

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: :
 : Case No. 08-43-TR-CVF
Notice of Apparent :
Violation and Intent to :
Assess Forfeiture. :

- - -

PROCEEDINGS

before Mr. Kerry H. Sheets, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room F, Columbus, Ohio, called at 10:00 a.m.
on Thursday, March 27, 2008.

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4 Pro se.

5 Mark Dann, Ohio Attorney General
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On behalf of the Staff of the Public
10 Utilities Commission.

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1 Thursday Morning Session,

2 March 27, 2008.

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4 THE ATTORNEY EXAMINER: The Public

5 Utilities Commission of Ohio has set for hearing at

6 this time and place Case No. 08-43-TR-CVF, In the

7 Matter of David E. Pheanis II. My name is Kerry

8 Sheets, an attorney-examiner for the Commission, and

9 I have been assigned to hear this case.

10 May I now have the appearances of the

11 parties please starting with staff.

12 MR. JONES: Good morning, your Honor. On

13 behalf of the Transportation Staff of the Public

14 Utilities Commission, Ohio Attorney General Marc

15 Dann, assistant attorneys general Sarah Parrot and

16 John Jones, 180 East Broad Street, Columbus, Ohio

17 43215.

18 THE ATTORNEY EXAMINER: Thank you,

19 Mr. Jones.

20 Mr. Pheanis, please give your name and

21 address.

22 MR. PHEANIS: David E. Pheanis,

23 P-H-E-A-N-I-S, 258 North Delmar, Dayton, Ohio,

24 45403.

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1 THE ATTORNEY EXAMINER: Do you have any
2 preliminary matters to take care of this morning?

3 MR. JONES: Yes, your Honor. On behalf
4 of the Transportation Staff and Mr. Pheanis, we had a
5 discussion off the record before the proceeding and
6 have agreed that Staff Exhibits 2 through 4 that go
7 to the calculation of the assessment in this case for
8 the forfeiture of \$100 for the seat belt violation is
9 a calculation that was done consistent with the
10 Commercial Vehicle Safety Alliance. That part of the
11 case is not being contested; just the seat belt part
12 of the violation is being contested there.

13 With that agreement, the staff would move
14 for the admission of Staff Exhibits 2 through 4,
15 which Staff Exhibit 2 would be the calculation
16 charge, your Honor, showing that for the seat belt
17 violation, that's where the \$100 came from, and the
18 other exhibits, 3 and 4, 3 goes to Notice of Intent
19 to Assess Forfeiture sent to Mr. Pheanis showing the

20 \$100, and then again later there was another letter
21 sent to Mr. Pheanis, Notice of Preliminary
22 Determination after there was a settlement conference
23 with Mr. Pheanis indicating again the \$100 for the
24 assessment being calculated by staff in this case.

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1 So with those exhibits not being
2 challenged or contested here, we would move for that
3 in lieu of any testimony being provided by staff on
4 that issue, Jonathan Frye is here this morning, but
5 again, it will not be necessary we believe for him
6 take the stand and give testimony since this is not a
7 contested issue.

8 THE ATTORNEY EXAMINER: You are in
9 agreement with staff's motion?

10 MR. PHEANIS: Yes, sir.

11 THE ATTORNEY EXAMINER: Very good, I will
12 admit the exhibits at this time.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 - - -

15 JOHN W. ASBROCK

16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Ms. Parrot:

20 Q. Officer Asbrock, would you state your

21 full name for the record?

22 A. John W. Asbrock, last name spelled

23 A-S-B-R-O-C-K. I'm a trooper for the Ohio State

24 Highway Patrol.

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1 Q. Please state your business address.

2 A. It's Rombach Avenue, Wilmington. I think
3 it's 900 on 950. I don't remember the exact numbers.

4 Q. Okay, thank you. You mentioned you're
5 employed by the State Highway Patrol; is that
6 correct?

7 A. Yes, ma'am.

8 Q. And in what capacity are you employed?

9 A. I'm a motor carrier trooper.

10 Q. And what are your responsibilities as a
11 motor carrier trooper?

12 A. As a motor carrier trooper I carry all
13 the responsibilities of a normal state trooper for
14 the state of Ohio, and in addition to that I do
15 commercial motor vehicle enforcement, inspections,
16 and everything that goes with the motor carrier
17 division, licensing and commercial standards.

18 Q. Thank you. How long have you worked for
19 the Department of Public Safety?

20 A. I became commissioned as a state trooper

21 September 7, 1984.

22 Q. And how long have you been employed in

23 your current position?

24 A. I want to say April 2004. I believe

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1 that's the date.

2 Q. Do you hold any certifications or have
3 you received any special training?

4 A. Yes, I have.

5 Q. Would you please tell us about that?

6 A. Back when I first took the position, I
7 went through the course, North American course for
8 logbook, vehicle inspections, HazMat, tank, and cargo
9 tank.

