

Not Reported in N.E.2d

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CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio, Sixth District, Lucas County.
STATE of Ohio, Appellee,

v.

Darroll C. TRINKLE, Appellant.
No. L-87-266.

July 22, 1988.

Appeal from Sylvania Municipal, Court No. 87-TR-D-
I357.

DECISION AND JOURNAL ENTRY

*I This cause is before the court on appeal from the Sylvania Municipal Court. The court rendered judgment against defendant-appellant, Darroll C. Trinkle, finding him guilty of violating R.C. 5577.04. Having timely filed a notice of appeal, appellant asserts the following assignments of error:

"ASSIGNMENT OF ERROR #I

"THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO TRY THE DEFENDANT-APPELLANT FOR A VIOLATION OF OHIO REVISED CODE SECTION 4513.34.

"ASSIGNMENT OF ERROR #II

"THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN FINDING THAT THE PERMIT, CARRIED AND PRODUCED BY THE DEFENDANT-APPELLANT, WAS NULL AND VOID.

"ASSIGNMENT OF ERROR #III

"THE STATE FAILED TO PROVE THAT THE DEFENDANT-APPELLANT HAD VIOLATED ANY TERMS OR CONDITIONS OF THE PERMIT.

"ASSIGNMENT OF ERROR #IV

"THE FINE IMPOSED BY THE TRIAL COURT EXCEEDS THAT WHICH IS PERMITTED BY LAW."

Appellant was operating a tractor trailer on Interstate Route 475 when he was stopped by Ohio State Trooper Earl Click. During the stop, appellant produced a special hauling permit [hereinafter the "permit"] that allowed appellant's vehicle to weigh 145,000 pounds. A

standardized document, the permit contained several potentially applicable "special provisions", and provided further that:

"[n]on-compliance with special provisions of [the] permit * * shall render the permit null and void and the operator of the vehicle subject to arrest, as provided in [R.C.] 5577.02 to 5575.05 inclusive * * *"

One such special provision provided that, if applicable, the operator was required to secure a flag to each end of the front bumper and at each end of the four corners of the vehicle. Concluding that this provision applied to appellant's permit, Trooper Click observed that appellant's tractor was without flags on the front bumper.

Pursuant to the permit's other provisions, appellant's putative flag failure rendered the permit null and void. Absent a special permit issued under R.C. 4513.34, a vehicle's weight cannot exceed the gross maximum weight of 80,000 pounds established under R.C. 5577.04(B)(2). Since appellant's vehicle exceeded this amount by 49,390 pounds, Trooper Click issued to appellant a uniform traffic citation, alleging appellant had violated R.C. 5577.04.

This case proceeded to a trial before the court. The trial court found that appellant failed to display flags as required under the permit's special provisions. Under the permit's other provisions, the lower court concluded that the permit was null and void. Accordingly, the court found appellant guilty of violating R.C. 5577.04 because appellant's vehicle exceeded the nonpermitted gross maximum weight by 49,390 pounds. Pursuant to R.C. 5577.99, appellant was fined \$1,533.00.

Appellant contends under his first assignment of error that he should have been charged with violating R.C. 4513.34. We do not agree. R.C. 4513.34 does not establish a rule of conduct, the violation of which creates a punishable crime. Instead, this section authorizes the director of transportation to issue special permits. Consequently, we find that appellant could not have been charged with violating R.C. 4513.34. Accordingly, we find appellant's first assignment of error not well-taken.

