

[Cite as *Cleveland v. Tricarichi*, 2017-Ohio-969.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104615

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

MICHAEL TRICARICHI

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2016 TRD 014214

BEFORE: Stewart, J., Kilbane, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: March 9, 2017

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MELODY J. STEWART, J.:

{¶1} As a defense for a charge of speeding, defendant-appellant Michael Tricarichi argued that the speed limit signs in the area where his infraction occurred failed to conform to the Ohio Manual on Uniform Traffic Control Devices minimum height requirements. The court rejected this argument and found Tricarichi guilty. It found that the speeding infraction occurred in a construction zone and that there were several speed limit signs indicating the speed limit. In addition, the court found that any issue relating to the height of the speed limit signs “would be an issue for the Ohio Department of Transportation.” The sole assignment of error contests the court’s judgment.¹

¹ This appeal is not moot even though Tricarichi immediately paid his \$150 fine in order to avoid the imposition of court costs — the docket shows that the court imposed two traffic points, and those points constitute “a collateral disability that is sufficient to preserve the justiciability of an appeal.” *Cleveland v. Rini*, 8th Dist. Cuyahoga No. 100866, 2014-Ohio-3328, ¶ 5, citing *In re S.J.K.*, 114 Ohio St.3d 23, 2007-Ohio-2621, 867 N.E.2d 408, ¶ 18. Although Tricarichi is a resident of Nevada, we note that both Ohio and Nevada are members of the Interstate Driver’s License Compact, Article III of which requires that “[t]he licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee.” Article IV(b) of the compact states that “the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.” Nevada uses a points-based infraction system similar to Ohio, so absent evidence to the contrary, we have to assume the points assessed to Tricarichi in Ohio were applied in Nevada.

{¶2} A driver is only required to obey traffic control devices that are properly positioned and sufficiently legible to be seen by ordinarily observant persons. *See Maple Hts. v. Smith*, 131 Ohio App.3d 406, 408, 722 N.E.2d 607 (8th Dist.1999), citing R.C. 4511.12 (“No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person.”). However, “once the prosecution has proved that a traffic control device exists in a specific location, such device is presumed to be official and properly placed, and the burden of going forward to rebut such presumption falls on the defendant.” *Akron v. Cook*, 67 Ohio App.3d 640, 643, 588 N.E.2d 157 (9th Dist.1990) (citations omitted).

{¶3} The evidence showed that Tricarichi was traveling 53 m.p.h. along a portion of State Route 2 popularly known as “the West Shoreway.” At the time, the West Shoreway was under construction and photographs submitted into evidence showed several temporary signs indicating the speed limit as 35 m.p.h. Tricarichi testified that he came back to the road on “another day” and measured the height of those signs. He found that none of the signs was at least seven feet off the ground as measured from the pavement to the bottom edge of the sign.

{¶4} Tricarichi argues that the speed limit signs on the West Shoreway were not installed in conformity with Section 2A.18 of the Ohio Manual on Uniform Traffic Control Devices. That section requires all traffic warning and regulatory signs to be at least seven feet above the level of the pavement. The city of Cleveland does not dispute that its traffic control devices must comply with the Ohio Manual on Uniform Traffic Control Devices, but argues that the seven-foot height requirement did not apply because Tricarichi was traveling in a temporary traffic control zone.

{¶5} A temporary traffic control zone is defined by the manual as “an area of a highway where road user conditions are changed because of a work zone or incident by the use of temporary traffic control devices, flaggers, uniformed law enforcement officers, or other authorized personnel.” Ohio Manual on Uniform Traffic Control Devices, Section 1A.13(96). Regulatory signs, defined as “a sign that gives notice to road users of traffic laws or regulations,” when used in temporary traffic control zones and “mounted on a barricade, or other portable support, shall be at least 1 foot above the traveled way.” Ohio Manual on Uniform Traffic Control Devices, Section 6F.03(17).