10 Q. Officer Asbrock, were you on duty on
11 November 20, 2006?

12 A. Yes, I was.

13 Q. And what was your assignment on this
14 date?

15 A. My assignment on that date was the area
16 of Interstate 75, Butler and Warren Counties, Ohio.

17 Q. And did you inspect a commercial motor
18 vehicle driven by the respondent, Mr. Pheanis, on
19 that date?

20 A. Yes, I did.

21 Q. Officer Asbrock, I believe you have
22 before you what's been marked as Staff Exhibit 1 for
23 identification purposes. Do you have that before
24 you?

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1 A. Yes, I do.

2 Q. And, Mr. Pheanis, do you also have a copy
3 of that exhibit before you?

4 A. Yes.

5 Q. Officer Asbrock, do you recognize this
6 document?

7 A. It appears to be a document I completed
8 that date.

9 Q. And would you please identify it for us?

10 A. Report No. 0H015800174. It's a vehicle
11 inspection report.

12 Q. And what does the document show us?

13 A. It shows us the carrier is a ground
14 transport. The driver is David Pheanis II. It was a
15 tractor-trailer -- a tractor pulling a trailer. It's
16 got four violations documented on there. There are
17 what appears to be blacked-out areas on this report
18 and it's probably a highlighter that I used on that
19 date, and then because of out-of-service issues, I

20 tried to make note of those so it is more

21 recognizable for the carrier.

22 It shows my signature at the bottom and

23 then the driver's signature and then the second page

24 is the information for getting the vehicle repaired

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1 and where to mail it within 15 days from the date of
2 inspection.

3 A. Thank you.

4 Q. Who prepared this inspection report?

5 A. I did.

6 Q. And did you prepare this report as part
7 of your official duties?

8 A. Yes, I did.

9 Q. And could you please tell us about how
10 you actually prepared this report itself?

11 A. There's a program in my laptop in my car
12 called Aspen. I enter the DOT number for the
13 carrier, bring up all the carrier information that is
14 in there. If not, I have to physically enter it
15 myself, enter the driver's information, the vehicle
16 information, and then the violations I find on my
17 inspection.

18 On this particular day I did a walkaround
19 inspection. The reason for the stop is pretty much

20 the stuff I put in.

21 Q. You mentioned you have a laptop. Is that
22 provided to you by the State?

23 A. Yes, it is.

24 Q. Does the report look like Staff Exhibit 1

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1 as you prepare it?

2 A. It in the computer itself it looks a
3 little different, but when you print it out, this is
4 the way it is printed out.

5 Q. And when during the inspection did you
6 prepare the report, at what point?

7 A. I prepared the report -- I completed the
8 report after my walkaround inspection where I take
9 notes, write them down and take it, put it in the
10 computer and print it.

11 Q. You take handwritten notes during the
12 inspection?

13 A. Yes. I carry a little notebook and make
14 short notes on it. After about a year you can't read
15 them.

16 Q. And you use those notes to enter the
17 information into the laptop?

18 A. Yes, that's correct.

19 Q. The information in this report because

20 you were completing it after the inspection, would

21 you say it's accurate at the time you prepare the

22 report?

23 A. Yes.

24 Q. And what do you do with the report after

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1 you prepare it?

2 A. After I prepare it, I print out a copy
3 for the driver giving the instructions that are
4 required. I have them sign the report for receipt of
5 the copy, and then either at that time or later on
6 that evening or within the next couple days I'll
7 upload it to the main terminal in Columbus.

8 Q. So Mr. Pheanis received a printed copy of
9 this inspection report.

10 A. Yes, he did.

11 Q. And he signed this copy of the inspection
12 report.

13 A. Yes.

14 Q. The printed copy.

15 A. Yes.

16 Q. And you sent a copy of this inspection
17 report to the Public Utilities Commission.

18 A. Yes; through the Internet system, however
19 you want to refer to it.

20 Q. Thank you. I'd like to take a closer
21 look at the report itself now, if you don't mind. I
22 know you have given us a good overview of it, but
23 please start at the top, in the top right corner and
24 please tell us what that shows us.

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1 A. The top right corner says Driver/Vehicle
2 Examination Report, Report No. OH0158001714; the date
3 of inspection is 11/20/2006; start time at 08:55 a.m.
4 I ended the inspection at 09:47 a. m.; inspection
5 level 2, walkaround, no Hazmat.

6 Q. What does a level 2 inspection involve?

7 A. Inspect the driver's credentials,
8 paperwork for the vehicle, paperwork for the load if
9 it's carrying a load, and walkaround inspection:
10 Check lights, tires, wheels, wheel fasteners, visible
11 brake hoses, visible springs. I check under the hood
12 for steering components, brake hoses going to the
13 brake chambers, steering link, all the steering
14 components, general body condition, tires.

