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NOTICE: UNPUBLISHED OPINION

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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.

Larry VARILEK, Appellant,

v.

STATE of Alaska, Appellee.

No. A-5351. | May 3, 1995.

Appeal from the District Court, Third Judicial District, Palmer, Peter G. Ashman, Judge.

Attorneys and Law Firms

[Gregory Heath](#), Assistant Public Defender, Palmer, and John B. Salemi, Public Defender, Anchorage, for Appellant.

[David G. Berry](#), Assistant District Attorney, Palmer, [Kenneth J. Goldman](#), District Attorney, Anchorage, and [Bruce M. Botelho](#), Attorney General, Juneau, for Appellee.

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

Opinion

MEMORANDUM OPINION AND JUDGMENT*

[COATS](#), Judge.

*1 A jury convicted Larry Varilek of driving a commercial motor vehicle without a commercial driver's license, a class A misdemeanor. [AS 28.33.150\(a\)\(1\)](#). Varilek appeals, contending that District Court Judge Peter G. Ashman should have suppressed the evidence arising from an unlawful search of his vehicle by a commercial vehicle enforcement officer whose commission as a special officer had temporarily lapsed. Varilek also contends that Judge Ashman incorrectly

instructed the jury on the evidence required to establish that Varilek had been driving a “commercial motor vehicle.” We affirm.

On August 10, 1993, Alaska State Trooper Steven W. Garrett was observing traffic on Parks Highway when a “military-type” truck pulling a trailer loaded with a large concrete slab passed him by. Garrett followed the truck and trailer and saw that they appeared to be unsafe; Garrett signaled that the driver of the truck should pull over and stop and contacted the driver, Varilek. Garrett called for a commercial vehicle inspector to come to the scene and examine Varilek's vehicles for specific safety violations. After Officer Wayne L. Renz arrived and began the inspection, Garrett left the scene.

Renz, a Commercial Vehicle Enforcement Officer with the Department of Public Safety, immediately estimated just from observing Varilek's truck and loaded trailer that their weights qualified them as a “commercial motor vehicle” requiring a commercial driver's license. Renz asked Varilek whether Varilek had a commercial driver's license; Varilek answered that he did not and showed Renz only a regular driver's license. Renz then inspected Varilek's truck; he determined from a manufacturer's plate on the truck's dashboard that its designated gross vehicle weight rating was 23,530 pounds. He also measured the size of the concrete slab on Varilek's trailer; the concrete measured about ten feet by twenty-six feet by ten inches. Renz was unable to actually weigh the loaded trailer with his portable scales. However, Robert Lewis, a construction materials engineer, testified at trial that, based on his review of photographs that Renz had taken at the scene and on Renz's measurements, the slab of concrete alone had weighed over 30,000 pounds. Based on this evidence, the jury found Varilek guilty of driving a commercial motor vehicle without a commercial driver's license.

On appeal, Varilek first contends that Judge Ashman erred by denying his motion to suppress the evidence against him on the ground that Renz had not been authorized to perform the search on August 10, 1993, because his certification as a special officer had expired. Renz had routinely received commissions as a “special officer” in accordance with [AS 18.65.010](#) and [AS 28.35.225](#) each year. At some time after August 10, 1993, Renz discovered that, due to a lapse in the paperwork from Juneau, his commission had not been in effect on that date. Renz was again certified and commissioned as a special officer on October 12, 1993.

*2 Judge Ashman denied Varilek's motion to suppress, ruling that Garrett's initial traffic stop and detention had been lawful and that Garrett could properly summon another Public Safety official to make additional observations at the scene of the stop, regardless of whether the other official was commissioned as a special officer and had independent police authority to effect the stop. Judge Ashman also noted that the operation of commercial motor vehicles is a highly regulated industry whose participants are subject to stops and inspections for safety and other regulatory violations under [13 Alaska Administrative Code \(AAC\) 04.006](#).

