

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: :
Gregory Tincher. : Case No. 08-593-TR-CVF
:
Notice of Apparent :
Violation and Intent to :
Assess Forfeiture. :

- - -

PROCEEDINGS

before Mr Daniel E. Fullin, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10:00
a.m. on Thursday, May 28, 2009.

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1 APPEARANCES:

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5 Pro se.

6 Richard Cordray, Ohio Attorney General
7 Duane W. Luckey, Senior Deputy
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9 Public Utilities Section
10 Mr. Stephen A. Reilly
11 Mr. Thomas Lindgren
12 180 East Broad Street, 9th Floor
13 Columbus, Ohio 43215-3793

14 On behalf of the Transportation Staff of
15 the Public Utilities Commission.

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1 Thursday Morning Session,
2 May 28, 2009.

3 - - -

4 THE ATTORNEY EXAMINER: The Commission
5 has scheduled for hearing at this time and place case
6 No. 08-593-TR-CVF, in the matter of Gregory Tincher,
7 Notice of Apparent Violation and Intent to Assess
8 Forfeiture.

9 My name is Daniel E. Fullin. I'm an
10 attorney examiner for the Commission assigned to the
11 case.

12 May I have the appearance on behalf of
13 the staff.

14 MR. REILLY: Thank you, your Honor. On
15 behalf of the staff of the Public Utility Commission
16 of Ohio, Richard Cordray, Ohio Attorney General,
17 Duane Luckey, section chief, Stephen Reilly and Tom
18 Lindgren, assistant attorneys general, 180 East Broad
19 Street, Ninth Floor, Columbus, Ohio.

20 THE ATTORNEY EXAMINER: Thank you.

21 And if you would like to give your name
22 and address for the record.

23 THE RESPONDENT: My name is Gregory
24 Tincher, 15354 Hillcrest Road, Mount Orab, Ohio.

25 THE ATTORNEY EXAMINER: What we would

1 like to do first -- does either party have something
2 to say before we get started on anything in terms of
3 an opening statement or anything? If not, if you
4 would like to call your first witness.

5 MR. LINDGREN: Thank you. The staff
6 calls John Canty to the stand.

7 - - -

8 JOHN CANTY
9 being first duly sworn, as prescribed by law, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Lindgren:

13 Q. Good morning, Mr. Canty.

14 A. Good morning.

15 Q. Can you state your name for the record?

16 A. John J. Canty, C-A-N-T-Y.

17 Q. Where are you employed?

18 A. Public Utilities Commission of Ohio.

19 Q. And what are your duties with the Public
20 Utilities Commission?

21 A. I am the assistant chief of the
22 compliance division.

23 Q. What are your duties in that position?

24 A. I supervise the employees who are
25 responsible for sending out the notice of the --

1 forfeiture notices and conducting the conferences.

2 Q. How long have you been in that position?

3 A. Approximately 16 years.

4 Q. What sort of training have you received
5 for your position?

6 A. Multiple training in Federal Motor
7 Carrier Safety rules, haz-mat rules, cargo tank
8 inspections, radioactive inspections, various
9 courses.

10 Q. So are you familiar with how the
11 Commission staff assesses forfeitures in motor
12 carrier cases?

13 A. Yes.

14 Q. Thank you.

15 MR. LINDGREN: Let the record show I am
16 handing the witness Staff Exhibit 1.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. Mr. Canty, do you recognize this exhibit?

19 A. Yes.

20 Q. Can you explain what this is?

21 A. This is a request for conference from
22 Mr. Tincher regarding the case at hand,
23 OH3256004572D.

24 Q. And what is the purpose of this document?

25 A. Once we send out a forfeiture notice to

1 the responsible party, they have the option of either
2 paying the forfeiture or requesting a conference in
3 writing, and Mr. Tincher requested a conference with
4 this document here.

5 Q. Thank you.

6 MR. LINDGREN: Let the record show I will
7 be handing the witness what has been marked as Staff
8 Exhibit 2.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Canty, do you recognize the document?

11 A. Yes, I do.

12 Q. Can you explain what it is?

13 A. This is the request from Mr. Tincher in
14 the same case, a request for administrative hearing.
15 This was dated May 12th of 2008. This is a document
16 he would have sent to the PUCO docketing division,
17 which is required for the responsible party to make a
18 request in writing if they would like to have an
19 administrative hearing.