15 Q. Thank you. The next section of the
16 report, please tell us what that shows us.

17 A. Okay. The top left part of that section
18 shows Brown Transport, their address, DOT number, the
19 phone number, MCMX number.

20 Q. I'm sorry, is Brown Transport the

21 carrier?

22 A. Yes, Brown Transport is the carrier. And

23 directly to the right of that is the driver's

24 information, driver's name, license number and date

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1 of birth and the state it is issued to. Beneath all
2 that is the location of the inspection. This
3 inspection was done -- considered a roadside
4 inspection in Franklin, State Route 73, Warren
5 County, mile post 7, and the load, cargo was empty.

6 Q. Mr. Pheanis was not carrying any cargo in
7 this case?

8 A. No.

9 Q. And where did you obtain this information
10 about Mr. Pheanis?

11 A. From him himself. Most of the time it's
12 from the driver's license.

13 Q. Thank you. The Vehicle Identification
14 Section, what does that show us, please?

15 A. This particular combination was a
16 two-unit combination. It had a tractor-trailer,
17 Kenworth 1995, license plate, the company truck
18 number, and the vehicle identification number. Unit
19 No. 2 is a trailer, 1994, shows the license plate,

20 the company number, and the vehicle identification

21 number also.

22 Q. And below that I see there's a section

23 for brake adjustments.

24 A. Yes. Because of the level 2, brake

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1 adjustments are not required.

2 Q. Okay. And then the middle section of the
3 report there is headed Violations. Do you see that?

4 A. Yes, ma'am.

5 Q. And what violations were noted in this
6 case?

7 A. Okay. I documented four violations on
8 this particular report. They're not directly in the
9 order of the way I found them. It's just the way
10 I've entered them. On the first violation listed
11 here is failing to use the seat belt while operating
12 a commercial motor vehicle, and I observed that
13 violation. The next violation would be the steering
14 axle, left spring to axle U bolts were loose. Then
15 trailer real axle left wheel fasteners, two of 10
16 wheel fasteners loose; and then both mud flaps for
17 the trailer were too short. The left one I measured
18 at 25 inches, and it was allowed 15 inches -- no I
19 take that back. The left one was allowed 15 inches

20 and was 8 -- the left one measured 15 inches and was
21 allowed 8 inches, 8.334, and the second one measured
22 15 inches and was allowed 8.6 inches. The height of
23 the mud flap from the roadway is determined by a
24 measurement from the center of the rearmost axle to

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1 the mudflap itself, and it is allowed for one-third
2 that distance from the ground to the bottom of the
3 mud flap.

4 Q. Okay. The first violation at issue in
5 this case, I want you to please take us from the left
6 side of this report and kind of explain to us working
7 our way over to the right what the information
8 represents.

9 A. On the left side it's the section code,
10 which is 392.16. And the next column says St, which
11 is designation of the state statute, and I did not
12 put it down as a state statute. Unit says D, which
13 means drivers. OOS means out of service; I have put
14 N, which is not. Citation number. there's no
15 citation number, which means I did not issue a state
16 citation for that issue. And the Verification is for
17 the out-of-service issues. There's an N there so it
18 didn't matter. Crash, the N means it was not a crash
19 involved, and then the Violation Discovered.

20 Q. And it indicates there that you observed

21 the violation; is that correct?

22 A. That's correct.

23 Q. Okay. I'd like to talk a little bit more

24 about the violation itself. Where were you, in your

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1 cruiser, I assume, is that correct, when you were on
2 duty that day?

3 A. Yes.

4 Q. And where were you physically located?

5 A. Probably driving. I don't remember
6 exactly where I was as far as I know it occurred on
7 State Route 73 and mile post 7 out in the Franklin
8 area. I could have been going east, west, north,
9 south.

10 Q. It's that a state route?

11 A. Yes.

12 Q. Is it a two lane, four-lane highway?

13 A. It all depends on what part of 73 that
14 you're on. One area is a two-lane divided, and
15 another one is two-lane joined or total four lanes
16 width, and when you get down into town, it's
17 different there because it's city streets.

18 Q. Where were you when you first observed
19 Mr. Pheanis's vehicle?

20 A. State Route 73 near mile post 7.

21 Q. Okay. Thank you, why did you stop

22 Mr. Pheanis's vehicle?

23 A. Well, the reason for the stop was for

24 traffic enforcement, was the reason code, and I

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1 notice I've got two traffic issues that fall under
2 state code on this. I show a mud flap violation,
3 which is definitely a state violation for mud flaps
4 being too short, and also the safety belt violation.

