

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Roe :
Transportation Enterprises, :
Inc., Notice of Apparent : Case No. 10-1274-TR-CVF
Violation and Intent to :
Assess forfeiture, :
:

- - -

PROCEEDINGS

before James M. Lynn, Attorney Examiner, held at the
offices of the Public Utilities Commission of Ohio, 180
East Broad Street, Hearing Room 11-D, Columbus, Ohio,
on Thursday, February 17, 2011 at 10:09 a.m.

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On behalf of the Staff of the Public
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On behalf of Row Transportation
Enterprises, Inc.

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1 Thursday Morning Session,
2 February 17, 2011.

3 - - -

4 ATTORNEY EXAMINER: The Public Utilities
5 Commission of Ohio is assigned for hearing at this time
6 and place, Case No. 10-1274-TR-CVF, in the matter of
7 Roe Transportation Enterprises, Incorporated, notice of
8 apparent violation and intent to assess forfeiture.

9 I'm Jim Lynn, the Attorney Examiner
10 assigned to hear this case. At this time we'll have
11 the appearances of the parties, and we'll begin with
12 the Ohio Attorney General's office.

13 MR. WRIGHT: Thank you, your Honor, good
14 morning. On behalf of the Attorney General Mike
15 DeWine, my name is Bill Wright, 180 East Broad Street,
16 Columbus, Ohio 43215.

17 ATTORNEY EXAMINER: And now representing
18 Roe Transportation Enterprises.

19 MR. STUCKEY: Yes, your Honor. My name is
20 Nathan Stuckey from Behnke, Martin & Schulte here
21 representing Roe Transport, Inc., 812 East National
22 Road, Suite A, Vandalia, Ohio 45377.

23 ATTORNEY EXAMINER: All right. Thank you.
24 Our order of proceedings, first we'll hear from
25 Mr. Wright and then Mr. Stuckey. Mr. Wright, I'll

1 give you the opportunity to go first. I believe you
2 had some statements you wanted to make before you get
3 underway?

4 MR. WRIGHT: Yes. Thank you, your Honor.
5 A couple preliminary matters if I could.

6 Following discussions with Mr. Stuckey, two
7 things I would like to note for the record. There --
8 in this case there were two out of service violations
9 that were part of Mr. Byrne's report. One of those
10 dealt with inoperative brakes. Mr. Byrne would be --
11 typically would be prepared to offer evidence into the
12 record as to his inspection, that sort of thing, but
13 counsel for Roe has indicated that they do not
14 contest -- will not be contesting that violation today
15 so we will not be presenting any case on that. Is that
16 accurate, Mr. Stuckey?

17 MR. STUCKEY: That is correct.

18 MR. WRIGHT: The second matter, your Honor,
19 deals with the civil forfeiture itself. It's typically
20 part of our case that we would provide some explanation
21 for that. That witness would have been Tom Forbes, but
22 again -- and I do appreciate counsel's cooperation on
23 this. Roe is willing to stipulate that the civil
24 forfeitures assessed in this case are consistent with
25 the commercial vehicle safety alliance fine structure.

1 It's misspelled, it says allowance, it should be
2 alliance --

3 MR. STUCKEY: I make mistakes, too.

4 MR. WRIGHT: -- fine structure.

5 MR. STUCKEY: That's correct.

6 MR. WRIGHT: So in that vein, your Honor,
7 we will not be presenting a witness on that.

8 ATTORNEY EXAMINER: Okay. And as far as a
9 calculation and civil forfeiture and so on?

10 MR. WRIGHT: Yes.

11 ATTORNEY EXAMINER: All right. That's
12 acceptable.

13 MR. WRIGHT: Okay. Thank you.

14 With that, your Honor, I believe we're
15 ready to begin our case.

16 We would call to the stand at this time
17 Mike Byrne.

18 - - -

19 INSPECTOR MICHAEL J. BYRNE
20 being first duly sworn, as prescribed by law, was
21 examined and testified as follows:

22 - - -

23 ATTORNEY EXAMINER: Mr. Wright, please
24 continue.

25 MR. WRIGHT: Thank you, your Honor.

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DIRECT EXAMINATION

By Mr. Wright:

Q. Good morning, Mr. Byrne. How are you this morning?

A. Good.

Q. Would you please state your full name for the record.

A. My name is Michael J. Byrne.

Q. And that is spelled B-y-r-n-e?

A. Yes, sir.

Q. Okay. By whom are you employed, Mr. Byrne?

A. The Ohio State Highway Patrol.

Q. What is your position?

A. My position is motor carrier enforcement inspector.

Q. Okay. Can you tell me a little bit about the training you've had -- well, strike that. Tell me a little bit about what you do.

A. My job simply is motor carrier enforcement of federal motor carrier safety regulations. We go through training at the Ohio State Highway Patrol Academy which is presented by our motor carrier enforcement manager of Columbus. We talk about the

1 federal regs that pertain to motor carrier
2 enforcements. We receive training and then we have
3 additional classroom. We have our actual outside
4 training with a senior inspector.

5 Q. Is it fair to say that the training is
6 ongoing?

7 A. Yes.

8 Q. Okay. Now, that tells a little bit about
9 your background. What are some of your job
10 responsibilities in your position?

11 A. Where do I begin? Some of the job
12 responsibilities is documentation, documentation of
13 what we observed and --

14 Q. If I may, as a result of inspections you
15 do, is that what you're referring to?

16 A. Yes. Yes.

17 Q. Roadside or scale inspections?

18 A. Roadside or -- yes.

19 Q. Okay. Is it fair to say that you perform
20 probably hundreds of inspections?

21 A. Yes.

22 Q. Okay. Is it fair to say that in your line
23 of work it's crucial that you have a very good working
24 understanding of federal regulations?

25 A. Yes.

1 Q. So that you could identify when you see a
2 violation where that violation should be noted, right?

3 A. Yes.

4 Q. Now, would you consider yourself a pretty
5 conscientious employee, Mr. Byrne?

6 A. Yes.

7 Q. When you're out looking -- doing an
8 inspection, is it fair to say that you note the
9 violations based on what you observe?

10 A. Yes.

11 Q. Okay. You don't write violations for the
12 sake of writing violations, do you?

13 A. No.

14 Q. Now, in this particular case, you prepared
15 a report, did you not?

16 A. Yes, I did.

17 Q. Okay.

18 MR. WRIGHT: Your Honor, at this time I'm
19 not going to question from the report right away, but
20 I'd like to go ahead and have it marked. We'll call it
21 Staff 1.

22 Q. Do you have a copy of your examination
23 report?

24 A. Yes.

25 MR. WRIGHT: May I approach the bench, your

1 Honor?

2 ATTORNEY EXAMINER: Yes. Certainly.

3 MR. WRIGHT: I'd like to mark as Staff
4 Exhibit No. 1, your Honor, the document captured
5 driver/vehicle examination report.

6 (STAFF EXHIBIT NO. 1 MARKED FOR
7 IDENTIFICATION.)

8 Q. Mr. Byrne, can you identify that document,
9 please?

10 A. Yes. This is the report that was
11 generated, this is what they call the ASPEN report.
12 This is a report that is -- computer program provided
13 by the Federal Motor Carrier Safety Administration, I
14 guess you could say a universal report used with all
15 the other motor carrier certified agencies.

16 Q. Okay. This is the report that you would
17 have prepared for this particular day; is that correct?

18 A. Yes.

19 MR. WRIGHT: And before I move on, your
20 Honor, I'd like to note --

21 Q. Mr. Byrne, could you please turn to the
22 third page. The third page is actually a copy of the
23 second page, is it not, with signatures on it?

24 A. Yes.

25 Q. And this is just an indication that the

1 driver that day, a John Roe, would have received a copy
2 of the report at the -- upon the conclusion of your
3 inspection that day?

4 A. Yes.

5 Q. Okay. Thank you.

6 MR. WRIGHT: Your Honor, I'll be revisiting
7 the report from time to time.

8 ATTORNEY EXAMINER: All right.

9 Q. Okay. Mr. Byrne, let's take it from the
10 top if we could. According to your report, the
11 roadside inspection occurred on U.S. 30 in Wyandot
12 County; is that right?

13 A. Yes.

14 Q. Or, no, I'm sorry -- yes, Wyandot County?

15 A. Yes.

16 Q. Okay. Now, would I assume that you were
17 stationary at a crossover on that day?

18 A. Yes.

19 Q. Okay. So tell me a little bit about what
20 happened. I assume the truck would have gone by. A
21 road vehicle went by. Tell me what you would have
22 noted at that point.

