (A) of this statute provides, in pertinent part:

{¶12} "No pedestrian, driver of a vehicle, or operator of a streetcar or trackless trolley shall disobey the instructions of any traffic control device placed in accordance with this chapter, unless at the time otherwise directed by a police officer.

{¶13} "No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is *not in proper position and sufficiently legible* to be seen by an ordinarily observant

person.” (Emphasis added.)

{¶14} In applying this provision, Ohio courts have held that, in light of the use of the word “and” in the second quoted paragraph, both requirements must be satisfied before a driver can be found guilty of a violation; i.e., the sign must be both in proper position and legible. See, e.g., *City of Bowling Green v. McNamara*, 132 Ohio App.3d 240, 241, 724 N.E.2d 1175 (6th Dist. 1999). Accordingly, a defendant cannot be found criminally liable for disobeying a traffic control device when the sign does not conform to the requirements of OMUTCD. R.C. 4511.11(D) and 4511.12(A). *Blair*, 2006-Ohio-3766, at ¶15; *City of Mentor v. Mills*, 11th Dist. Lake No. 12-269, 1988 Ohio App. LEXIS 2962, *5-6 (July 22, 1988).

{¶15} The R.C. 4511.12(A) test for sign enforcement is stated conjunctively in a compound statement: a sign is not enforceable if it is *not* in proper position *and* sufficiently legible (i.e., *not* (p and q)). “De Morgan’s law” relates “the logical operators ‘and’ and ‘or’ in terms of each other vis negation.” *O’Donnabhain v. Comm’r Internal Revenue*, 134 T.C. 34, 83 (2010) (Halpern, L., concurring). This logic rule provides that “a disjunction may be converted into a conjunction and a conjunction may be converted in a disjunction if (1) the quality (i.e., either affirmative or negative) of the conjunction or disjunction is changed and (2) the quality of each of the disjuncts and conjuncts is changed.” Finan, *Lawgical: Jurisprudential and Logical Considerations*, 15 Akron L. Rev. 675, 684 (1981). As a result, the statement “*not* (p and q)” is equivalent to “(*not* p) or (*not* q).” Kelley, *The Art of Reasoning* 270 (2d Ed.1994), see also *Vasudevan Software v. MicroStrategy Inc.*, N.D.Cal. No. C 11-06637, 2013 U.S. Dist. LEXIS 134310 (Sept. 19, 2013).

{¶16} Here, the statute provides—in its conjunctive form—that a traffic sign is not enforceable when it is *not* in proper position *and* sufficiently legible (i.e., *not* (p *and* q)). What this means—in its disjunctive form—is that a traffic sign is not enforceable when it is *either* not in its proper position *or* when it is not sufficiently legible (i.e., (*not* p) *or* (*not* q)).

{¶17} Pursuant to R.C. 1.42, all words and phrases contained in statutes must “be read in context and construed according to the rules of grammar and common usage.” Furthermore, R.C. 2901.04(A) generally provides that “sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.” Therefore, given the specific language used by the General Assembly in stating when a traffic sign can be enforced against the driver of a motor vehicle, R.C. 4511.12(A) must be interpreted in accordance with the rules of logistic reasoning.

{¶18} Because a stop sign is only enforceable when it is both legible and in a proper position, a motorist can escape punishment when the stop sign is not properly placed, notwithstanding the fact that it is still legible. Seemingly, legibility should be the only requirement. However, until the legislature decides to amend R.C. 4511.12(A), the courts of this state are obligated to apply the present version of the statute as written in R.C. 1.42 and 2901.04(A).

{¶19} “Once it has been demonstrated that a traffic control device exists in a specific location, an inference arises that the traffic control device was placed pursuant to lawful authority.” *State v. Rivera*, 11th Dist. Ashtabula No. 2001-A-0005, 2001 Ohio App. LEXIS 4290, *6 (Sept. 21, 2001), citing *Akron v. Cook*, 67 Ohio App.3d 640, 643,

588 N.E.2d 157 (1990). The burden then switches to the defendant to rebut the inference that the traffic control device, i.e., a stop sign, was placed in compliance with the Ohio Manual of Uniform Traffic Control Devices. See *Id.* at *7-8. In the face of adversarial evidence regarding the position of the sign, the ultimate burden of proof reverts back to the state. *Mills*, 1988 Ohio App. LEXIS 2962. But, see, *State v. Kilgore*, 175 Ohio App.3d 665, 2008-Ohio-1162, ¶11, in which the defendant's burden of rebutting the inference is viewed as an affirmative defense.

{¶20} In this case, appellant claims the stop sign did not meet the state requirements for mounting heights. In support, he cites sections 2A.18.04 and 2A.18.05 of the OMUTCD. The first section provides that, in rural areas, the minimum height of a traffic sign shall be five feet, as measured from the sign's lower edge to the "near" edge of the pavement. The next section states that, in business, commercial, or residential areas where there are likely to be pedestrians or parked vehicles, the minimum height shall be seven feet.

{¶21} As part of his testimony, the licensed land surveyor stated that he measured the distance from the bottom edge of the stop sign to the top edge of the pavement, and that the distance was only forty-seven inches. Given that the lowest minimum height for a traffic sign under the OMUTCD is five feet, i.e., sixty inches, the surveyor's testimony rebuts the inference that the stop sign was positioned in accordance with the state requirements. The state did not present any evidence contradicting the surveyor's testimony. Therefore, the stop sign was not enforceable against appellant and he could not be found guilty. Appellant's first assignment is well taken.

{¶22} In light of our disposition of the first assignment, the second assignment is moot and need not be addressed. See App.R. 12(A)(1)(c).

{¶23} Appellant's conviction is reversed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.