5 Q. Did you have a clear view of Mr. Pheanis
6 from your vehicle?

7 A. Obviously I did if I put down that I
8 observed the violation, so I've had to have had a
9 clear view.

10 Q. And you could see Mr. Pheanis was not
11 wearing his seat belt?

12 A. That was my observation, that's correct.

13 Q. Thank you. Did you enter Mr. Pheanis's
14 vehicle at any time?

15 A. If I did, it had been at the driver's
16 door or maybe in the passenger door to check dash
17 lights, low air warning, tractor protection, feel for
18 the defroster, check the inside of the windshield
19 looking out. As far as totally climbing into and

20 having a seat in the seat, I cannot say I did because

21 chances are I didn't.

22 Q. Did you have a conversation with

23 Mr. Pheanis about the seat belt violation?

24 A. I might have, and if I did, I didn't

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1 document it at all. I can't answer that.

2 Q. Do you routinely discuss violations?

3 A. I try to. I try to.

4 Q. Do you remember anything that Mr. Pheanis

5 may have said to you during the inspection?

6 A. No, I don't.

7 Q. Directing your attention back to

8 Exhibit 1, your inspection report, in the State

9 Information part of the report do you see where that

10 is?

11 A. Yes.

12 Q. I believe you mentioned that the reason

13 code there was a traffic stop; is that correct?

14 A. Yes.

15 Q. That's what you testified?

16 A. Yes.

17 Q. And would you please tell us, do you see

18 where it says for-hire carrier?

19 A. Yes.

20 Q. Would you please tell us what that shows

21 us?

22 A. Yes.

23 Q. And what does that mean, the Y?

24 A. A for-hire carrier, they're hired out to

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1 haul -- they do not haul their own product. I make
2 this piece of paper, and I haul it. I'm not for
3 hire. I make this piece of paper and give it to
4 Mr. Pheanis to haul, and I pay him to haul. That's
5 for hire.

6 Q. Go ahead.

7 A. A simple way to explain.

8 Q. And it indicates a yes, this is a
9 for-hire carrier involved in this case.

10 A. Yes.

11 Q. And then at the bottom I believe you
12 mentioned already that this indicates -- is that your
13 signature in the lower left corner?

14 A. Yes.

15 Q. And your badge number.

16 A. Yes.

17 Q. And then Mr. Pheanis signed this report
18 as well, is that what we see there?

19 A. Yes.

20 Q. It's presumably his signature?

21 A. Yes.

22 Q. Thank you. Are there any other additions

23 to this report that were not present at the time you

24 printed this report, anything else on the report

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1 itself that wasn't there at the time you printed it?

2 A. I'm not sure.

3 Q. The other signatures on the report?

4 A. The other signature on the report,

5 there's signatures on this report now that weren't

6 there when I relinquished it to the driver. One of

7 the signatures, and it's hard to see, but it's up

8 under Signature of Repair. It's about three-quarters

9 of the way down with the dark line going through it,

10 that signature was not there. The Signature of Motor

11 Carrier, title and the date was not there and the

12 whole second page. All the signatures and the

13 information at the bottom of that where it says

14 Certification of Completed Repairs, those signatures

15 weren't there at the time I relinquished the report.

16 Q. At what point are those signatures

17 obtained?

18 A. As far as those, the report is given to

19 the driver to turn into his motor carrier, and then

20 they take care of it from there. I couldn't tell

21 you, you know, if the people are truthful. The lady

22 signed it on the 21st and so on and so forth. I

23 don't watch those signatures.

24 Q. And both pages of this report are given

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1 to the driver?

2 A. Yes, ma'am, it is.

3 Q. So aside from the signatures that we just
4 discussed, is this an accurate representation of the
5 report you gave to Mr. Pheanis?

6 A. Yes, it is, with the exception of a
7 couple things. The "Staff Exhibit 1" is not there,
8 and the PUCO time stamp on the top is not there.

9 Q. Thank you for pointing that out. Is this
10 a record that's kept in the ordinary course of
11 business?

12 A. Yes.

13 Q. During the inspection were you wearing
14 your uniform?

15 A. November 20 I would have been in a long
16 sleeve shirt and tie, unless I was wearing a jumpsuit
17 that day. Chances are I was in the uniform very
18 similar to the one I have on today.

19 Q. Were you in your marked cruiser on that

20 date?

21 A. Yes, I was.

22 Q. At what point did you observe Mr. Pheanis

23 not wearing his seat belt?

24 A. While traveling on the roadway.

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1 Q. So it was before you approached his
2 vehicle?