20 Q. Thank you.

21 MR. LINDGREN: Let the record show I am
22 handing the witness what I have marked for
23 identification as Staff Exhibit 3.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Canty, do you recognize this

1 document?

2 A. Yes.

3 Q. And can you explain what this is?

4 A. Yes. This is called a Notice of
5 Preliminary Determination. This is notice that is
6 sent to the responsible party following the
7 conference. It was sent to Mr. Tincher dated May 5,
8 2008. It is our notice to him that a conference was
9 held, and as a result of the conference, we intend to
10 recommend that the fine stay at \$100.

11 Q. How would this recommended fine of
12 \$100 have been calculated?

13 A. We have an assessment chart that we use
14 based on the violations, Federal Motor Carrier
15 violations. They're divided into four categories
16 depending on where the -- where on the chart the
17 violation is placed. The forfeiture amount is
18 determined from that. A seat belt violation actually
19 is I believe in category No. 4, and that is a
20 straight \$100 fine.

21 Q. Thank you.

22 MR. LINDGREN: Let the record now reflect
23 I'm handing the witness what has been marked as
24 State's Exhibit 4.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. Mr. Canty, do you recognize the document?

2 A. Yes, I do.

3 Q. Is this the fine schedule you previously
4 referred to in your testimony?

5 A. Yes. This is the fine schedule for out
6 of service violations that the compliance division
7 uses, has groups 1, 2, 3 and 4 on the second page.
8 Group 4 you'll find a seat belt violation is a
9 straight \$100 fine.

10 Q. All right. So the recommended fine of
11 \$100, was that amount calculated in accordance with
12 the standard procedures used by the Public Utilities
13 Commission?

14 A. Yes, it was.

15 Q. Is that the amount you would recommend
16 today that the Commission assess against this
17 respondent?

18 A. Yes, I would.

19 Q. Mr. Canty, are you familiar with the
20 standards used by the Commercial Motor Vehicle Safety
21 alliance?

22 A. Yes, I am.

23 Q. Is this recommended fine amount
24 consistent with those standards?

25 A. Yes, it is.

1 MR. LINDGREN: Thank you.

2 I have no further questions for the
3 witness.

4 THE ATTORNEY EXAMINER: Let me ask you,
5 maybe you said this earlier, how does -- this is a
6 Commission document. The compliance division came up
7 with this chart.

8 THE WITNESS: Correct.

9 THE ATTORNEY EXAMINER: How did they
10 arrive at the maximum fine? I mean, when they put
11 this together, how did they come up with the numbers
12 that ended up being on the chart?

13 THE WITNESS: We referenced the CVSA,
14 Commercial Vehicle Safety Alliance, recommended fine
15 schedule. That's a national organization of
16 transportation specialists, enforcement specialists
17 who recommend what fines Federal Motor Carrier Safety
18 Regulation fines should be. We followed their
19 guidelines when we put this together.

20 THE ATTORNEY EXAMINER: Okay.

21 Mr. Tincher, do you have any questions
22 for Mr. Canty?

23 THE RESPONDENT: Yes, I do.

24 - - -

25

CROSS-EXAMINATION

By The Respondent:

Q. First, I mean, I was wearing my seat belt. I mean, I didn't have my shoulder strap on. That was apparent. I mean, I don't know, where do you assess that to fine me for not wearing a seat belt when I had the seat belt on?

A. Well, you were cited for violation of 392.16, use of seat belts. I'll just read what it says. A commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself with the seat belt assembly."

So the seat belt must be worn and it must be worn properly. If it is just a seat belt and only the belt is worn, if it's a the belt and shoulder assembly, the belt and the shoulder harness must be worn.

Q. I mean, does that state that in the safety regulation?

A. Yes, it does.

Q. The proper way to wear the seat belt?

A. Unless the driver has properly restrained himself.

Q. Properly restrained myself. I had the

1 seat belt on.

2 A. But not the shoulder harness.

3 Q. It doesn't state that's the proper way,
4 the proper way to wear the seat belt. I'm sorry, I
5 mean, that's the whole case of it. I mean, if I
6 wasn't wearing my seat belt, I wouldn't be here. I'd
7 pay the fine. It would be no problem.

8 MR. LINDGREN: Objection. The witness is
9 testifying now rather than asking questions.

10 THE ATTORNEY EXAMINER: Well, I mean, he
11 may not be real experienced in how to get the
12 evidence in at the right time. There will be a point
13 where he can provide the same kind of testimony and
14 you can have a chance to object. But I'm going to
15 allow it now for purposes of getting to the point
16 he's trying to get to. I think you will have a
17 chance to interrogate him about anything he's saying
18 now in terms of the facts when it is his time to
19 testify.