23 A. Okay. If you'll note on the report you
24 will see that at milepost 21 eastbound U.S. 30 is where
25 the inspection was conducted. That was in an eastbound

1 rest area just east of Upper Sandusky. At milepost 18
2 is where I sit stationary, it's approximately two and a
3 half to three miles away from this location. At
4 milepost 18, this is where I'm watching eastbound
5 traffic as it's going by looking for violations and
6 determining if -- determining if the carrier may pose
7 an inspection through my observations.

8 Q. Okay. And as part of your activity on --
9 incidentally, the date of the inspection was May 5,
10 2010; is that right?

11 A. Yes.

12 Q. As part of your inspection on that day,
13 sir, I assume you observed a road truck go by; is that
14 right?

15 A. Yes.

16 Q. Can you explain a little bit about what you
17 did? What did you notice at that point and then what
18 happened thereafter?

19 A. Okay. While sitting stationary I observed
20 the vehicles as traveling eastbound and one of the key
21 things I am looking for is a name, a city, and a
22 state. If I can observe the US DOT number that helps,
23 however, that's usually the toughest thing to observe.
24 By observing the carrier name, city and state, with my
25 computer and the ASPEN program, there is what they call

1 an ISS search. And that ISS search, type in the
2 carrier, click on it and observe and there's various
3 carriers. You can match up the carrier name.

4 Q. If I may, you're getting a little ahead of
5 me.

6 A. Yes, sir.

7 Q. What's ISS stand for?

8 A. ISS is called Inspection Selection System.

9 Q. Okay. So if I understand your testimony up
10 to this point in time, the truck went by, you're
11 looking for name, city, US DOT number if you can find
12 that. So at some point you would have been typing some
13 information into this ISS system; is that right?

14 A. Yes.

15 Q. And were you typing in the company name or
16 what was it? What did you type in?

17 A. The company name and looking to see if the
18 company name would match up with the city and state
19 that would be listed on the side of the vehicle.

20 Q. Okay. So you would have -- do you recall
21 what you typed in, the name you typed in?

22 A. I would have typed in at least Roe
23 Transportation.

24 Q. Okay. Do I understand it then that the ISS
25 screen that would then be visible would show different

1 carriers with that or similar names?

2 A. Yes.

3 Q. And show their location?

4 A. Yes.

5 Q. And their DOT number; is that right?

6 A. Yes.

7 Q. So, at that point in time you have that
8 screen up now in your car, right?

9 A. Yes.

10 Q. Now, were you in a car or an SUV? I guess
11 I took the liberty of suggesting a car.

12 A. Marked SUV.

13 Q. SUV. Okay. That's fine. All right. So
14 at that point in time then what happened next?

15 A. May I --

16 Q. With that information up on your screen.

17 A. May I add one other thing as to --

18 Q. Oh, I'm sorry.

19 A. -- what I observed. One of the other
20 things as I'm observing the vehicles that approach me,
21 I like to look at license plates, too, to see if the
22 vehicle is interstate license plates, in other words,
23 registered in the state of Ohio and maybe out of
24 state. That helps me to determine my ISS to narrow it
25 down as I'm doing the search.

1 Q. Okay. If you recall, when the vehicle went
2 by and you started typing in a name, were you able to
3 actually catch the DOT number at that point?

4 A. At that point, no.

5 Q. Okay. So at some point you would have
6 pulled out from the crossover; is that right?

7 A. Yes.

8 Q. And what would happen next?

9 A. I would follow up to be sure that the
10 carrier that I'm showing on the ISS screen would match
11 the markings on the side of the vehicle, namely the
12 name of the vehicle or, excuse me, the name of the
13 carrier. And I would verify that with the US DOT
14 number that is on the side of the vehicle, by traveling
15 parallel with the commercial vehicle, verify US DOT
16 number with the information on my ISS screen.

17 Q. Okay. So, again, just so we're very clear
18 on this, because it -- I've become confused on numerous
19 occasions just trying to understand how this works.
20 You have your ISS screen up, it's got several names,
21 company names on it with the Roe name.

22 A. Yes.

23 Q. Each with their own DOT number and with a
24 city, right?

25 A. Yes.

1 Q. And in some cases were some of these not
2 even Ohio companies on the list, do you recall?

3 A. I do not recall.

4 Q. Okay. But in any event, you pulled up
5 alongside the truck and you were trying to match the
6 DOT number on the truck to one of the numbers that was
7 on your screen?

8 A. Yes.

9 Q. Okay. Were you able to make that match?

10 A. Yes.

11 Q. And what was the name of the company that
12 corresponded to that number that was shown on your ISS
13 screen?

14 A. The name of the company was Roe
15 Transportation Enterprises, Inc.

16 Q. And that would be why their name appears on
17 the report that you're sponsoring today?

18 A. Yes, sir.

19 Q. Now, just so we're clear, a slight
20 backtrack if we would, when you type in your
21 information on the ISS, you get what's commonly
22 referred to as an ISS score?

23 A. Yes.

24 Q. You're familiar with that term?

25 A. Yes, sir.

1 Q. What does that mean?

2 A. ISS score is, in a nutshell, their safety
3 score. Okay. If it's high, that is a reason for us to
4 inspect the vehicle.

5 Q. So you basically have a -- is it like a
6 traffic light?

7 A. Yes.

8 Q. You have a green.

9 A. It is a traffic light --

10 Q. Which means what?

11 A. Green usually means they have a decent
12 score and it will say pass.

13 Q. Okay. In this instance the color code, if
14 you will, that came up for Roe Transportation
15 Enterprises, Inc. was what?

16 A. Red.

17 Q. And red means what?

18 A. Inspect.

19 Q. Okay. So, again, the way you determined
20 who the carrier was, at least at that point, was by
21 matching these numbers, the number on the truck with
22 the number that was on your screen.

23 A. Yes.

24 Q. Your ISS screen. And, again, the name of
25 the company that corresponded to that DOT number was

1 Roe Transportation Enterprises, Inc.; is that right?

2 A. Correct.

3 Q. Did you use the vehicle registration for
4 any purpose -- for purposes of determining the DOT
5 number?

6 A. I do not like using -- no.

7 Q. Would you typically do that?

8 A. No.

9 Q. Okay. Why not? Do you use the
10 registration for other purposes?

11 A. I use the registration primarily for
12 putting down the vehicle information for my report. I
13 don't like using the registration because there are
14 companies, say, if I may give an example, an owner-
15 operator who is operating under another carrier name,
16 he may have his own individual US DOT number but is
17 using another carrier's US DOT number that he is
18 operating for.

19 Q. Okay.

20 A. I just don't -- I don't feel comfortable
21 doing that.

22 Q. Okay. That's fair. So at this point in
23 time then, you would have made a decision because of
24 that red color designation then to do an inspection of
25 this vehicle; is that right?

1 A. Correct.

2 Q. And I would assume the next step would be
3 to pull the vehicle over to a safe spot along the road
4 where an inspection could be performed; is that right?

5 A. Yes.

6 Q. All right. Now -- so I guess you probably
7 have a routine when you're doing an inspection; would
8 that be correct?

9 A. Yes.

10 Q. One of the first things you would do is
11 obviously approach the truck; is that right?

12 A. Yes.

13 Q. Now, what typically -- how would you
14 address the driver upon reaching the truck?

15 A. Typically I would address the driver and
16 say, sir, I'm Inspector Byrne with the Ohio State
17 Highway Patrol. The reason for the stop today is for
18 DOT inspection.

19 Q. Would you have -- do you typically ask the
20 driver of the vehicle under whose authority they're
21 hauling that day?

22 A. I like to follow up, yes.

23 Q. Did you do that here? Do you have any
24 reason to believe you didn't do that?

25 A. I don't have any reason to believe that I

1 didn't do that.

2 Q. Okay. Do you recall what the -- how the
3 driver responded to you?

4 A. I do not recall.

5 Q. Okay. Do you recall whether or not you
6 actually asked the driver, did you use the name Roe
7 Transportation Enterprises, Inc. at that point in
8 time? Did you ask him if he was hauling on behalf of
9 that entity?

10 A. I would have somehow verified by asking him
11 are you -- is your carrier Roe Transportation.

12 Q. Okay. And to the best of your
13 recollection, you received no response from the driver
14 that would have indicated that he was operating under
15 anybody else's authority; is that right?