3 A. Before I made the traffic stop.

4 Q. Before you inspected the vehicle.

5 A. Yes, definitely before that.

6 MS. PARROT: Your Honor, we have no
7 further questions for the witness.

8 THE ATTORNEY EXAMINER: Mr. Pheanis, do
9 you have any questions for the officer?

10 MR. PHEANIS: Yes, sir, I do.

11 THE ATTORNEY EXAMINER: Proceed.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Pheanis:

15 Q. Trooper Asbrock, you say you have been
16 working that area for about four years.

17 A. No. I have been a commercial vehicle
18 trooper for about four years; actually working that
19 particular area since 1991.

20 Q. Okay. So you know the area pretty well.

21 A. Yes, I do.

22 Q. Your business address, do you go to that

23 address every day that you are employed at work?

24 A. The Rombach Avenue?

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1 Q. Yes.

2 A. No, I do not.

3 Q. So there's other addresses that you go to
4 to start your day as a trooper?

5 A. If I report to another facility -- my
6 main business address where I'm stationed is out of
7 Wilmington. If I do not go to Wilmington, there are
8 times I may go to Lebanon or I might go to Hamilton.
9 I might not go to either one, and it all depends what
10 my assignment is for the day.

11 Like this week, for example, I'm working
12 Sunday through Thursday afternoons. Sunday I did not
13 report to any facility, per se. Monday night I did,
14 and Tuesday and Wednesday I didn't. I just went out
15 and worked the road. But to answer the question, my
16 assigned address is the Rombach address.

17 Q. Okay. This day that you came in contact
18 with me you were on State Route 73, correct?

19 A. That would be correct.

20 Q. But you don't know exactly that part of
21 State Route 73 you encountered me other than a mile
22 post, an estimated --
23 A. Mile post 7, which should be out in the
24 73 area.

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1 Q. Is that exactly where you encountered me

2 or is that an estimated site?

3 A. As far as?

4 Q. Where you encountered me.

5 A. I put down on the inspection report it

6 was mile post 7. Did I encounter you exactly at mile

7 post 7? I'd have to say no.

8 Q. Do you keep a notebook, a notepad you

9 stated earlier?

10 A. I write stuff down on a notepad. I carry

11 it around. I call them reporter pads, and I use a

12 page, and I get done with them, and I don't keep

13 them.

14 Q. You don't have it with you today?

15 A. No, I do not.

16 Q. You cannot go back to your notes and

17 recall anything from that notepad?

18 A. Okay. What I write on my notepads, I put

19 it down in my report itself. Normally what I do, I

20 put down the carrier name, DOT number, and the

21 violations that occur.

22 Q. You no longer have that notepad?

23 A. That is correct, I do not.

24 Q. Your computer in your state trooper

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1 vehicle you were using at the time, can you pull that

2 out of the car?

3 A. Yes, I can.

4 Q. Is it in the car with you today, or are

5 you using your POV?

6 A. What do you mean?

7 Q. Your personal vehicle.

8 A. No, I'm using a patrol vehicle today.

9 Q. Is it the same computer you used at the
10 time of the stop?

11 A. I got to say I don't know because I've
12 had three different computers, and the one I've got
13 now I believe I got last year around July. So the
14 one I had in 2006, no, I do not have that one. I
15 have a different one.

16 Q. It would be fair to say there's several
17 people that have access to the computers,
18 particularly the one used the day you pulled me over.

19 A. No. At the time nobody else has access

20 to it except me. Since the time since I turned the

21 computer in, yes.

22 Q. Okay. How long have you been wearing

23 glasses?

24 A. Off and on quite a few years.

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1 Q. Were you wearing them the day you
2 encountered me?

3 A. Probably was.

4 Q. But you don't know for sure?

5 A. Well, 100 percent I can't answer that.

6 Q. How long have you been wearing glasses?

7 A. You want an exact date? I can't tell
8 you.

9 Q. It was like 20 years?

10 A. Do you want the year? 1974.

11 Q. Okay. So you should be putting on your
12 glasses every day when you go to work.

13 A. I do put them on when I go to work.

14 Q. You can't tell me if you had them on at
15 the time you encountered me.

16 A. Sometimes I wear sunglasses. Sometimes I
17 don't. I normally wear these glasses.

18 Q. But you can't tell me 100 percent you had
19 those glasses on when you encountered me.

20 A. I did not have these glasses on when I

21 encountered you.

22 Q. Did you have sunglasses on?

23 A. Probably not; because I got these glasses

24 December 2006.

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1 Q. Okay. Do you have a prescription for
2 sunglasses?

3 A. No, I don't.

4 Q. Okay. You say you were traveling in your
5 vehicle. Do you know at what rate of speed you were
6 traveling when you encountered me and noticed me not
7 wearing a seat belt?