20 THE RESPONDENT: I mean, as I was saying,
21 I am of short stature, and when I'm in that seat
22 belt, the seat belt cuts into my neck, the shoulder
23 harness. I never, never in my truck or my vehicle do
24 not wear a seat belt. But I had the shoulder harness
25 pulled down. I'm guilty of that, I admit it here,

1 but I'm not guilty of not wearing the seat belt as
2 the ticket I'm being opposed on.

3 And, furthermore, I've asked him right
4 there in the safety regulation book, there's no
5 proper way stating in that regulation book, I read
6 it, too, that states how you have to wear that seat
7 belt other than having it on, clicked. Click it or
8 ticket. That's exactly what it says. That's my
9 statement.

10 THE ATTORNEY EXAMINER: Okay. I'm
11 learning some of the facts because I didn't know them
12 ahead of time, except what was in the letter in the
13 file.

14 So basically what this come down to from
15 your point of view is that you were wearing a seat
16 belt that had a shoulder belt, but you didn't have
17 the shoulder belt on. You had the seat belt on.

18 THE RESPONDENT: Yes, sir. I had it
19 pulled down, but I had the seat belt on.

20 THE ATTORNEY EXAMINER: And the testimony
21 from the witness was citing to the rule.

22 Just for my edification, could you read
23 that one more time about what it says about, if it
24 says anything, about wearing a shoulder harness in
25 addition to the seat belt

1 THE WITNESS: "A commercial vehicle which
2 has a seat belt assembly installed at the driver's
3 seat shall not be driven unless the driver has
4 properly restrained himself with the seat belt
5 assembly."

6 Seat belt assembly would mean the belt
7 and the harness. That is the seat belt assembly. It
8 doesn't say seat belt.

9 THE ATTORNEY EXAMINER: Is that defined
10 anywhere else in that code? Since they use that
11 word, is there a definition section?

12 THE WITNESS: It's not in this section.
13 I'm sure it is somewhere in some federal document
14 somewhere that the seat belt assembly includes the
15 belt and the harness. Knowing the fed, the federal
16 government, and how they define every possible thing
17 in the world, I am certain there's some code or some
18 document out there that defines a seat belt assembly
19 as the seat belt and the shoulder harness. It is not
20 contained in this section right here, but I don't
21 think that negates the violation.

22 THE ATTORNEY EXAMINER: Let me ask you,
23 are you going to have other testimony about the
24 citation itself? Is it going to be presented?

25 MR. REILLY: Yes.

1 THE ATTORNEY EXAMINER: I'll just wait to
2 hear on that then.

3 MR. REILLY: Generally we put on the
4 officer first and then Mr. Canty. We have taken this
5 out of order because Mr. Canty has a time constraint
6 here.

7 THE ATTORNEY EXAMINER: Okay.

8 THE RESPONDENT: Going back to the book,
9 I've read that book. I got that book at home. I
10 went through the whole thing on the seat belt. It
11 doesn't say nothing about the shoulder harness. It
12 says the seat belt. Whether it says assembly or not,
13 that's assembly.

14 I even went on the Internet and looked.
15 It says nothing on there about it. The proper --
16 exact proper way that the federal government wants
17 you to wear that seat belt, it says wear the seat
18 belt. If there's a seat belt in that vehicle, it
19 must be worn.

20 My whole argument of the thing, I was
21 wearing my seat belt and I wasn't wearing the
22 shoulder strap. I had it pulled down. I mean, I
23 said that right here on record.

24 THE ATTORNEY EXAMINER: Just to show you
25 that I'm following along what is happening, it seems

1 to me that the issue presented is that you're saying
2 what you just said, and that the staff position is
3 that the rule says more than seat belt, seat belt
4 assembly, and seat belt assembly is defined as the
5 seat belt with the shoulder harness. You have a
6 difference of opinion on that, but that seems to be
7 the point here of the case.

8 MR. REILLY: If I might, just to clarify,
9 it essentially is the same thing, the rule says seat
10 belt assembly. In addition, the staff has suggested,
11 quote, unquote, seat belt is really a term of art and
12 refers to the restraint and in any motor vehicle.
13 Whether it's an automobile or whether it's a
14 commercial motor vehicle, seat belt refers to the
15 restraint of the passengers in the motor vehicle. We
16 would suggest that also. We will get into that a
17 little more.