16 A. That is correct.

17 Q. And just so we're clear, there are other
18 forms of authority that can be utilized, correct?

19 A. Yes.

20 Q. And those would require some sort of
21 paperwork as well, right?

22 A. Correct.

23 Q. All right. So at that point you're
24 proceeding based on -- you're proceeding based on the
25 belief that you're doing an inspection of a vehicle

1 being operated by Roe Transportation Enterprises, Inc.;
2 is that right?

3 A. Yes.

4 Q. And so, what, the first part of your
5 routine is you, what, ask the driver for paperwork?

6 A. I usually ask for three things initially,
7 his license, medical card and --

8 Q. Could you try to keep your voice up,
9 please.

10 A. Yes.

11 Q. That fan is in the background.

12 MR. WRIGHT: I'm sorry, could you repeat
13 his answer.

14 COURT REPORTER: I didn't hear him and was
15 going to ask him to repeat it.

16 Q. Well, typically what paperwork do you ask
17 for typically?

18 A. I ask for his driver's license, his medical
19 card and his logbook.

20 Q. Okay. And then during the course of the
21 investigation, at some point you would have examined
22 those documents; is that right?

23 A. That is correct.

24 Q. Based on that examination, did you see
25 anything that would have caused you to conclude that

1 you were dealing with someone else's authority, someone
2 other than Roe Transportation Enterprises, Inc.?

3 A. No.

4 Q. Okay. You then would have performed your
5 inspection.

6 A. Correct.

7 Q. Is that right?

8 A. Yes.

9 Q. And, again, you found several violations
10 most dealing with brakes; is that right?

11 A. Yes.

12 Q. And, of course, as you know, that's not
13 being contested today; is that your understanding?

14 A. Yes.

15 Q. Okay. And you would have placed the
16 vehicle out of service at that point; is that correct?

17 A. Yes.

18 Q. Now, let's talk a little bit about post
19 inspection if you will. Once you complete your
20 physical inspection of the truck, you take the
21 documents and then you go back to your vehicle; is that
22 right?

23 A. Correct.

24 Q. And is it correct that one of the first --
25 well, one of the things you do as part of your post

1 inspection routine is to consult the L & I database?

2 A. Yes.

3 Q. Well, first off, for the record, what does
4 L & I stand for?

5 A. L & I is Licensing and Insurance.

6 Q. Okay. And is it your understanding that
7 that is a database that's maintained by the Federal
8 Motor Carrier Safety Administration?

9 A. That is correct.

10 Q. Okay. Do you regularly use that tool when
11 you're doing inspections?

12 A. Yes.

13 Q. Okay. Why? Why did you utilize that
14 database in this instance? Or in any other inspection,
15 I guess?

16 A. Well, for this or any other inspection,
17 carriers who are operating with what they call
18 interstate commerce, in other words, transportation of
19 goods from one place to another, have to have basically
20 permission to transport those goods. Without that
21 permission, you can't transport. To determine whether
22 or not they have that permission, that's where we
23 utilize the L & I website and it will -- once you've
24 entered the carrier's US DOT number, it will show
25 whether or not they have one of three authorities, what

1 they call operating authority. They have to have
2 operating authority is what we call it.

3 Q. Again, don't get ahead of me here.

4 A. Yes.

5 Q. I'll come back to that. You said what you
6 would have -- to access the database you would have to
7 type in the US DOT number?

8 A. Yes.

9 Q. DOT number. And I assume you would have
10 used the number that you viewed on the truck that day?

11 A. Yes.

12 Q. And would that number -- and feel free to
13 consult your report if you need to, would that number
14 have been 846123?

15 A. Yes.

16 Q. Okay. Now, you said a couple things about
17 authority. Your report clearly indicates that this was
18 an interstate movement; is that right?

19 A. Yes.

20 Q. Origin: Sidney, Ohio. Destination:
21 Downingtown, PA, Pennsylvania?

22 A. Yes.

23 Q. And this was -- the cargo you identified as
24 general freight, so this was, as you understood this,
25 this was an interstate movement for hire of property

1 other than property owned by the carrier itself; is
2 that right?

3 A. Yes.

4 Q. So that would have triggered the need for
5 operating authority; is that right?

6 A. Yes.

7 Q. Okay. Now, you access this database and I
8 think this might have been where you were going, you
9 indicated that the carrier had no authority; is that
10 correct?

11 A. Yes.

12 Q. And by that, that would mean no common
13 carrier authority; is that right?

14 A. Per my report, yes.

15 Q. And would that also have indicated no
16 contract authority?

17 A. The contract authority per my report shows
18 inactive.

19 Q. Shows inactive. Okay. Now, for the
20 record, if you would, there's such a thing as -- have
21 you ever heard the term trip lease?

22 A. Yes, I have.

23 Q. Do you know what -- a trip lease, can you
24 explain in layman terms what that is?

25 A. A trip lease is where, let's say a carrier

1 is operating -- let's say just for the day is operating
2 for another carrier maybe just for a particular load.
3 It's common with steel haulers. And in that case then
4 they have to show for that particular day who they're
5 operating for. In other words, on the logbook they
6 have to properly show that there's a logbook and show
7 who the carrier is on the side of the vehicle. They
8 have to have the proper markings. And we -- for the
9 report, we use that carrier that they're operating
10 under a trip lease.

11 Q. Now, have you ever -- have you ever
12 performed an inspection on a carrier that was operating
13 at that particular time under a trip lease?

14 A. Once.

15 Q. One time. Is there paperwork that you
16 would ask to see if they were claiming trip lease
17 authority?

18 A. Yes.

19 Q. And were you presented with any paperwork
20 in this case that would have indicated that Roe
21 Transportation Enterprises, Inc. was operating under
22 somebody else's authority, vis-a-vis a trip lease?

23 A. No.

24 Q. By the way, is it fair to say, Mr. Byrne,
25 that the L & I, I'm sorry -- that, again, stands for

1 licensing and insurance?

2 A. Yes.

3 Q. Is that what you said?

4 A. Yes.

5 Q. That the L & I database is an established
6 tool that is used, maintained by the feds and typically
7 used as part of state enforcement?

8 A. Yes.

9 Q. So upon consulting the L & I database and,
10 again, you're now back in your vehicle looking over
11 things to complete the inspection, this is the first
12 time that you would have become aware of a lack of
13 operating authority violation; is that right?

14 A. That is correct.

15 Q. Okay. And, again, that, too, would have
16 been an out of service violation?

17 A. Yes.

18 Q. Okay. So after completing your review of
19 that, of the L & I database, after looking over the
20 paperwork, which I believe you already testified did
21 not indicate to you anything different than Roe
22 Transportation Enterprises, Inc., you then would have
23 generated your report; is that right?

24 A. Yes.

25 Q. And that -- and, again, the report I'm

1 referring to is what we've marked as Staff Exhibit 1,
2 the driver/vehicle examination report; is that right?

3 A. Yes.

4 Q. Once that report is prepared, then you,
5 what, you approach the truck, I guess, and return the
6 paperwork to the driver; is that right?

7 A. Yes, sir.

8 Q. And then you hand him a copy of the
9 driver/vehicle examination report?

10 A. Yes.

11 Q. And does he sign the report at that point
12 indicating he received it?

13 A. I tell him to sign the report.

14 Q. Okay. So at that point in time both you
15 and he would have signed that report?

16 A. Yes.

17 Q. Now, you just hand it to him and send him
18 on his way?

19 A. No. I like to explain the report.

20 Q. Do you tend to explain it in fair detail?

21 A. Yes.

22 Q. The idea is you want the driver to
23 understand exactly, you know, what you observed as part
24 of your inspection, right?

25 A. Yes.

1 Q. And I assume, among other things, you would
2 have talked to him about the brakes and all, right?

3 A. Yes.

4 Q. And would I also be correct that you would
5 have brought up this notion of a lack of operating
6 authority once again with the driver?

7 A. Yes.

8 Q. As a result of what you found on the
9 L & I?

10 A. Yes.

11 Q. Again, were you -- was there any indication
12 offered from the driver that, no, I'm operating under
13 somebody else's authority?

14 A. Not that I recall.

15 Q. Well, if that had been the case, it would
16 have raised a question in your mind; is that right?

17 A. Yes. Oh, yes.

18 Q. And is it possible at that point in time
19 that you then might have been looking at a different
20 type of violation?

21 A. Yes.

22 Q. Marking violation?

23 A. Yes.

24 Q. Okay. But just so we're clear, what you
25 observed on the truck, the DOT number, was what

1 ultimately led you to the carrier name Roe
2 Transportation Enterprises, Inc.?

3 A. Yes.

4 Q. Okay. Do you recall whether or not the
5 driver said anything to you about authority at that
6 point or at any point during the inspection?