8 A. No, I don't know. I did not document how
9 fast.

10 Q. You don't have a clue?

11 A. I don't know. I answered it. What more
12 do you want?

13 Q. Was I at rest or was I traveling?

14 A. I don't know.

15 Q. Okay. When we stopped, do you recall
16 stepping up on my truck?

17 A. I probably did.

18 Q. Okay. Do you recall where you stopped me
19 at?

20 A. No, I do not.

21 Q. Do you recall at what time you filled out

22 this report on your computer?

23 A. I filled it out between 9:55 and

24 9:47 a.m.

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1 Q. Was it at the point of the stop or at
2 another location?

3 A. It was where I did the inspection.

4 MR. PHEANIS: Your Honor, I have no
5 further questions for the officer.

6 THE ATTORNEY EXAMINER: Do you have any
7 redirect?

8 - - -

9 REDIRECT EXAMINATION

10 By Ms. Parrot:

11 Q. I believe you testified you obtained
12 those particular glasses in December 2006; is that
13 correct?

14 A. That's correct.

15 Q. And the date of this what?

16 A. November 2006.

17 Q. And so were you wearing -- did you have
18 in your possession another frame, another set of
19 glasses at that time?

20 A. Yes, I did.

21 Q. Are those prescription glasses that you

22 have worn since 1974?

23 A. Yes, '74, I started with prescription

24 glasses.

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1 Q. And that's what you wear during the
2 course of your job.

3 A. Yeah. I mainly need them for reading.
4 It's just easier to wear them all the time, and there
5 are times I do not have them on my face, but the
6 majority of the time I have them on.

7 Q. But they're primarily for reading.

8 A. Yes.

9 Q. Is that what you testified?

10 A. Yes.

11 MS. PARROT: We have nothing further,
12 your Honor.

13 THE ATTORNEY EXAMINER: Do you have any
14 questions on recross?

15 MR. PHEANIS: Actually, I do, your Honor.

16 - - -

17 RE CROSS-EXAMINATION

18 By Mr. Pheanis:

19 Q. Trooper Asbrock, can you tell me what

20 color the interior of my truck is?

21 A. No.

22 MS. PARROT: Objection, your Honor, not

23 limited to the scope of the redirect examination.

24 THE ATTORNEY EXAMINER: I'll allow the

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1 one question about color.

2 You have to limit your recross to what
3 she said on redirect, but I'll allow this question.

4 Go ahead and answer if you can.

5 THE WITNESS: I already did. I don't
6 know what color the inside of his truck is.

7 MR. PHEANIS: That's all I have for right
8 now.

9 THE ATTORNEY EXAMINER: All right. That
10 will conclude. Do you have any more?

11 MS. PARROT: I would move for the
12 admission of Staff Exhibit 1 .

13 THE ATTORNEY EXAMINER: I will admit
14 Staff Exhibit 1 at this time.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 MS. PARROT: We have no further
17 witnesses.

18 THE ATTORNEY EXAMINER: Very good.
19 We will proceed to your side of the case.

20 MR. PHEANIS: Okay.

21 MR. JONES: Can we go off the record?

22 THE ATTORNEY EXAMINER: All right.

23 (Discussion off the record.)

24 - - -

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1 DAVID E. PHEANIS II

2 being first duly sworn, as prescribed by law, was
3 examined and testified as follows:

4 DIRECT TESTIMONY

5 MR. PHEANIS: The day I was pulled over I
6 was emptying a load in Springboro, and I did that and
7 started down I believe it's 741 and encountered
8 Trooper Asbrock at 741 and Route 73. We went about
9 three miles, four miles to get on the ramp to 75
10 south, and he turned his lights on when I was in the
11 turn lane to get onto 75 south.

12 I was proceeding down to a truck stop to
13 get some repairs made on my vehicle because I had
14 made an inspection earlier that day and found that
15 these things were messed up on my truck.

16 I pulled over on the shoulder of the
17 ramp, set my parking brakes, and I've been pulled
18 over more than once so I know what he is going to
19 require from me, so in the interest of saving time

20 and me trying to get my job done and get these
21 repairs made, I released my seat belt, stood up in
22 the truck and moved to the other side of the vehicle,
23 took the paperwork out of the dash, sat back down,
24 and within a matter of probably three seconds, the

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1 trooper came up and started to address me.

2 He went through a couple of issues with
3 me stating what he wanted to do. He wanted to do a
4 DOT inspection and asked for the paperwork and asked
5 me to get out of the truck, that we would do a
6 walkaround.

7 He made some comments when I was sitting
8 in the seat about me wearing a seat belt and about my
9 size, and he saw why I wasn't wearing a seat belt.
10 Well, the way I was raised, I don't argue with
11 officers. There's courts for that, so if he's going
12 to write me a citation, he's going to do it. I'm not
13 going to argue with it. That's just how I was
14 raised.