18 THE ATTORNEY EXAMINER: Okay.

19 Do you have any other questions of this
20 witness?

21 THE RESPONDENT: No.

22 THE ATTORNEY EXAMINER: Thank you for
23 your testimony.

24 You may call your next witness.

25 MR. REILLY: We will call Douglas

1 Hostetler.

2 - - -

3 DOUGLAS HOSTETLER

4 being first duly sworn, as prescribed by law, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Reilly:

8 Q. Good morning, Mr. Hostetler. Could you
9 state your name and spell it for the record?

10 A. Douglas W. Hostetler, H-O-S-T-E-T-L-E-R.

11 Q. What is your business address?

12 A. I am assigned to the Ohio State Highway
13 Patrol here in Columbus, but I'm at the Massillon
14 District Headquarters, State Route 172 in Massillon,
15 Ohio.

16 Q. Would you tell us by whom you are
17 employed and what your position is?

18 A. I'm a motor carrier enforcement
19 inspector. I'm employed by the Ohio State Highway
20 Patrol, the division of license and commercial
21 standards. My subheadquarters is the district
22 headquarters in Massillon, Ohio.

23 Q. And how long have you been in that
24 position?

25 A. Approximately six years.

1 Q. Were you employed by the patrol prior to
2 entering this position?

3 A. Yes. I was employed by the Ohio State
4 Highway Patrol as a dispatcher for years prior to
5 employment here in this division. And prior to that
6 I was a deputy sheriff assigned to road patrol in
7 Holmes County, Ohio, from 1982 to 1986.

8 Q. Okay. So you have been in law
9 enforcement and traffic control your entire career?

10 A. Yes, sir.

11 Q. And your entire career has been about how
12 long?

13 A. Approximately 27 years.

14 Q. Now in your current position, which you
15 said you have been in about six years --

16 A. Yes.

17 Q. -- do you have occasion to enforce the
18 commercial motor vehicle safety rules?

19 A. Yes, I do.

20 Q. And have you had any training in those
21 rules?

22 A. Yes, sir, I have. Initially upon my
23 transfer into this division there was a five-week
24 training period consisting of the level one Federal
25 Motor Carrier Safety standards, as well as haz-mat,

1 cargo tank, regular haz-mat and various other driving
2 schools and other updates throughout the next six
3 years after that.

4 Q. Has any of that training involved the
5 requirement involved in this case, to wear a seat
6 belt?

7 A. Yes, sir.

8 Q. And a number of the training programs
9 involve that or discuss that requirement, or just a
10 few?

11 A. A number of them within the commercial
12 division also, as well as just in law enforcement in
13 general.

14 Q. Okay. Now, you have heard here in the
15 hearing from Mr. Tincher. You have met Mr. Tincher?

16 A. Yes.

17 Q. Could you describe that meeting for us,
18 please?

19 A. It was on a commercial motor vehicle
20 inspection on US 30 on the roadside in western Wayne
21 County, Ohio.

22 Q. What occasioned that inspection?

23 A. Well, I was stationed in the median and
24 observed Mr. Tincher drive by. I observed he didn't
25 have any belt visible as he drove by. He was wearing

1 a tan tank top and a dark colored belt. In the
2 absence of that, I initiated a motor vehicle stop as
3 evidenced on the Aspen report I have in front of me.

4 Q. Can you describe a little more what
5 happened after you stopped Mr. Tinchler?

6 A. Right. Upon my first contact with
7 Mr. Tinchler, I walked up to the truck and greeted
8 him. I noticed that he was wearing his belt properly
9 at that time. When I say properly, his shoulder belt
10 was engaged across his shoulder, different than what
11 I initially observed.

12 I greeted him and told him the reason he
13 I stopped him, I was going to conduct a commercial
14 motor vehicle safety inspection, and I proceeded to
15 do so.

16 Q. Okay. What happened as a result of that
17 inspection?

18 A. I noted two violations, one the initial
19 violation for the stop was the lack of a presence of
20 a seat belt as he drove by, and number two was that
21 the license plate on the power unit of the truck was
22 different from that that should appear on it.

23 Q. And then what happened?

24 A. After doing the complete safety
25 inspection and obtaining some documents including his

1 CDL and medical card registration, bill of lading, I
2 returned to my patrol car, and I had a laptop
3 computer where I fill out this Aspen report which I
4 have here now.

