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NOTICE: UNPUBLISHED OPINION

NOTICE

Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited for any proposition of law, nor as an example of the proper resolution of any issue.

Court of Appeals of Alaska.

Leland S. CLUFF, Appellant,

v.

STATE Of Alaska, Appellee.

No. A-4760. | Oct. 6, 1993.

Appeal from the District Court, Third Judicial District, Anchorage, [Sigurd E. Murphy](#), Judge.

Attorneys and Law Firms

[Dan Allan](#), Anchorage, for Appellant.

Susan Wibker, Assistant District Attorney, Edward E. McNally, District Attorney, Anchorage, and [Charles E. Cole](#), Attorney General, Juneau, for Appellee.

Before: BRYNER, Chief Judge, [COATS](#) and [MANNHEIMER](#), Judges.

Opinion

MEMORANDUM OPINION AND JUDGMENT*

BRYNER, Chief Judge.

*1 A jury convicted Leland S. Cluff of driving a commercial motor vehicle without a commercial driver's license, a class A misdemeanor. [AS 28.33.150\(a\)\(1\)](#). Cluff appeals his conviction, raising three related contentions: that his conduct was not prohibited by [AS 28.33.150](#); that [AS 28.33.150](#) is vague if it is construed to prohibit his conduct; and that there was insufficient evidence at trial to support his conviction under [AS 28.33.150](#). We affirm.

[Alaska Statute 28.33.150](#) became effective on April 1, 1992. On April 7, Cluff was driving a wrecker truck that was towing an inoperative dump truck; Alaska State Trooper Bradley Brown stopped Cluff on Glenn Highway when Cluff had failed to stop at a weigh station. On the inner door of Cluff's wrecker truck was a plate from the manufacturer specifying that the gross combination weight rating (GCWR) of the truck was 48,000 pounds and that the gross vehicle weight rating (GVWR) was 25,500 pounds. Cluff did not have a commercial driver's license, but only a Class D license for driving passenger cars.

At trial, Cluff testified that he had been an employee of the municipal power company for ten years and also had a part-time business called Cluff Enterprises in which he bought, fixed up, and sold vehicles; Cluff characterized this part-time business as a "hobby." Cluff had a business license showing that he co-owned a business called "Cluff Enterprises." Cluff estimated that he had made an average of about \$15,000 a year over the last ten years from his part-time business. Cluff testified that he used his wrecker truck to tow other vehicles but never hired out such towing as a paid service. Cluff testified that he had already sold two other vehicles that year for his part-time business and that he had intended to sell parts of both the wrecker he was driving and the dump truck he was towing on April 7. Cluff testified that he had gone to the department of motor vehicles, read pamphlets there, and decided that he did not need a commercial driver's license. He also testified that he had received "conflicting answers" when he had spoken to department employees.

[Alaska Statute 28.33.150\(a\)\(1\)](#) provides: "[a] person is guilty of a class A misdemeanor if the person drives a commercial motor vehicle in this state without being licensed or privileged in this state to drive a commercial motor vehicle..." [Alaska Statute 28.33.190\(2\)](#) provides that "commercial motor vehicle" is defined in [AS 28.40.100](#). [Alaska Statute 28.40.100\(a\)](#) provides in part:

(2) "commercial motor vehicle" means a motor vehicle or a combination of a motor vehicle and one or more other vehicles

(A) used to transport passengers or property;

(B) used upon a land highway or vehicular way ...; and

(C) that

(i) has a gross vehicle weight rating or gross combination weight rating greater than 26,000 pounds;

(ii) is designed to transport more than 15 passengers, including the driver; or

*2 (iii) is used in the transportation of [hazardous] materials ...;

(D) except that the following vehicles meeting the criteria in (A)-(C) of this paragraph are not commercial vehicles:

(i) emergency or fire equipment that is necessary to the preservation of life or property;

(ii) farm vehicles ...; and

(iii) recreational vehicles used exclusively for purposes other than commercial purposes;

(3) “commercial purposes” means activities for which a person receives direct monetary compensation or activities for which a person receives no direct monetary compensation but that are incidental to and done in furtherance of the person's primary business;

....

(8) “gross combination weight rating” means the value specified by the manufacturer as the loaded weight of a combination vehicle, except that if a value has not been specified by the manufacturer, the gross combination weight rating is determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and the load on the towed unit;

(9) “gross vehicle weight rating” means the value specified by the manufacturer as the loaded weight of a single vehicle;

....

(11) “motor vehicle” means a vehicle which is self-propelled except a vehicle moved by human or animal power;

....

(21) “vehicle” means a device in, upon, or by which a person or property may be transported or drawn upon or immediately

over a highway or vehicular way or area except devices used exclusively upon stationary rails or tracks....

Cluff makes two arguments that he was not driving a commercial vehicle under these statutes. First, Cluff argues that he was not driving “a combination of a motor vehicle and one or more other vehicles” with a GCWR of over 26,000 pounds. This argument is without merit. Cluff concedes that he was driving a wrecker truck with a GCWR greater than 26,000 pounds (its actual rating was 48,000 pounds) and that the wrecker truck was towing a dump truck; Cluff nevertheless argues that a truck towing another truck is not a “combination” of vehicles and that the dump truck he was towing is not a “vehicle” because it was disabled and could not move on its own. However, the phrase “a combination of a motor vehicle and one or more other vehicles” in [AS 28.40.100\(a\)\(2\)](#) includes on its face one motor vehicle towing another vehicle, and the definition of “vehicle” in [AS 28.40.100\(a\)\(21\)](#) specifically includes a device that may transport persons or property even though the device is not a self-propelled “motor vehicle” under [AS 28.40.100\(a\)\(11\)](#). The disabled dump truck could have transported persons or property while Cluff was towing it with his wrecker truck.¹

Second, Cluff argues that his truck was excluded from the statutory definition because it was a “recreational vehicle[] used exclusively for purposes other than commercial purposes.” Cluff points out that [AS 28.40.100](#) does not specifically define the term “recreational vehicle” and argues that the term includes his wrecker truck because he used it to tow vehicles for his “hobby” of Cluff Enterprises and therefore as a form of “recreation.” This argument, too, is without merit. The term “recreational vehicle” does not refer to the subjective state of mind of the vehicle's driver; it connotes a particular type or class of vehicle that, by design and manufacture, is meant for recreational use.² Whatever the extent of this class might be at its peripheries, it cannot reasonably be understood to include a wrecker truck towing a dump truck.

*3 Cluff also contends, relying on the same arguments, that the statute's definition of “commercial motor vehicle” is unconstitutionally vague and that there was insufficient evidence at trial to support his conviction for driving a “commercial motor vehicle.” Again, we reject these arguments. The definitions in [AS 28.40.100\(a\)](#), despite the absence of a separate definition of “recreational vehicle,” are straightforward and clear; the undisputed evidence at trial

proved that Cluff drove a commercial motor vehicle under the definitions. We AFFIRM the conviction.

Footnotes

- * Entered pursuant to [Appellate Rule 214](#) and Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3).
- 1 Indeed, a photograph taken at the scene reveals that Cluff was, in fact, transporting property in the back of the dump truck that he was towing.
- 2 Webster's New World Dictionary (2d College Ed.1980) defines "RV" (recreational vehicle) as "any of various vehicles, as campers, trailers, and motor homes, outfitted as a place to live, as when camping out."

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