15 He asked me to exit the vehicle. We
16 started going through the inspection -- let me back
17 up. He asked me to turn my blower motor on for my
18 defrost, so I did that, turned it off, got dust in my
19 face. He said he was used to it. I said I'm not.

20 He started talking again about what he
21 wanted me to do, and he stepped to the front of the
22 vehicle and asked me to turn the turn signal on. I
23 did both. He stepped to the back of the vehicle. I
24 turned my turn signals on again as he requested,

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1 turned on my flashers, my brakes. He went through
2 all that.

3 He said: Step out the vehicle. He
4 popped the hood. He started inspecting the
5 mechanical parts and the -- not the drive train area
6 but the motor compartment of my vehicle. And he
7 said: Come here, let me show you something. He
8 showed me the U bolts were loose, and he was shaking
9 the steering column that goes to the steering box. I
10 said: I know that. I was headed down there to get
11 it fixed at the Pilot.

12 At this point he stopped his inspection.
13 He said: Let's go town to the truck stop. I'll
14 finish the paperwork down there. So I closed the
15 hood up, went down to the truck stop. And he said --
16 he told me when we got parked I should come down
17 there and get in his vehicle and he would go through
18 this report with me and write stuff up. So we did
19 that.

20 He started showing me the different
21 violations of what I was get written up for, and he
22 exited the vehicle and went out and measured the mud
23 flaps and came back, continued writing his report.
24 He got done with the report asked me to sign it and

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1 showed me all this stuff that was wrong with the
2 vehicle and what I needed to repair.

3 I exited his vehicle. He said: Hang on
4 a minute. I need to see the report again. I said:
5 No problem; got back in the vehicle. He added
6 something to the report and reprinted it and handed
7 it to me again. So I signed it again, exited the
8 vehicle and walked over to the mechanic's shop and
9 started addressing the issues that needed to be
10 repaired with this truck.

11 At no point in time did I not wear
12 my seat belt because I have an issue with that, a
13 big issue with not wearing it. And even when we
14 moved from the point of the initial stop to where he
15 did his report at the truck stop, I had a seat belt
16 on.

17 That's it.

18 THE ATTORNEY EXAMINER: Does that
19 conclude your testimony?

20 MR. PHEANIS: Pretty much.

21 THE ATTORNEY EXAMINER: Do you have any

22 questions?

23 MS. PARROT: Thank you.

24 - - -

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1 CROSS-EXAMINATION

2 By Ms. Parrot:

3 Q. Good morning, Mr. Pheanis.

4 A. Good morning.

5 Q. Please tell us about how you first

6 encountered Officer Asbrock on that date.

7 A. Are you talking about verbally, or me

8 physically seeing him?

9 Q. When you were both in your vehicles

10 before the inspection, you were on the roadway. He

11 was on the roadway. How did you first encounter him?

12 A. I made a right-hand turn off of I believe

13 it's 741. I'm not sure what the road number is. It

14 comes out of Dayton down to Springboro. I have to

15 look at my map. I don't use that road that often.

16 Anyway I, made a right-hand turn and was traveling

17 east back towards 75, and I saw the trooper at the

18 light.

19 Q. And what was your position in relation to

20 his?

21 A. Well, let's just say this is the

22 intersection right here. I'm on 741. He's on 73.

23 He would be sitting at the light over here, and I

24 made my right-hand turn, and he was -- I can't say

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1 for exact, but he was about two or three cars back

2 from the intersection.

3 THE ATTORNEY EXAMINER: Excuse me, you're
4 describing an intersection at right angles?

5 THE WITNESS: Yes. Pretty much a T
6 intersection. It's a four-way stop. There's a gas
7 station on the corner. I mean, there's other things
8 down there. I can't recall right off the top of my
9 head, but it's a four-way stop.

10 THE ATTORNEY EXAMINER: Thank you.

11 Go ahead, please.

12 Q. (By Ms. Parrot) So just so I understand
13 it, the officer was stopped at the intersection, and
14 he would have been able to see you from his driver's
15 side door or from your driver's side door.

16 A. I have been driving a truck for 17
17 years, and in his position and me sitting in that
18 driver's seat, no, he couldn't see. There's no way
19 he could see where -- how I was sitting in that

20 truck.

21 Q. But you were both stationary at the light

22 at the intersection; is that correct?

23 A. At that time, yes.

24 Q. And the officer again, just so we're

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1 clear, the officer was not on the same road as you

2 were; is that correct?

3 A. No, he wasn't.

4 Q. He was to your left.

5 A. Yes.

6 MS. PARROT: Thank you.

7 THE ATTORNEY EXAMINER: Let me just ask a

8 question. Can you describe your seat belt, what it

9 looks like? Is it a lap and shoulder harness or just

10 a lap or what?