7 A. I do not recall.

8 Q. Okay. But you feel that you would have
9 adequately explained why you wrote that violation up?

10 A. Yes.

11 Q. Lack of authority, that is?

12 A. Yes.

13 Q. Now, I want to direct your attention to the
14 report if I may. At the top there, there is a phone
15 number; is there not?

16 A. Yes, there is.

17 Q. Okay. Now, that's the phone number, I
18 assume, for District 2 headquarters?

19 A. Yes.

20 Q. And that would be Bucyrus, Ohio?

21 A. Yes.

22 Q. Okay. And that's the post you work out of?

23 A. Yes.

24 Q. Okay. Why is that phone number there?

25 A. The phone number is to identify, number 1,

1 who our agency is; number 2, if there is any question,
2 the carrier can contact the post and if they have
3 concerns or questions about the report, they can talk
4 to a supervisor.

5 Q. All right. And, frankly, if an error
6 occurred or if there's a question about something, is
7 it not your-all's policy to encourage to make that phone
8 call?

9 A. Yes.

10 Q. Or it could be a driver, too, I suppose?

11 A. Yes.

12 Q. Do you recall since this investigation on
13 May 5, 2010, did you receive any phone calls from the
14 carrier, from anybody at Roe about the inspection and
15 report that you did on May 5, 2010?

16 A. I do not recall.

17 Q. Who is your boss?

18 A. His name is Joe Kindt.

19 Q. Joe Kindt?

20 A. K-i-n-d-t.

21 Q. Okay. I assume you regularly interact with
22 Mr. Kindt in your daily activities at District 2; is
23 that fair?

24 A. Yes.

25 Q. Did Mr. Kindt indicate to you at any point

1 in time that he's received any inquiry about this
2 particular inspection involving this particular
3 carrier?

4 A. No.

5 Q. Or any call whatsoever about operating
6 authority?

7 A. No.

8 MR. WRIGHT: Your Honor, could I have a
9 moment?

10 ATTORNEY EXAMINER: Yes. Off the record
11 for a moment, please.

12 (Off the record - recess)

13 ATTORNEY EXAMINER: Back on the record.

14 MR. WRIGHT: Your Honor, I have no further
15 questions for Mr. Byrne at this time. I would move for
16 the admission of Staff Exhibit No. 1 subject to cross-
17 examination by opposing counsel. And I would like to
18 reserve the ability to recall Mr. Byrne if need be on
19 rebuttal.

20 ATTORNEY EXAMINER: Okay. I'll agree to
21 those requests. And, Mr. Stuckey, do you have
22 questions of the witness?

23 MR. STUCKEY: I do.

24 - - -

25 CROSS-EXAMINATION

1 By Mr. Stuckey:

2 Q. Good morning.

3 A. Good morning.

4 Q. As I stated earlier, I'm Nathan Stuckey, I
5 represent Roe Transport, Inc. I want to go back --
6 I've got quite a few questions. Do you recall what day
7 of the week this happened on?

8 A. I do not.

9 Q. Do you work normal hours? I mean, is it a
10 normal thing every week, you work the same days, the
11 same hours?

12 A. Yes.

13 Q. What's your schedule?

14 A. Monday through Friday from 7:00 a.m. to
15 3:00 p.m.

16 Q. Okay. This report was done at 6:00 p.m. or
17 somewhere between 6:00 and 7:00 p.m.

18 A. Correct.

19 Q. Would that have been just a different day
20 or different hours?

21 A. This was overtime.

22 Q. This was overtime.

23 A. Yes.

24 Q. Okay. How many times prior to today did
25 you review the facts in this case with Mr. Wright?

1 A. How many?

2 Q. How many times did you go over this, the
3 facts of this case?

4 MR. WRIGHT: Your Honor, I would caution
5 counsel. I think that's a fair question, but if we
6 start getting into the substance of discussions,
7 discussions I may have had, I would certainly object to
8 that.

9 MR. STUCKEY: Agreed.

10 A. Shall I answer?

11 Q. Yes.

12 A. Repeat the question, please.

13 Q. How many times would you say you've
14 reviewed the facts in this case with Mr. Wright?

15 A. At least twice.

16 Q. At least twice. Okay. And when you file
17 this report, do you enter everything here, all the
18 information about the company, about the US DOT number,
19 all that stuff manually or do you click on something
20 where it enters it in automatically for you?

21 A. When you enter the US DOT number, it adds
22 the carrier automatically that is assigned to that US
23 DOT number.

24 Q. You stated earlier that on the date of this
25 incident you were stationary, you watched the truck

1 pass you and while this truck is passing, you try to
2 pull the name of the truck, the name of the company off
3 of the truck as well as possibly the city, state and
4 DOT number, correct?

5 A. Yes.

6 Q. What was the speed limit on the road that
7 day?

8 A. The speed limit for commercial vehicles is
9 55 miles per hour post.

10 Q. Would you say that it's somewhat hard at
11 times to pull off exactly what was on the side of that
12 truck going 55 miles an hour when you're stationary?

13 A. If you are observing close enough, you can
14 usually pick out the information --

15 Q. Okay.

16 A. -- fairly easy.

17 Q. And what was the name that you said you
18 entered in that day?

19 A. Roe Transportation.

20 Q. Roe Transportation. Are you certain that
21 that's exactly the name that was on the side of that
22 truck?

23 A. I would have at least entered Roe
24 Transportation.

25 Q. But it's possible that the truck, the name

1 on the truck was not exactly just Roe Transportation,
2 it could have been Roe Transportation, Inc., could have
3 been Roe Transport or it could have been Roe
4 Transportation Enterprises. All you know for sure is
5 that you put in Roe Transportation?

6 A. Would have at least put in Roe Transport.

7 Q. Okay.

8 A. And followed up from there.

9 Q. And then once you put in possibly Roe
10 Transport, as you said, all kinds of names come up that
11 could possibly meet that description?

12 A. Yes. Correct.

13 Q. For the -- do you remember how many entries
14 came up?

15 A. No.

16 Q. Was there more than just Roe Transportation
17 Enterprises, Inc.?

18 A. I don't recall.

19 Q. But it's possible?

20 A. Possible.

21 Q. Okay. At that point you say you drive up
22 next to the truck, and you confirm that the name and
23 the DOT number match what you've got pulled up on the
24 computer, correct?

25 A. Yes.

1 Q. Did -- Roe Transportation Enterprises,
2 Inc., was that on the side of the truck?

3 A. I don't recall.

4 Q. You don't recall what was exactly on the
5 truck?

6 A. I know it --

7 Q. You just know that you had that on the
8 report?

9 A. I would have at least ran the US DOT number
10 and seen that it would have matched something with that
11 carrier name of Roe Transportation --

12 Q. Okay.

13 A. -- Roe Transport, Roe Transportation.

14 MR. WRIGHT: I'm sorry, could I have the
15 question -- last question and answer repeated, please.

16 MR. STUCKEY: I'm sorry, you want me to
17 repeat it?

18 MR. WRIGHT: No, she's going to read it.

19 (The court reporter read back the following
20 questions and answers:

21 "Q. You just know that you had that on
22 the report?

23 A. I would have at least ran the US
24 DOT number and seen that it would have matched
25 something with that carrier name of Roe

1 Transportation --

2 Q. Okay.

3 A. -- Roe Transport, Roe
4 Transportation."

5 MR. WRIGHT: Thank you.

6 Q. So to clarify, when you brought up the US
7 DOT number, you would have matched it to make sure that
8 it exactly matched what was on the truck?

9 A. Would have made sure it would have said Roe
10 Transportation on the side of the vehicle.

11 Q. Okay. You said you did not use the
12 registration, correct?

13 A. No.

14 Q. That the registration usually isn't a very
15 good way of going about getting all that information,
16 is what your testimony was, correct?

17 A. The registration is primarily used for
18 vehicle information.

19 Q. All right. When you interacted with the
20 driver that day, you said you walked up and you
21 normally have a conversation. You stated multiple
22 times that you don't recall any response that you got
23 from the driver, correct?

24 A. Correct.

25 Q. But obviously you remember because on a

1 normal basis you would have the same normal
2 conversation with the driver as to who he's working
3 for, who he's operated by, all that information,
4 correct?