5 Q. Can you tell us what the Aspen report is?

6 A. It's formatted document that I fill out
7 that basically is designed to document any violations
8 that I observe. It records the driver's information,
9 date and time of violation, the vehicles involved,
10 both power unit and trailer, general cargo
11 description, any violations listed.

12 There's a section here that I also put
13 notes down and I record those in case I would ever be
14 questioned in regards to different items on my
15 inspection here to refresh my memory.

16 Q. Okay. And where is this information
17 stored?

18 A. It's stored in my laptop, and at the end
19 of every shift I upload it to the federal government
20 on the website that we have, and my understanding,
21 the PUCO gets a copy as well as the federal
22 government upon that uploading.

23 Q. So the upload resulting from the Aspen
24 report is a record of the United States Department of
25 Transportation.

1 A. That's my understanding, yes.

2 Q. And it's a record of the Public Utilities
3 Commission of Ohio both.

4 A. That's my understanding also.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. And I have placed in front of you a
7 document identified as Staff Exhibit No. 5. Do you
8 see that document?

9 A. Yes, I do.

10 Q. I believe you said before that that was
11 the result -- that was the Aspen report.

12 A. That's the Aspen report that's initiated
13 during the roadside inspection.

14 Q. Okay. And by that you mean it's a
15 printout from the database.

16 A. Yes.

17 Q. It's the record of the federal government
18 and state of Ohio.

19 A. It's a printout of my inspection
20 conclusion.

21 Q. Okay. And it generally reflects -- the
22 information on there is information you put in at the
23 time of the inspection, correct?

24 A. Yes, sir.

25 Q. Let's talk about how to read it.

1 A. Okay.

2 Q. Let's go to the top of the record where
3 you see it say Driver/Vehicle Examination report.

4 A. Yes.

5 Q. Right underneath that is something called
6 a report number. Do you see that?

7 A. Yes.

8 Q. Could you tell us what that is?

9 A. That is OH3256004572. OH meaning Ohio.
10 3256 is my unit number. And the next six digits are
11 inspections numbers, and this one happened to be the
12 4,572nd inspection I've initiated.

13 Q. Okay. And there is an individual number,
14 individual to this particular inspection?

15 A. Yes; a unique number assigned to this
16 particular inspection.

17 Q. Beneath that I see something called the
18 Inspection Date.

19 A. Yes, sir.

20 Q. What's that?

21 A. That's August 21, 2007.

22 Q. And that's the date of the --

23 A. That's the date it occurred, yes, sir.

24 Q. To the immediate right is something
25 called the Certification Date. Do you know what that

1 is?

2 A. No, that I'm not familiar with.

3 Q. Okay. You did not put that in there.

4 A. No, sir.

5 Q. And then the Time Started is 11:15.

6 What's that?

7 A. That's military time for the time the
8 inspection occurred. That's 11:15 a.m. and to the
9 right is the conclusion time, which is 11:55 a.m.

10 Q. The next item in this block we have
11 Inspection Level. What is that?

12 A. That indicates it's an inspection level
13 No. II, which is a walkaround. There are several we
14 can choose from. This one in particular is just a
15 walkaround on the roadside.

16 Q. The next block begins on the left has
17 Hillsboro Transportation Code. What's shown there?
18 If you could take us through each of the blocks going
19 down each of the columns.

20 A. Whenever I enter the DOT number of the
21 carrier, it populates this line. On the left side of
22 the line Hillsboro Transportation Company, an address
23 as well as the phone number, their DOT number. Also
24 their MC number is listed generated there as a result
25 of the entering the DOT number.

1 The right half of that column is the
2 driver information box that I actually record the
3 gentleman's name, license number, date of birth and
4 licensed state, and that's reported on the line.

5 Q. Okay. That's the driver that's involved
6 with the inspection.

7 A. The person operating the truck at the
8 time of inspection, yes.

9 Q. The document speaks for itself as the
10 driver identified.

11 A. Yes, sir.

12 Q. And who is the driver identified?

13 A. Gregory Tincher.

14 Q. What is the MC/MX number?

15 A. My understanding that's a motor carrier
16 number that was similar to a DOT number. I deal with
17 DOT only so that populates automatically so that I
18 don't regulate or record.

19 Q. And the DOT number is what?

20 A. That's the number assigned by the federal
21 government that each individual motor carrier gets
22 issued to them, kind of an identity number.