11 THE WITNESS: This no, it's a lap and

12 shoulder harness. It has to be pulled down from my

13 left across my body, and it snaps on my -- over the

14 top of my right leg, and the clasp, it's not really

15 in the middle. It's more up against the seat.

16 THE ATTORNEY EXAMINER: Thank you.

17 MR. PHEANIS: May I add something your

18 Honor?

19 MS. PARROT: Objection, your Honor.

20 There's no question pending.

21 THE ATTORNEY EXAMINER: I will allow him

22 to make a statement.

23 MR. PHEANIS: Thank you.

24 - - -

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1 REDIRECT TESTIMONY

2 MR. PHEANIS: Your Honor, I pretty much
3 wear the same clothes to work every day. This shirt
4 says Water Works because I used to work at
5 Roto-Rooter. My wife still does. Roto-Rooter shirts
6 are black shirts. I've had this hat for two years,
7 and you can tell it's pretty nasty, same thing every
8 day.

9 The interior of my truck is black. Well,
10 that truck anyway is black so it's pretty dark in
11 there all the time, and the way that truck sits, I
12 sit back, and there's a panel right here on the cab,
13 and I sit back there and I drive like that all the
14 time. So it would be next to impossible for the
15 trooper to be sitting in a car to see whether I had
16 my seat belt on, next to impossible.

17 And for the last week driving down the
18 road in my personal vehicle or my tractor-trailer, I
19 have been looking at every angle that I can possibly

20 see in another tractor-trailer to see whether drivers

21 have their seat belt on.

22 Yesterday I came up on a guy pulling a

23 tanker that had a day cab with the window in the back

24 and one that wraps around the side, and I could not

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1 see until I got right up on this guy and I'm sitting
2 up level with him that he was wearing a seat belt
3 that was orange. So for this trooper to say that he
4 saw me without a seat belt on I find it absolutely
5 ridiculous. There's no way that he was driving or
6 sitting in his vehicle that he could see me.

7 MS. PARROT: Objection, your Honor.

8 THE ATTORNEY EXAMINER: Does that
9 conclude your statement?

10 MR. PHEANIS: Yes, sir.

11 THE ATTORNEY EXAMINER: Do you have any
12 further questions?

13 MS. PARROT: He's still testifying, your
14 Honor? I thought he was just making a brief
15 statement.

16 THE ATTORNEY EXAMINER: I'll consider it
17 part of the testimony. Go ahead if you want to ask
18 more questions.

19 - - -

20 RECROSS-EXAMINATION

21 By Ms. Parrot:

22 Q. What shirt were you wearing on the date

23 November 20, 2006?

24 A. As a matter of fact, the one I have on.

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1 Q. For the record, it is navy blue in color.

2 A. Yes. I have four shirts like this, four

3 Roto-Rooter shirts, four black shirts. That

4 particular day I was wearing a Water Works shirt.

5 Q. And your seat belt that you testified,

6 it's two pieces, shoulder and lab belt combination.

7 A. Yes.

8 Q. It's black in color; is that correct?

9 A. Yes.

10 Q. You mentioned you saw the officer was

11 over to your left. Would you please describe the

12 left side of the vehicle, the driver's side window on

13 your vehicle that you would have been driving on that

14 date?

15 A. Well, actually, that truck has a tint on

16 it, tinted window.

17 Q. So are you able to see clearly through

18 that window?

19 A. Yes, I am.

20 MS. PARROT: We have no further

21 questions.

22 THE ATTORNEY EXAMINER: Very good.

23 Do you have anything else to add?

24 MR. PHEANIS: I don't know what else can

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1 be added, your Honor. That would be it.

2 THE ATTORNEY EXAMINER: Okay.

3 MR. JONES: May I have one second, your

4 Honor.

5 THE ATTORNEY EXAMINER: Yes.

6 (Discussion off record.)

7 MR. JONES: Your Honor, we have nothing

8 further.

9 THE ATTORNEY EXAMINER: Let's go off the
10 record here.

11 (Discussion off record.)

12 THE ATTORNEY EXAMINER: The date to
13 submit simultaneous briefs case the will be May 7.

14 Okay. Nothing more to add, I'll consider
15 the case submitted on the record. Thank you for
16 coming.

17 (The hearing concluded at 11:00 a.m.)

18 - - -

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Thursday, March 27, 2008, and
5 carefully compared with my original stenographic
6 notes.

7 _____
8 Rosemary Foster Anderson,
9 Professional Reporter and
Notary Public in and for
the State of Ohio.

10 1 commission expires April 5, 2009.

11 (RFA-8119)

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Case No(s). 08-0043-TR-CVF

Summary: Transcript Forfeiture-David E. Pheanis,II electronically filed by Mrs. Jennifer D. Duffer on behalf of Armstrong & Okey, Inc.