{¶6} Tricarichi’s exhibit No. 1 is a photograph showing a 35 m.p.h. speed limit sign posted on portable support. That bottom edge of the speed limit sign is plainly more than one foot above the traveled surface. While the bottom edges of other signs affixed to nonportable supports did not appear to be at least seven feet above the traveled way, it was enough that at least one of the several speed limit signs did conform to the manual.² The court did not err by finding Tricarichi guilty of speeding.

{¶7} At oral argument, Tricarichi objected to the city’s argument that some of the speed limit signs conformed to the Ohio Manual on Uniform Traffic Control Devices, arguing that the city offered no evidence regarding temporary traffic control devices nor was that a basis for the court’s decision.

² Tricarichi’s exhibit No. 2 showed a 35 m.p.h. speed limit sign affixed to and above the top of a concrete barrier. Although there was no evidence showing the height of concrete barrier, the photograph shows a safety drum placed next to the concrete barrier. Drums used for road user warning or channelization must be at least 36 inches in height, Ohio Manual on Uniform Traffic Control Devices, Section 6F.67, paragraph 01, so it appears that this speed limit sign was more than three feet above the road surface, which would make it conforming in height. *See* Ohio Manual on Uniform Traffic Control Devices, Section 6F.04 (“Signs mounted on barricades, or other portable supports, shall be no less than 0.3 m (1 ft) above the traveled way.”) It is unclear however, whether a concrete barrier is considered a “barricade” or “other portable support” for purposes of Section 6F.03 (17). Our holding does not require us to resolve this question.

{¶8} While the court did not specifically cite the Ohio Manual on Uniform Traffic Control Devices and temporary traffic control devices as a basis for finding Tricarichi guilty, the court did state that “in each of the photographs there are several signs in which the speed limit is noted as 35.” In fact, Tricarichi’s own photographic evidence showed five separate 35 mile per hour speed limit signs, of which he objected to only two. Having raised the Ohio Manual on Uniform Traffic Control Devices as a defense to those two signs, he opened the door to consideration of the entire manual. The manual has the force of law, *Woods v. Beavercreek*, 62 Ohio App.3d 468, 575 N.E.2d 1219 (2d Dist.1989), so we cannot disregard it. Tricarichi cannot be heard to complain about the application of other provisions of the manual to one of “several” conforming speed limit signs that informed him of the lawful speed limit.

{¶9} Judgment 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 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

SEAN C. GALLAGHER, J., CONCURS;

MARY EILEEN KILBANE, P.J., CONCURRING IN JUDGMENT ONLY WITH SEPARATE OPINION

MARY EILEEN KILBANE, P.J., CONCURRING IN JUDGMENT ONLY:

{¶10} I concur in judgment only for the reason that I would affirm the trial court based on the appeal being moot. *Cleveland Hts. v. Lewis*, 187 Ohio App.3d 786, 2010-Ohio-2208, 933 N.E.2d 1146, ¶ 11 (holding that where a defendant fails to allege a collateral disability and none can be inferred from the record, he can still pursue the appeal if the trial court denied his motion for a stay of execution of the judgment because his satisfaction of the judgment is deemed involuntary). In this case, Tricarichi voluntarily satisfied his sentence by paying the fine in full the day of sentencing, he did not seek a stay of the sentence in the municipal court or the court of appeals, and I would not infer a collateral disability from this record.

{¶11} The majority correctly notes that the imposition of points on a traffic offender's driving record does create a collateral disability that would preserve the justiciability of the appeal even if the offender has voluntarily satisfied the judgment. *In re S.J.K.*, 114 Ohio St.3d 23, 2007-Ohio-2621, 867 N.E.2d 408, paragraph one of the syllabus. However, the record does not demonstrate that any points were ever imposed on Tricarichi's driver's license. He is a resident of Nevada and, at oral argument, the parties represented that no points have been imposed on Tricarichi's driving record because he is not an Ohio licensed driver. I do not believe the law allows us to presume that the Nevada licensing authority imposed traffic points on Tricarichi's driving record as a result of an Ohio traffic infraction. Because the appeal is moot, I would not reach the merits.