23 Q. Okay. In the next block it begins with
24 Location, and it says roadside. Do you see that?

25 A. Yes, sir.

1 Q. Would you tell us what is shown in this
2 block of information?

3 A. Yes, sir. This is just a general
4 description of where and some of the shipping
5 information. Roadside, of course, on US 30 in Wayne
6 County, mile post 2, which means it's two miles east
7 of the Ashland County line.

8 Also documented on here is in regards to
9 the load, the shippers LUK transmission. The load
10 started in Wooster, Ohio going to Batavia. There's a
11 bill of lading documented here. Cargo, we have a
12 drop-down box you can populate, somewhat formatted.
13 We're to select the cargo that best applies to that.
14 They don't have anything here specific to that type
15 of cargo so I populated the "other" box.

16 Q. But he was in the process of transporting
17 cargo.

18 A. Yes, sir.

19 Q. Okay. I don't want to dwell on this.
20 The Vehicle Identification block, what is shown
21 there?

22 A. This shows the style of the power unit,
23 as well as trailer make, year, the plate state. When
24 I say plate, the license plate state it was issued
25 to, as well as license plate number from the state,

1 unit number, both truck and trailer, as well as the
2 VIN number, vehicle identification number, of both
3 the truck and trailer, gross vehicle weight rating,
4 and that is pretty much it for that line.

5 Q. You already mentioned, we're here because
6 of certain violations, because of one violation you
7 found, and is that indicated anywhere on the
8 inspection report?

9 A. Yes, sir, in the violation caption there,
10 392.16, a driver violation of failure to use seat
11 belt at the time.

12 Q. Okay. Is there anything on the
13 inspection report that describes in greater detail
14 what you observed?

15 A. Yes, sir; down in my notes column.

16 Q. And your notes column is where?

17 A. It's about two thirds of the way down the
18 form here on the front where it says Inspection
19 Notes.

20 Q. And what is shown there?

21 A. I put in OBVI, which means I wrote the
22 reason for stop is an obvious violation. There are
23 several ways we can initiate a stop, random, an ISS,
24 or obvious violation. This particular stop is
25 because of an obvious violation, which was the seat

1 belt.

2 Also on there is a couple abbreviations I
3 personally put in there, just how I established who
4 was the carrier in this. The driver indicated it was
5 Hillsboro Transportation. Also the door on the truck
6 and the registration for the power unit also
7 indicated Hillsboro Transportation Company as the
8 carrier

9 Also some brief notes regarding the
10 violation here in question. First of all, I
11 documented I was stationary in the median and as the
12 driver passed by me -- when I say driver, I mean
13 Mr. Tincher -- wearing a tan tank top shirt and his
14 black seat belt was not visible as he passed.

15 When I walked up to the driver, he was
16 wearing the belt properly. When I say properly, the
17 shoulder belt was present and up firmly across his
18 shoulder. When I asked him why I didn't notice it, I
19 recorded his comment to me was he places the shoulder
20 belt behind the seat when he drives.

21 Q. And you recorded all this information at
22 the time of inspection.

23 A. Right. Before I complete my inspection,
24 press the end time that documents the end time of the
25 inspection and before I print off a copy for him.

1 Q. Now, Inspector Hostetler, you've been
2 through a number of training classes. You testified
3 you have been through a number of training classes
4 dealing with the commercial motor carrier safety
5 regulations including the seat belt regulation.

6 A. Yes, sir.

7 Q. What is your understanding of properly
8 wearing a seat belt assembly which has a shoulder
9 strap?

10 A. The shoulder strap should be strapped
11 across your shoulder, as well as the bottom strap I
12 refer to as a lap belt, usually they're attached so
13 they're not independent of one another, that they're
14 both used to their full intent.

15 This is not just my personal opinion;
16 that's the regulations as well as the Ohio State
17 Highway Patrol's enforcement. And if we should
18 happen to encounter someone who has modified their
19 shoulder belt, whether removed from their assembly,
20 we are trained to consider that as a violation of the
21 seat belt law.

22 Q. Okay. Just so I understand, properly
23 using a seat belt assembly means to use all aspects
24 of that assembly to restrain the passengers and
25 driver?

1 A. All aspects of that assembly that was
2 manufactured with the truck. Any modification after
3 that point is considered a violation also.

4 MR. REILLY: May I have a moment, your
5 Honor?

6 THE ATTORNEY EXAMINER: Yes.

7 (Discussion off the record.)