5 A. Correct.

6 Q. But you don't remember any of his
7 responses?

8 A. I do not recall.

9 Q. Do you ever put any of the responses or do
10 you ever write a report of what maybe he said into a
11 report?

12 A. I do.

13 Q. Okay. So if he would have said --

14 MR. WRIGHT: I'm sorry, I didn't hear your
15 response to that.

16 THE WITNESS: I do.

17 MR. WRIGHT: You do?

18 THE WITNESS: If I feel it's --

19 MR. WRIGHT: Okay. I just didn't hear your
20 answer, I'm sorry.

21 Q. Go ahead. If you feel that it's important?

22 A. Yes.

23 Q. So it's discretionary whether you believe
24 it's important or not of what the driver is saying?

25 A. With the information I've come up with, if

1 I feel it's concrete, then that is the information I'm
2 going to go with on the report. If it is questionable,
3 then I'm going to put it in my notes.

4 Q. Okay. You asked the driver for his ID, his
5 medical card and logbook is what you stated, correct?

6 A. Correct.

7 Q. That's normal procedure. Do you recall the
8 name on the logbook?

9 A. It was -- I do not recall the name.

10 Q. You don't recall. All right. Once the
11 truck or tractor and trailer were impounded, as I would
12 assume that's what happened, correct, once the citation
13 was made?

14 A. Placed out of service.

15 Q. Correct. What were -- what was the driver
16 or anybody else told that they needed to do in order to
17 get it back out of service?

18 A. I typically like to tell them that -- well,
19 one of the things I like to tell them since -- just
20 they're stuck there. What are they going to do. Your
21 options are, number one, the carrier needs to somehow
22 obtain authority or they're going to have to operate
23 under a different carrier name and US DOT number.

24 Q. Okay. Were you there when -- the next
25 day -- I've been told that the next day was when they

1 were able to move, it was pulled out of service.

2 A. I do not know.

3 Q. You were not there when any of that
4 happened?

5 A. No.

6 Q. All right. Do you recall ever looking into
7 any different name when you pulled them up on the ISS
8 number or all the names came up, again --

9 A. I do not recall.

10 Q. The only one you tried was the one that's
11 on the report?

12 A. That is the -- yes.

13 Q. Okay.

14 MR. STUCKEY: Just a second, your Honor.

15 ATTORNEY EXAMINER: Sure.

16 MR. STUCKEY: I have no further questions
17 at this time.

18 ATTORNEY EXAMINER: All right. Mr. Wright,
19 questions?

20 MR. WRIGHT: Your Honor, I think I might
21 have one or two.

22 - - -

23 REDIRECT EXAMINATION

24 By Mr. Wright:

25 Q. Let's build on one of Mr. Stuckey's last

1 questions to you. Let's be real clear on this. You
2 didn't check any other names other than Roe
3 Transportation Enterprises, Inc. because it didn't make
4 any sense to; is that correct?

5 A. Yes.

6 Q. And the reason it didn't make any sense to
7 is because what you did was you matched the DOT number
8 on the vehicle with the DOT number that was on the
9 screen?

10 A. Yes.

11 Q. The ISS on the computer in your car; is
12 that correct?

13 A. Yes.

14 Q. And that gave you the name of the company?

15 A. Yes.

16 Q. And the name of the company, again, was Roe
17 Transportation Enterprises, Inc.; is that correct?

18 A. Yes.

19 Q. So there would have been no reason to have
20 looked any further, was there?

21 A. No.

22 Q. Okay. One of the earlier questions
23 Mr. Stuckey asked you had to do with what you may have
24 observed when the truck went by. Do you recall that?

25 A. Yes.

1 Q. And you acknowledged, I believe, in your
2 testimony to my questions that it's difficult to get
3 all the carrier name, the city, the US DOT. It's
4 difficult to get all that for a truck going by 55, 60
5 miles an hour. Would you not agree with that?

6 A. Yes.

7 Q. Is it not your testimony, sir, that what
8 you used to begin accessing the ISS database was a
9 name, a name only, company name; is that correct?

10 A. It began with a name.

11 Q. Okay. And then that's when you got --
12 that's when you then had to lead to match numbers?

13 A. Yes.

14 Q. Is that fair?

15 A. Yes.

16 Q. You said you did this report, basically you
17 were working overtime that day; is that right?

18 A. Yes.

19 Q. Is it not the case that whenever you do an
20 inspection, without exception, that the report is
21 prepared that same day and provided to the driver that
22 same day upon completion of your inspection that same
23 day; is that correct?

24 A. Yes.

25 Q. Okay. And that happened here, of course?

1 A. Yes.

2 Q. Okay. Typically when you place a driver or
3 vehicle -- you can place both out of service; is that
4 right?

5 A. Yes.

6 Q. Typically when you do that, you explain the
7 corrective action that needs to be taken. I believe
8 you testified previously to that; is that right?

9 A. Yes.

10 Q. And then you -- at that point it's up to
11 the driver and/or the carrier to correct whatever
12 deficiencies may exist prior to placing the vehicle
13 back into service; is that right?

14 A. Yes.

15 Q. And you don't babysit that process, do you?

16 A. No.

17 Q. And typically you don't babysit that
18 process?

19 A. That's correct.

20 Q. You expect them to do that before they set
21 foot back on the road, right?

22 A. Expect them to take care of it, yes.

23 MR. WRIGHT: That's all I have.

24 ATTORNEY EXAMINER: Okay. Mr. Stuckey, did
25 you have follow-up questions?

1 MR. STUCKEY: Yes. A couple quick.

2 - - -

3 RECROSS-EXAMINATION

4 By Mr. Stuckey:

5 Q. Just so that I can clarify, when you first
6 put the name in there, like you said -- more than one
7 name can pop up, correct?

8 A. Uh-huh.

9 Q. And you do not recall whether or not more
10 than one name popped up that day, correct?

11 A. Correct.

12 Q. It's possible that another one did?

13 A. Ask the question again.

14 Q. Is it possible that another name popped up
15 other than the one on this report?

16 A. It could very well be.

17 MR. WRIGHT: You're referring on the ISS
18 screen?

19 MR. STUCKEY: Correct.

20 Q. Do you recall the color of the stickers on
21 the truck?

22 A. I do not recall.

23 Q. Do you recall the color of the truck?

24 A. I do not recall.

25 Q. Do you recall if there was more than one

1 number on the truck?

2 A. More than one number?

3 Q. Yes, DOT number.

4 A. If there were, then we have some possible
5 marking issues.

6 Q. The DOT number that you have on this, do
7 you recall if that number that you pulled off that
8 truck was with stickers?

9 A. Stickers?

10 Q. Correct. Like decals, do you recall?

11 A. I would have used the US DOT number that
12 was marked on the side -- both sides of the vehicle.

13 Q. Okay.

14 MR. WRIGHT: Your Honor, I would just like
15 to note an objection at this point in time. I've been
16 really indulgent. We're certainly into questions
17 that's well beyond anything I asked on redirect.

18 MR. STUCKEY: I'm done with this witness.

19 ATTORNEY EXAMINER: All right. You're
20 finished with your questions then?

21 MR. STUCKEY: Yes, sir.

22 ATTORNEY EXAMINER: Okay. I have a few
23 questions for Mr. Byrne just to clarify things in my
24 own mind.

25 - - -

EXAMINATION

By Attorney Examiner:

Q. So you stopped this vehicle then because of its ISS score, which indicated that it had a higher than acceptable number of violations over a period of time; am I correct?

A. That is correct.

Q. Okay. And you mentioned that -- let's see, when you started using this ISS database, you initially typed in the carrier's name. That's what you did in this instance.

A. Start with the carrier's name.

Q. Okay. But where you discovered the carrier had allegedly no operating authority was when you went to this licensing and insurance database and for that you typed in the US DOT number.

A. Yes.

Q. That's indicated for that carrier.

A. Yes.

Q. And that's a, I guess, a database that's set up by the Federal Department of Transportation?

A. Federal Motor Carrier Safety Administration.

Q. FMCSA, okay. And that indicated no type of authority, common or contract, really issued by any

1 state; am I correct? Or can you explain that a little
2 bit?

3 A. That would have been issued by the feds.

4 Q. Oh, I see. Issued by the federal
5 government. Okay.

6 A. That was intrastate transport.

7 Q. I see. Okay. So no authority issued by
8 the federal DOT for interstate transportation of
9 goods?

10 A. Yes.

11 ATTORNEY EXAMINER: I have no further
12 questions at this time. Thank you. And you can take
13 your seat. Mr. Wright?

14 MR. WRIGHT: Your Honor, if I may, I would
15 move for the admission of Staff Exhibit No. 1,
16 Mr. Byrne's report at this time. And, number two,
17 again reserve the ability to recall him on rebuttal if
18 deemed necessary.