We conclude that the expiration of Renz's commission as a special officer did not render his observations of Varilek's trailer inadmissible. Varilek does not dispute that Garrett, a state trooper, had reasonable suspicion that Varilek's truck and trailer were unsafe and could validly stop Varilek. [13 AAC 04.006\(a\)](#) provides that “[a] police officer ... having reasonable cause to believe that a vehicle is unsafe ... may require the driver of the vehicle to stop and submit the vehicle to an inspection and tests as may be appropriate.” Garrett could properly determine that it was “appropriate” for a commercial vehicle officer to perform the inspection and require that Varilek submit his truck and trailer to the inspection. Garrett could properly then summon Renz, who was not a state trooper but was, like Garrett, an employee of the Department of Public Safety, and direct him to perform the inspection. The determinations Renz made during this inspection—that Varilek had no commercial driver's license, that Varilek's truck had a certain gross vehicle weight rating, and that the concrete slab on Varilek's trailer had a certain size—were legally made and were admissible, regardless of whether Renz would have had the broad authority as a special officer to stop Varilek and seize and search the vehicle himself.¹ Nor did the fact that Garrett left the scene while the inspection was underway vitiate Varilek's obligation to remain and continue to submit his vehicles to the inspection. *See* [13 AAC 04.006\(c\)](#) (the driver may not refuse to submit the vehicles to inspection).

Varilek next contends that Judge Ashman erred by rejecting his proposed jury instruction that would have required the state to prove the “actual weight” of his trailer and its load of concrete, “not an estimated weight.”² Varilek argued below that the state could not prove that Varilek's truck and trailer met the weight requirements in the statutory definition of “commercial motor vehicle” because the state had not actually weighed his loaded trailer but had only estimated the weight of the concrete based on its size. Judge Ashman

rejected this argument and simply instructed the jury with the statutory language defining “commercial motor vehicle,” “gross vehicle weight rating,” and “gross combination weight rating.”

*3 [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;

....

(9) “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;

(10) “gross vehicle weight rating” means the value specified by the manufacturer as the loaded weight of a single vehicle[.]

The statutory language of [AS 28.40.100](#), repeated verbatim in the instructions Judge Ashman provided the jury, required the state to prove that the “gross combination weight rating”—in this case, the sum of the truck's “gross vehicle weight rating” (shown by the plate on the truck's dashboard to be 23,530 pounds) and “the total weight of the towed unit and the load on the towed unit”—was “greater than 26,000 pounds.” Nothing in this statutory language or in the definition of the offense requires that the state establish the exact weight of the loaded towed unit by actually weighing it; the state need only show that that weight, when added to the gross vehicle

weight rating of the power unit, exceeded 26,000 pounds. The state may show this by presenting an estimate of the weight. Cf. *Young v. State*, 848 P.2d 267, 271-72 (Alaska App.1993) (estimates of repair costs sufficient to prove that value of damage to property equaled or exceeded \$500 for purposes of second-degree criminal mischief statute).

In this case, because the gross vehicle weight rating was 23,530 pounds, the jury was required to find only that the weight of the trailer and its load exceeded 2,470 pounds.

Cf. *Young*, 848 P.2d at 272 (“the jury could properly have found that Young caused \$483.46 in damages [for broken windows;] [a]ccordingly, to reach the \$500 jurisdictional limit ... the jury need only have concluded that the damaged ... door was worth seventeen dollars or more”). Lewis' estimate that the concrete slab alone weighed over 30,000 pounds was sufficient to support the jury's verdict.

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 [AS 18.65.010](#) allows the commissioner of public safety to appoint persons as “special officers” for limited periods of time, granting them broad powers to “prevent crime, pursue and apprehend offenders, obtain legal evidence, institute criminal proceedings, execute warrants of arrest or search and seizure, or other criminal process issuing from any court of the state [and] make arrests in the same manner as a member of the division of state troopers.” [AS 18.65.010\(b\)](#). [AS 28.35.225](#) further provides that “employees of the department designated by the commissioner” along with “[a]ll law enforcement officers in this state” “shall enforce this title and regulations adopted under this title.”
- 2 Varilek's proposed jury instruction read:
In determining the gross vehicle weight rating of a combination vehicles [sic] where there is no value specified by the manufacturer for the combination vehicle, the total weight of the towed unit and the load on the towed unit is the actual weight of towed [sic] unit and its load, not an estimated weight.