8 MR. REILLY: We have no further questions
9 at this time.

10 THE ATTORNEY EXAMINER: Okay.

11 Let me ask you one question. As I
12 understand from what your testimony is, all the
13 information that is on this, I'm going to call it the
14 Driver/Vehicle Inspection Report, that's entered into
15 here was entered at the time you concluded your
16 inspection so there's nothing that got added or
17 changed --

18 THE WITNESS: No. He gets a copy of
19 this.

20 THE ATTORNEY EXAMINER: -- after 11:55 on
21 that day of the inspection.

22 THE WITNESS: That's correct, sir.

23 THE ATTORNEY EXAMINER: I don't think I
24 have any other questions.

25 Do you have some questions of the

1 officer?

2 THE RESPONDENT: Yes, I have one.

3 - - -

4 CROSS-EXAMINATION

5 By The Respondent:

6 Q. I don't mean this in a rude way as far as
7 the question. As a motor carrier enforcement and/or
8 a state highway patrolman, if a driver in a
9 commercial vehicle or a vehicle is pulled over and
10 doesn't have a seat belt on, you write him a ticket,
11 correct?

12 A. That's my job, to document the violation.
13 I don't write tickets in this particular scenario,
14 but I do document. I assume that's what you mean by
15 a ticket.

16 Q. I have one more question. I was honest
17 with you when you came up to the vehicle.

18 A. You were.

19 Q. I told you I wasn't wearing my shoulder
20 strap.

21 A. Yes, sir.

22 Q. You knew I was wearing my seat belt.

23 A. The only thing I can testify to from what
24 I can view is from mid waist up. No device was
25 observed.

1 Q. That's a fair answer.

2 THE RESPONDENT: That's all I have.

3 THE ATTORNEY EXAMINER: Okay. Thank you
4 for your testimony.

5 THE WITNESS: Yes.

6 MR. REILLY: We have nothing further,
7 your Honor.

8 THE ATTORNEY EXAMINER: Then it would be
9 your turn if you would like to be sworn, if you want
10 to provide any testimony.

11 THE RESPONDENT: I'd like to provide a
12 conclusion, if I could. I can be sworn in if I need
13 to do that.

14 THE ATTORNEY EXAMINER: I think that even
15 when you were questioning earlier, you were basically
16 putting some facts into the record, so I think it's
17 only fair I swear you in and allow the other side to
18 question you about things that were already said.
19 I'll allow questions on statements that you have made
20 up until now if you don't want to add any more to it
21 at this point, if all you want to provide is -- what
22 did you say?

23 THE RESPONDENT: A conclusion is what I
24 want to say.

25 THE ATTORNEY EXAMINER: I guess I will

1 allow questioning on what you already stated, and
2 then what will follow will be the conclusion.

3 - -

4 GREGORY TINCHER

5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 CROSS-EXAMINATION

8 By Mr. Reilly:

9 Q. Mr. Tincher, we would just ask you with
10 you under oath, your statements previously that you
11 were wearing -- you had your lap belt buckled but you
12 were not wearing the safety harness; is that correct?

13 A. That's correct yes, sir.

14 Q. So all your statements describing how you
15 were using the seat belt assembly are correct; true?

16 A. That's correct.

17 Q. All your prior statements.

18 MR. REILLY: We have nothing further.

19 THE ATTORNEY EXAMINER: Then I think when
20 you were talking to the officer, you did indicate
21 pretty much you confirmed what is in the report, that
22 when he asked you, he could observe, you also told
23 him you were wearing the seat belt in the way you
24 said, basically with the shoulder harness behind the
25 seat.

1 THE RESPONDENT: Yes, sir.

2 THE ATTORNEY EXAMINER: I think that's
3 all we need in terms of the testimony. But since you
4 said you want to give the conclusion, you may give --
5 actually, I guess the order would be -- I'm going to
6 consider the conclusion to be kind of an argument
7 rather than testimony.

8 THE RESPONDENT: Basically yes.

9 THE ATTORNEY EXAMINER: I will allow the
10 other side to go first and you get to go last.

11 MR. REILLY: That's fine. I think we
12 have a case squarely for the Commission. The
13 question is, is wearing part of the seat belt
14 assembly the proper wearing of that assembly?

15 You have the testimony of both Mr. Canty
16 and Inspector Hostetler telling you that's not true,
17 that it's not the proper use of the seat belt
18 assembly. If there's a shoulder strap, it must be
19 worn.