Appellant supports his second assignment of error with three arguments. Appellant first argues that the legislature did not delegate the authority to the director of transportation to provide that a special permit is void when its holder does not conform to the permit's requirements. The Second District Court of Appeals addressed this issue in *State v. Weaver* (App.1957), 79 Ohio Law Abs. 258. Then, as in the instant case, the defendant-appellant

contended that "the Director of Highways had no authority for including the limitation or condition to the effect that in the event of a violation of [the permit's] terms and requirements by the holder, the permit should be rendered null and void * * *" The appellate court disagreed, holding in its syllabus that

*2 "I. The Director of Highways in issuing a special permit authorizing the operation of vehicles exceeding the maximum weights as provided by law has the power and authority to insert a condition in such permit that in the event of a violation of its terms and requirements by the holder the permit would be rendered null and void and the operator of the vehicle subject to arrest under § 7250-I GC, providing a penalty for a violation of the maximum weights and loads permitted on public highways or streets. (Sec. 6307-106 GC.)"

The statutory law underlying the court's reasoning in *Weaver, supra*, mirrors the sections of the Revised Code applicable to the instant case. As in *Weaver, supra*, the director of transportation is statutorily empowered to issue a special permit authorizing its holder to operate a vehicle exceeding the maximum weight limits. R.C. 4513.34. Identically to *Weaver, supra*, the director of transportation is statutorily authorized to "limit or prescribe conditions of operation for [an overweight] vehicle." *Id.* Pursuant to these delegated powers, the court in *Weaver, supra*, found that:

"[T]he special permit authorized by law to be issued in the discretion of the Director of Highways was designed to protect the defendant as a holder of same, providing the conditions assented to were complied with, otherwise the defendant would be amenable and subject to the penalties as specifically prescribed by the legislature for hauling a load in violation of the requirements of the law."

We find this reasoning persuasive, particularly since its statutory underpinning is identical to the present version of R.C. 4513.34. Accordingly, we find that appellant's first argument is without merit.

Appellant next contends that a special permit cannot be voided without process under R.C. 119.12. We do not agree. R.C. 119.12 provides a right of appeal for an order issued by an agency pursuant to an adjudication. Moving an overweight vehicle is lawful only on the issuance of a special permit pursuant to R.C. 4513.34. This statute authorizes the director of transportation to prescribe conditions of operating an overweight vehicle. Accordingly, the director of transportation has conditioned the lawfulness of operating an overweight vehicle upon operator compliance with the provisions of the special permit. Pursuant to this delegation of authority under R.C. 4513.34, a special permit may be voided without an agency order or adjudication. Since an order and adjudication are not required to void a special permit, we find that process under R.C. 119.12 was not required in the case sub judice.

Consequently, we find appellant's second argument is without merit.

Appellant lastly argues under his second assignment of error that R.C. 4513.34 expressly provides that violation of the requirements of a special permit is a misdemeanor. Our review finds no such express provision. Concluding that appellant's argument is without merit, we find that appellant's second assignment of error is not well-taken.

*3 Appellant argues under his third assignment of error that he was under no duty to post flags on his vehicle. To support this argument, appellant asserts that flags were not required by his permit. We agree. To reiterate, the uniform permit in the case sub judice provides 15 special provisions that are potentially applicable to any special hauling permit. Each special provision is denoted by a numeral. The special provision for flags is denoted by the numeral one. Directions on the permit state that a special provision applies when a check mark is placed near the corresponding numeral. Our review of the permit in the instant case finds that a check mark was not drawn near the first numeral. [FNI] Since there is no check mark, we find that the special provision for flags did not apply in the instant case. Accordingly, we find appellant's third assignment of error well-taken.

Appellant essentially contends under his fourth and final assignment of error that he should not have been convicted and fined in the instant case. We agree. Appellant's conviction was premised on the conclusion that he had violated the permit's special provision for flags. However, we have found there was no such violation. Accordingly, we find appellant's fourth assignment of error well-taken.

The judgment of the Sylvania Municipal Court is reversed at appellee's costs and defendant is ordered discharged.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. See also Supp.R. 4, amended 1/1/80.

CONNORS, J., and RESNICK, P.J., concur in judgment only.

GLASSER, J., dissents.

FNI. We note that a line has been drawn through the first numeral; however, we find this insufficient to invoke the requirements of the first special provision.

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