19 ATTORNEY EXAMINER: Okay. Mr. Stuckey, do
20 you have any objections to admitting Staff's Exhibit 1
21 into evidence?

22 MR. STUCKEY: No, I don't.

23 ATTORNEY EXAMINER: Okay. Just a minute,
24 please. I had one more question I'm trying to
25 remember.

1 Oh, Mr. Byrne, one other question. When
2 you place the vehicle out of service, and this may be
3 repeating something you've already said, but just to
4 make it clear in my mind, you explain to the driver
5 that he was being placed out of service and, you know,
6 the reasons why; am I correct?

7 THE WITNESS: Yes.

8 ATTORNEY EXAMINER: And you don't recall
9 any specific response that he had?

10 THE WITNESS: I do not recall.

11 ATTORNEY EXAMINER: Okay. Thank you. You
12 can take your seat, please. Are you ready to call one
13 more witness, Mr. Wright?

14 MR. WRIGHT: Well, what's your pleasure
15 here? Do you want to --

16 MR. STUCKEY: I was going to go with him
17 first.

18 MR. WRIGHT: All right. Yes, your Honor,
19 Mr. Barrett, would you take the stand now, please.

20 - - -

21 OFFICER ROBERT BARRETT
22 being first duly sworn, as prescribed by law, was
23 examined and testified as follows:

24 - - -

25 ATTORNEY EXAMINER: Mr. Wright, do you want

1 to go first?

2 MR. WRIGHT: Yes, I'll go first.

3 - - -

4 DIRECT EXAMINATION

5 By Mr. Wright:

6 Q. Good morning, Mr. Barrett, how are you?

7 A. Good morning.

8 Q. Would you please state your full name for
9 the record.

10 A. Robert James Barrett.

11 Q. And by whom are you employed, Mr. Barrett?

12 A. I'm a field staff member with the
13 Transportation Department of Public Utilities.

14 Q. How long have you been doing that?

15 A. Since December 2001.

16 Q. Now, what training generally do you have to
17 function in that capacity?

18 A. I'm a hazardous materials specialist so I
19 went through general HazMat training to conduct
20 roadside inspections, bulk package HazMat, radioactive
21 HazMat, North American standard driver/vehicle
22 inspection, which would apply to HazMat and general
23 freight. I went through some training by the federal
24 Motor Carrier Safety Administration on how to conduct
25 new entrance safety audits and compliance reviews.

1 Q. I assume that training is ongoing?

2 A. Yes, sir.

3 Q. And I assume you've performed probably,
4 what, hundreds -- well, strike that.

5 Just so we're very clear, the inspection
6 that you've heard us discussing earlier that was
7 conducted on -- roadside inspection that was conducted
8 May 5, 2010, you did not accompany Mr. Byrne on that
9 inspection, did you?

10 A. No, I was not there.

11 Q. You were not present for any of that, were
12 you?

13 A. No.

14 Q. You did a -- what's called a compliance
15 review or a CR of Roe Transport, Inc. about a month
16 later?

17 A. Yes. First week of June 2010.

18 Q. Okay. And, again, that was done for Roe
19 Transport, Inc.; is that correct?

20 A. Roe Transport, Inc. and the DOT number
21 1879584.

22 Q. Now, is that a different number than the
23 number that you heard referenced this morning for Roe
24 Transportation Enterprises, Inc.?

25 A. Yes, it is.

1 Q. Okay. So you understand those to be two
2 different companies?

3 A. Yes. Originally my compliance review was
4 to be on Roe Transportation, Inc. with the 846123 DOT
5 number. Upon contacting the carrier in August of 2009,
6 found out that that company, Roe Transportation, Inc.
7 846123 was no longer in operation.

8 Q. Okay. Did you learn anything more about --
9 I mean, at that point in time did that number cease to
10 exist?

11 A. Well, it was still an active number in the
12 system, in the federal database.

13 Q. I'm sorry, you said it was still an active
14 number, not inactive?

15 A. It was still an active number.

16 Q. Okay.

17 A. At that time I consulted with my supervisor
18 here at the PUCO and, obviously, if the number -- if
19 they're not operating under that number, then obviously
20 we're not going to audit that number.

21 Q. Right.

22 A. In the course of the next week or so, I did
23 some inquiry and found out that Roe Transport, Inc.,
24 1879584 was actually in the system, on the radar and
25 set for a new entrance safety audit. And having known

1 of this business and had a little bit of history with
2 it for probably ten years prior to, I questioned
3 through my supervisors here why are we doing a safety
4 audit on a company that's been established for quite
5 some time.

6 Q. Again, the company you're referring to now
7 is Roe Transport, Inc.?

8 A. That's correct.

9 Q. Okay.

10 A. That's correct. My supervision then
11 contacted FMCSA and through their guidance it was
12 recommended to me or told to me to conduct a compliance
13 review on the 1879584 Roe Transport, Inc. rather than a
14 safety audit and then to inactivate the 846123 number.

15 Q. Okay. Did you -- as part of the compliance
16 review that you performed on June 18th, 2010, did you
17 have occasion to learn whether or not that 123 number
18 that you just mentioned, DOT number had been
19 reassigned?

20 A. Yes. Because I -- again, I went in with
21 the intention of inactivating that number since that
22 company was no longer operating. Chad Roe, who I
23 believe is the vice president at that establishment,
24 informed me that they were in the process of or had
25 formed Roe Transportation Enterprises, Inc., and they

1 had reassigned that 846123 number to that carrier
2 name. And that that was going to operate as a
3 intrastate private carrier to transport -- they have a
4 mulch operation where they manufacture bulk mulch.
5 They were going to transport bulk mulch intrastate
6 under that name and number. So obviously since it had
7 been reassigned, I obviously didn't inactivate that
8 number.

9 Q. Okay. And then you would have proceeded
10 with your compliance review on Roe Transport, Inc.; is
11 that correct?

12 A. That's correct.

13 Q. Now, as you've been sitting here this
14 morning, I assume you've come to understand that the
15 case today is -- calls into question operating
16 authority for Roe Transportation Enterprises, Inc.; is
17 that right?

18 A. I was just made aware of that this morning,
19 that's correct.

20 Q. Okay. And is it also your understanding,
21 and I'm happy, if it would be helpful, to show you a
22 copy of Staff Exhibit 1, the report, but is it your
23 understanding that the movement, the commercial motor
24 carrier movement in this particular case was one that
25 would require operating authority?

1 A. Based on --

2 Q. They weren't hauling mulch, in other
3 words?

4 A. Correct.

5 Q. Okay. The roadside inspection that
6 Mr. Byrne performed on May 5th was not the reason you
7 did the compliance review as you've already stated; is
8 that right?

9 A. That's correct.

10 Q. And, frankly, had no relationship
11 whatsoever to that earlier roadside inspection, did it?

12 A. No.

13 Q. The purpose of the compliance review of Roe
14 Transport, Inc. was not to determine the presence or
15 absence of operating authority for Roe Transportation
16 Enterprises, Inc., was it?

17 A. No.

18 Q. Did you find any, as you were doing -- as
19 you were doing, performing this CR, compliance review,
20 I'm sorry, Mr. Barrett, did you have any -- did you
21 ever get confused about the names?

22 A. The names have changed pretty regularly at
23 that location, yes.

24 Q. Okay. So it can be -- someone could get
25 confused as they were sifting through the different

1 names; is that right?

2 A. Yes.

3 Q. Okay. Just to wrap it up then, the
4 compliance review you did on June 18th of 2010 had
5 absolutely nothing to do whatsoever with the roadside
6 inspection done on May 5th?

7 A. That's correct. And just for the record,
8 to correct the dates, I was at the carrier, worked on
9 my compliance review June the 2nd, the 3rd, the 4th,
10 June 15th, 16th and 17th and I closed on the 18th.

11 ATTORNEY EXAMINER: And that's in 2010?

12 A. 2010.

13 Q. And you used the date. I apologize for
14 that. And it's fair to say that you have no firsthand
15 knowledge whatsoever of the inspection that was done on
16 May 5th, 2010 and how the vehicle in question may have
17 been marked on that day; is that fair?

18 A. That's correct.

19 MR. WRIGHT: Okay. That's all we have.
20 Thank you, Mr. Barrett.

21 ATTORNEY EXAMINER: Okay. Mr. Stuckey.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Stuckey:

25 Q. During your time you said you've been

1 working there since 1991, correct?