20 I'd suggest to you also that common sense
21 says that that's true. There is absolutely no reason
22 to provide a shoulder strap with the attending cost
23 if it is not to be worn. The proper use is to use
24 all -- common sense just says the proper use of a
25 restraint is to maximize its restraining effect, and

1 that is done through wearing all parts of it, the
2 seat belt, the lap belt, and the shoulder strap.

3 To wear only part of it by definition
4 makes it less effective because you're only using
5 half. I suggest the testimony of experts here and
6 common sense are all on the side of the proper use of
7 the seat belt assembly is to wear the entire
8 assembly.

9 It's like saying the proper appearance in
10 a judicial tribunal or any tribunal, which is
11 typically for lawyers anyway, is a coat and tie or a
12 suit and tie. If you showed up without the coat,
13 most tribunals would take offense at that.

14 It's the same kind of thing, only safety
15 is involved here. That's looks; this is safety.
16 There is a reason for the shoulder strap, for the
17 restraint. For proper use of the seat belt assembly
18 requires the full use of all restraints.

19 That's all. I think the facts are
20 basically undisputed.

21 THE ATTORNEY EXAMINER: All right. Thank
22 you.

23 You can have your chance now.

24 THE RESPONDENT: Per Mr. Canty and the
25 officer over there, no disrespect to them, no

1 disrespect to these gentlemen here, it might be
2 common sense. It might be what they say, but the
3 bottom line it's not what the regulations say. That
4 is what is wrote in this book, the regulations that
5 we abide by. That's in this right here, all this.

6 The bottom line was I was wearing a seat
7 belt. It doesn't say exact proper use of the seat
8 belt in the regulations. It don't tell me that. It
9 don't tell me I have to wear the shoulder strap. It
10 tells me I have to wear the seat belt. It was proven
11 right there. I read the regs. I read the whole book
12 on it. I've been on the Internet on. It doesn't say
13 you can ask the officer what is proper use. Well,
14 he'll show you, but that's not what is in the
15 regulation book.

16 The bottom line, I was wearing my seat
17 belt. It might not have been the proper way the
18 officer wants or this man wants, but I was wearing
19 the seat belt according to regulations in the book.
20 That's my closing argument.

21 THE ATTORNEY EXAMINER: All right. Let
22 me say this. The testimony we got, I think from
23 Mr. Canty, when I asked if there was a definition
24 within the code for the seat belt assembly was that
25 he's sure some existed somewhere.

1 I guess I'm tempted to provide the staff
2 an opportunity to submit a cite to a definition that
3 exists, if it does, and then I would give you a
4 chance once they do that, if they want to do that, if
5 they do, then you would have a chance to respond to
6 whatever additional information they provide, because
7 I think it comes down to the issue, especially in
8 terms of the way that you see it.

9 MR. REILLY: We would just note we were
10 prepared to waive briefs. Mr. Canty's testimony is
11 what it is.

12 THE ATTORNEY EXAMINER: Again, I'm not
13 holding you to a standard you felt you already met so
14 you didn't want to provide any more information than
15 already's been provided. If that's all you want to
16 do, that's fine. I was basically providing you
17 additional information if you are interested.

18 MR. REILLY: I submit it's a question of
19 what the Commission views as the proper use of the
20 seat belt assembly. I think that's what we are
21 talking about here.

22 THE RESPONDENT: There's one article that
23 he read in the book that that's on the seatbelt.
24 That's it. It's that big in the whole entire
25 regulation book.

1 THE ATTORNEY EXAMINER: The one he was
2 reading.

3 THE RESPONDENT: That's correct.

4 MR. REILLY: That's the regulation, and I
5 think you find "properly used" in it.

6 THE ATTORNEY EXAMINER: I'm sure I heard
7 that when he was reading that. If not, I'm sure I
8 will go back to the book and read it when making my
9 decision.

10 All right. It sounds like both sides
11 have completed their presentation and their arguments
12 so I thank you all for your time, and I will try to
13 get the decision out as soon as I can.

14 MR. REILLY: Thank you, your Honor.

15 THE RESPONDENT: Thank you.

16 (Discussion off the record.)

17 THE ATTORNEY EXAMINER: Back on record, I
18 note we neglected to rule on the exhibits, and if
19 there's no objection, I'm going to admit all five of
20 the exhibits into evidence at this time.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 THE ATTORNEY EXAMINER: With that, we are
23 closed again.

24 (The hearing adjourned at 10:41 a.m.)

25 - - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, May 28, 2009, and carefully compared with my original stenographic notes.

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

My commission expires April 5, 2009.

(RFA-8291)

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