

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

March 31, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-3558

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT III

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STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

LARRY E. KRAEMER,

DEFENDANT-RESPONDENT.

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APPEAL from an order of the circuit court for Taylor County:  
GARY L. CARLSON, Judge. *Reversed and cause remanded with directions.*

MYSE, J. The State appeals the trial court's denial of its motion to direct a verdict against Larry Kraemer in this civil action arising under § 348.17(1), STATS. (operating a vehicle in violation of special weight limitations). The State argues that the trial court erred because all the elements of the offense charged against Kraemer were undisputed. Because this court agrees, the order is

reversed and the cause is remanded to the circuit court to direct a verdict against Kraemer.

Kraemer was cited for violating a special weight limitation imposed on a bridge. The bridge was posted with a forty-ton limit sign both several miles away from the bridge and on the bridge itself. At a jury trial, Kraemer admitted to driving an overweight truck over the bridge. The State moved for a directed verdict, which was held in abeyance pending the jury's decision. The jury returned a verdict of not guilty, and the State renewed its motion. The trial court summarily denied it.

The State filed a motion to reconsider, and a hearing was held. Again, the trial court denied the motion. The court reasoned that although it believed Kraemer was guilty, it simply refused to upset the jury verdict. The State appeals.

The State argues that all five elements of the offense were undisputed, and that there is no credible evidence to the contrary. The jury was given the following elements in a jury instruction:

Before you may find the defendant guilty of this offense, the State must prove by evidence which is clear, satisfactory, and convincing that the following five elements were present.

The first element requires that the defendant operated a motor vehicle on a highway structure. A bridge is a highway structure.

The second element requires that state or local authorities have imposed a special weight limitation on said highway structure on which the defendant operated the motor vehicle.

The third element requires that a sign(s) had been erected as required by § 349.16(2) giving notice of such weight limitation on said highway structure.

Section 349.16(2):

“Imposition of the special weight limitations authorized ... shall be done by erecting signs on or along the highway on which it is desired to impose the limitation sufficient to give reasonable notice that a special weight limitation is in effect and the nature of that limitation. Imposition of the special weight limitations authorized ... shall be done by erecting signs before each end of the bridge or culvert to which the weight limitation applies sufficient to give reasonable notice that a special weight limitation is in effect and the nature of that limitation.”

The fourth element requires that the vehicle was not being operated under a permit expressly authorizing such weight limitations to be exceeded.

The fifth element requires that the weight of the vehicle operated by the defendant exceeded the weight limitations on the highway structure.

A directed verdict may be granted where “the court is satisfied that, considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party.” Section 805.14(1), STATS. In denying the State’s motion, the trial court did not identify any credible evidence to support the jury’s verdict. Nor, for that matter, did Kraemer do so at the hearing or on appeal.

Where the elements of a civil offense are undisputed, a case should be taken from the jury and a verdict of guilty entered by the court. *City of Omro v. Brooks*, 104 Wis.2d 351, 353, 311 N.W.2d 620, 621 (1981). This court has reviewed the record and agrees with the State that there is no dispute that Kraemer met all the elements of the civil offense. The defense counsel admitted during closing arguments that there was no dispute as to the first and fourth elements. The second element was established by the uncontroverted testimony of Stan Woods, the State Bridge Engineer for the Wisconsin Department of

Transportation, that the State authorities imposed a weight restriction of forty tons on the bridge in question. The third element was established by the testimony of State Patrol Inspector Daniel Boese, confirmed by the defendant himself, that unobstructed signs stating a forty-ton limit are posted on both the bridge itself and on the highway several miles back. The fifth element was established by Boese's testimony that he weighed the vehicle at 97,900 pounds, 17,900 pounds over the forty-ton limit, and the defendant's own following testimony:

Q And yet you clearly know that the bridge says not over 40 tons and yet you knew you were over 40 tons, correct?

A Yes, but it is a short bridge.<sup>1</sup>

The State therefore clearly met its burden of proving the elements, and a directed verdict should have been granted.

This court acknowledges the strong public policy against overturning a jury verdict. In this case, however, the record strongly suggests that the jury operated under an erroneous view of the law. Despite objections, Kraemer successfully introduced evidence and argument suggesting that he did not violate the statute because (1) his truck and trailer amounted to two vehicles, and (2) the law required his entire vehicle to be on the bridge at the same time. The trial court properly rejected these legal theories, but unfortunately, the jury apparently did not.

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<sup>1</sup> This testimony belies the claim Kraemer advances on appeal that "No evidence was presented by the plaintiff-appellant to prove that the defendant-respondent operated a vehicle that exceeded the weight limitations on the highway structure."

*By the Court.*—Order reversed, and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.