2 A. Been with PUCO since 2001.

3 Q. Oh, 2001, I'm sorry. During your normal
4 duties, is it your duty to make unbiased evaluations?

5 A. Yes.

6 Q. Have you ever been pressured to make
7 certain evaluations?

8 A. I'm not sure what you mean pressured to
9 make --

10 Q. Have you ever been told by a certain
11 individual, you know, what you're suppose to find, what
12 you're suppose to say, that kind of thing in your
13 evaluations or your report?

14 A. No.

15 Q. Okay. Do you work for or under Mr. Bill
16 Wright at the Attorney General's office?

17 A. He represents my agency. I mean, the state
18 of Ohio as legal counsel but --

19 Q. Prior to today, were you contacted by
20 Mr. Wright?

21 A. Yes.

22 Q. Okay. And at the time he contacted you,
23 did he mention to you that I was going to be calling
24 you as a witness today?

25 A. Actually, you told me the day before I

1 spoke to Mr. Wright.

2 Q. Right. But did he repeat that?

3 A. Yes. Yeah, I believe he did.

4 Q. At that time did Mr. Wright instruct you
5 not to speak with me further about this incident at
6 all?

7 A. That's correct.

8 MR. WRIGHT: Your Honor, I would like the
9 record to be real clear on something here. Mr. Stuckey
10 at that point in time had already had two conversations
11 with Mr. Barrett and I had made it very clear to
12 Mr. Stuckey that we would be willing, as an
13 accommodation, to see that Mr. Barrett -- make
14 Mr. Barrett available without need for a subpoena today
15 and that anybody could ask questions of him about this
16 case at that point in time, so with that caveat.

17 MR. STUCKEY: My point, obviously, your
18 Honor, was to show that he did not want me talking to a
19 witness that I was going to be calling. Whether or not
20 he was not -- going to bring him here without a
21 subpoena or not, it does not matter. We could have
22 continued it. I could have subpoenaed him. But the
23 point of the matter is, obviously he did not want me
24 speaking with this individual at any further time.

25 MR. WRIGHT: That had already occurred,

1 your Honor, on two occasions.

2 ATTORNEY EXAMINER: All right.

3 MR. STUCKEY: But past that, you did not
4 want me speaking with him further.

5 MR. WRIGHT: That is correct. But I did
6 make that statement, that's correct.

7 MR. STUCKEY: Thank you.

8 Q. During your time -- you often conduct
9 audits, correct?

10 A. Yes.

11 Q. For evaluations. And as you stated, you
12 conducted an audit or an evaluation, a compliance
13 review, I believe is what it's called, of Roe
14 Transport, Inc., correct?

15 A. That's correct.

16 Q. For what time period were you conducting
17 the compliance review?

18 A. Anytime we do an audit or a compliance
19 review, it goes back one year from the date that the
20 review or the audit is initiated.

21 Q. Okay. And following up with one of the
22 questions he asked, you said the purpose was not to
23 determine operating authority, correct, of Roe
24 Transport, Inc.? That was not the purpose of --

25 MR. WRIGHT: That was not -- your Honor,

1 excuse me, that was not my question. My question was
2 not to determine the operating authority for Roe
3 Transportation Enterprises, Inc.

4 Q. Was the purpose of your review that day to
5 determine operating authority for Roe Transport, Inc.?

6 A. It was part of it, but that was not my
7 purpose.

8 Q. Okay. So you did check the operating
9 authority of Roe Transport, Inc.?

10 A. That is correct. That's part of standard
11 protocol when you conduct any compliance.

12 Q. And what did you find when you looked into
13 their operating authority?

14 A. On Roe Transport, Inc.?

15 Q. Roe Transport, Inc.

16 A. Their authority was in order and their
17 insurance was in compliance with the federal
18 regulations part 387.

19 Q. Which is part of the reason why in the end
20 you gave them a satisfactory rating, correct?

21 A. Well, the compliance review is an overall
22 assessment of their compliance with the federal
23 regulations of the Ohio Administrative Code. And there
24 were violations noted, but none of those acted to where
25 they affected their rating. They were issued a

1 satisfactory rating.

2 Q. Okay. And while you were completing the
3 compliance review, did you ever speak with my client
4 about the fact that they were cited a month prior to
5 the review for not operating with operating authority?

6 MR. WRIGHT: Objection, your Honor.

7 ATTORNEY EXAMINER: Why, Mr. Wright?

8 MR. WRIGHT: A couple bases. Number 1,
9 again, I would remind the Bench that Roe Transport,
10 Inc. is not on trial here today. We are not -- we have
11 not as part of any of this case challenged their
12 operating authority. All right. This case is about a
13 different company. And, number 2, I think
14 Mr. Stuckey's question lacks foundation.

15 MR. STUCKEY: As part of our defense, our
16 defense rotates around the fact that the operating
17 authority on that day and the operator of that vehicle
18 that was cited was Roe Transport, Inc. rather than Roe
19 Transportation Enterprises, therefore, I'm trying to
20 show that he did an audit of Roe Transport, Inc. on --
21 a month later and did find that my client, Roe
22 Transport, Inc. did have operating authority.

23 ATTORNEY EXAMINER: Mr. Stuckey, your
24 client was Roe Transportation Enterprises. You're
25 representing them today.

1 MR. STUCKEY: Well, that's who's being
2 cited, but the fact of the matter is is that Roe
3 Transportation Enterprises did not exist.

4 MR. WRIGHT: Your Honor, we will
5 stipulate --

6 MR. STUCKEY: Exactly what our defense
7 rotates around today.

8 MR. WRIGHT: We will stipulate that on the
9 day of the inspection, that Roe Transport, Inc. had
10 operating authority. Again, we're not contesting that.

11 MR. STUCKEY: Okay.

12 MR. WRIGHT: Nor have we ever contested
13 that.

14 ATTORNEY EXAMINER: Do you have any further
15 questions, Mr. Stuckey, or you're going with the same
16 question you had?

17 MR. STUCKEY: Correct.

18 MR. WRIGHT: Can I at least get the
19 question read back to us, please.

20 ATTORNEY EXAMINER: Yes.

21 MR. STUCKEY: Your Honor, I guess I'll
22 withdraw that question. I got what I needed, the
23 stipulation, don't worry about it. I don't have any
24 further questions of this witness.

25 - - -

EXAMINATION

By Attorney Examiner:

Q. Mr. Barrett, I have some questions just to make clear in my mind what's going on.

We certainly have a lot of similar names floating around here. So apparently there are two carriers, Roe Transport, Inc. and Roe Transportation Enterprises; am I correct?

A. Currently if you were to go into the federal database, those two entities are on record.

Q. They exist at least in the federal database and they both operate, I assume, out of the same location?

A. Yes.

Q. In Sidney, Ohio?

A. Yes.

Q. And the compliance review that you were doing was for Roe Transportation, Incorporated; am I correct?

A. Roe Transport, Incorporated.

Q. Roe Transport, Incorporated. Okay. And that carrier you said had, according to your compliance review, it had all the necessary operating authority. Could you elaborate a little bit on what you found out beginning with Roe Transport, Inc.?

1 A. Well, anytime we do a compliance review we
2 go through the federal system and we -- I pull up the
3 carrier snapshot, which is the information that the
4 carrier declares when they obtain a DOT number: Names,
5 addresses, phone numbers, how many vehicles, how many
6 drivers, commodities transported and so on. Then I
7 also go into the L & I database, as the officer
8 testified previously, to verify that they have
9 operating authority to transport for hire and if they
10 have the adequate insurance on file.

11 Q. And, for the record, that's the licensing
12 and insurance database?

13 A. Yes. And all of the credentials for Roe
14 Transport, Inc. 1879584 were in order on that date and
15 time.

16 Q. So that 1879584 was the Roe Transport, Inc.
17 US Department of Transportation number.

18 A. 1879584, that's correct.

19 Q. 1879584, right.

20 A. That's correct.

21 Q. Then there's also a Roe Transportation
22 Enterprises which operates with the US DOT number
23 846123.

24 A. Which was current as of yesterday when I
25 checked it.

1 Q. Okay. And, again, at the time you did the
2 audit of Roe Transport, Inc., you had no knowledge that
3 there had been a roadside inspection of Roe
4 Transportation Enterprises?

5 A. No, I was not aware of that.

6 Q. Okay. And you indicated also Roe
7 Transport, Incorporated had authority, which was, I
8 believe you said, interstate authority?

9 A. Yes. It was through L & I with Interstate
10 Commerce.

11 Q. And then you determined or you stated
12 earlier that Roe Transportation Enterprises, the
13 authority that they had under the US DOT number 846123,
14 that was for intrastate authority; am I correct?

15 A. Well, I didn't check their intrastate
16 authority at that time. Mr Chad Roe had told me that
17 they changed -- they had modified and moved that number
18 from Roe Transportation, Inc. to Roe Transportation
19 Enterprises, Inc. with the intent of operating
20 intrastate private hauling their own mulch.

21 Q. I see. And then you didn't really dig into
22 that issue any deeper, because that wasn't really the
23 purpose of your compliance review?

24 A. It was not within the scope.

25 Q. I see. So the 846123, according to your

1 understanding that you learned during the compliance
2 review, was a US DOT number that had been with Roe
3 Transport, Inc., and was changed over to Roe
4 Transportation Enterprises, Inc.; am I correct?

5 A. It had been with Roe Transportation, Inc.
6 and then had been moved to Roe Transportation
7 Enterprises, Inc.

8 Q. Okay. And the audit that you were doing
9 was for Roe Transport, Inc.?

10 A. That is correct.

11 ATTORNEY EXAMINER: Wow. That's quite an
12 adventure keeping that all straight, but thank you for
13 your explanations. I have no further questions. You
14 can take your seat, please. Thank you.

15 MR. STUCKEY: Thank you, Mr. Barrett.

16 ATTORNEY EXAMINER: Let's go off the record
17 for just a minute.

18 (Off the record - recess)

19 ATTORNEY EXAMINER: We'll go back on the
20 record, please. Thank you, everyone. And let's
21 continue, Mr. Stuckey, do you have a witness to call?

22 MR. STUCKEY: Yes. I'll call
23 Mr. Burkhead.

24 - - -

25 RICK BURKHEAD

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

3 - - -

4 ATTORNEY EXAMINER: Take your seat.
5 Mr. Stuckey, please continue.

6 - - -

7 DIRECT EXAMINATION

8 By Mr. Stuckey:

9 Q. State your name, spelling your last name
10 for the record.

11 A. Rick Burkhead. B-u-r-k-h-e-a-d.

12 Q. Mr. Burkhead, where do you work?

13 A. Roe Transport.

14 Q. And how long have you been with Roe
15 Transport?

16 A. Two and a half years.

17 Q. And what is your position at Roe Transport?

18 A. Director of operations.

19 Q. And how long have you been the director of
20 operations for Roe Transport?

21 A. Two and a half years.

22 Q. Can you state the current address for Roe
23 Transport?

24 A. 3680 Michigan Avenue, Sidney, Ohio.

25 Q. All right. And what type of business is

1 Roe Transport, Inc. involved in?

2 A. Contract carrier.

3 Q. And with regard to contract carriers --
4 what are your duties at Roe Transport?

5 A. As director of operations part of my duties
6 is making sure that we are compliant with the
7 Department of Transportation regulations and Federal
8 Motor Carrier Safety regulations. Making sure that
9 insurance requirements are met, driver training,
10 overall operations and dispatch and accounting.
11 Basically overall operations of the company.

12 Q. Okay. And how long have you handled these
13 duties?

14 A. The duration of my employment.

15 Q. So for about two and a half years now?

16 A. Yes.

17 Q. And has the company you worked for always
18 been named Roe Transport, Inc.?

19 A. No.

20 Q. What was the name prior to Roe Transport,
21 Inc.?

22 A. Roe Transportation Enterprises.

23 Q. Okay. Which is the other company we've
24 kind of shuffled around here today, correct?

25 A. Yes.

1 Q. Why the transformation?

2 A. We diversified the companies and started --
3 the owners decided to start smaller -- subdivide the
4 companies to protect each division. In the times that
5 we've -- we see economically, it made sense as a
6 business to protect each individual company.

7 Q. Okay. And when did Roe Transportation
8 Enterprises, Inc. become Roe Transport, Inc.?

9 A. May of 2009.

10 Q. 2009. So well before the incident in
11 question here today?

12 A. Yes, sir.

13 Q. Does Roe Transportation Enterprises still
14 exist?

15 A. It does. As Mr. Barrett had explained,
16 that is the mulch division of the company. And the
17 only units operating under that number is, in fact, the
18 dump trucks, the mulch trucks.

19 Q. To clarify my misstatement earlier, when I
20 said it did not exist, it does not exist with contract
21 carriers?

22 A. Right. It has nothing to do with contract
23 carries or Roe Transport's functions.

24 Q. And did Roe Transportation Enterprises, did
25 it -- was it involved with motor carriers and contract

1 carriers and that sort of thing on May 5th, 2010?

2 A. No.

3 Q. Okay. And has Roe Transport, Inc. ever
4 held itself out as Roe Transportation Enterprises since
5 May 2009 when it became Roe Transport, Inc.?

6 A. Absolutely not.

7 Q. What makes you so sure?

8 A. Part of my responsibilities during that
9 transition was to make sure that the labeling on the
10 trucks was done or rather the name removed of
11 transportation and make sure that the new DOT numbers
12 were put on the trucks and the old ones were taken
13 off. And that was done.

14 ATTORNEY EXAMINER: Before you go further,
15 Mr. Burkhead, again, can you clarify for me, and for
16 the record, the DOT number for -- the two DOT numbers
17 for the two carriers, please.

18 THE WITNESS: Right. The DOT number for
19 Roe Transport is the 1879584.

20 ATTORNEY EXAMINER: Okay.

21 THE WITNESS: The other for Roe
22 Transportation was 84123.

23 ATTORNEY EXAMINER: Is it the 846123 --

24 THE WITNESS: 846123.

25 ATTORNEY EXAMINER: And that was for Roe

1 Transportation Enterprises?

2 THE WITNESS: That was for Roe
3 Transportation Enterprises.

4 ATTORNEY EXAMINER: Enterprises. Okay.
5 And that's the mulch carrier.

6 THE WITNESS: Yes, sir.

7 ATTORNEY EXAMINER: Okay. I see.

8 Q. And to clarify, when -- on the contract
9 carrier such as the vehicle number 396, dealing with
10 this incident, when did the number, the DOT number on
11 that truck and the name on that truck, when did you
12 change those from Roe Transport Enterprises to Roe
13 Transport along with the one DOT number to the other?

14 A. That would have happened in May of 2009.

15 Q. Okay. Did you guys own truck 396 in 2009?

16 A. Yes, we did.

17 Q. And you're sure that that truck, on that
18 truck the new DOT number was placed on it? The old one
19 was taken off and the name of it then said Roe
20 Transport, Inc.?

21 A. Yes.

22 ATTORNEY EXAMINER: I have a question for
23 counsel. You said truck 396, is that on this
24 inspection report somewhere?

25 MR. WRIGHT: What's the question?

1 MR. STUCKEY: I believe so.

2 ATTORNEY EXAMINER: Mr. Stuckey had
3 mentioned truck 396 as apparently being the truck that
4 was inspected. I was just looking for the number --

5 MR. STUCKEY: Under vehicle
6 identification. Under equipment ID, it states 396.

7 ATTORNEY EXAMINER: I see. I've got it.
8 Okay. Thank you.

9 Q. On May 5th of 2010, would any of the trucks
10 and trailers -- tractors-trailers that were being
11 operated by Roe Transport, Inc. have the name Roe
12 Transportation or the name Roe Transportation
13 Enterprises, Inc. on them?

14 A. No.

15 Q. You're completely sure?

16 A. I'm absolutely sure.

17 Q. Okay. Do you understand the current laws
18 and regulations with regards to operating authority?

19 A. I believe I'm very familiar with them.

20 Q. What has made you so familiar with them?

21 A. I've been in transportation for the past 30
22 years in one capacity or another from driver, to driver
23 trainer, to management, to -- this is where I wound up
24 for the past 20 some years in management.

25 Q. Can you explain the process that you go

1 through to obtain operating authority?

2 A. Although I did not obtain the authority for
3 Roe Transport, I'm quite familiar with the process of
4 it. Once filing is made with the -- DOT and proof of
5 insurance has been made with the Department of
6 Transportation, proper filings with -- such as POC 3
7 filings are done, then the application is submitted and
8 it's either approved or denied.

9 Q. And when did Roe Transport, Inc. go through
10 this process of applying for operating authority?

11 A. I believe Chad Roe had applied in April of
12 2009 at which time we received the authority on May the
13 9th, I believe, or May the 8th of 2009.

14 MR. STUCKEY: Your Honor, may I approach
15 the witness?

16 ATTORNEY EXAMINER: Yes.

17 MR. STUCKEY: Let the record reflect that I
18 am handing the witness what appears to be marked as our
19 Exhibit A, and I don't think I have another copy.

20 MR. WRIGHT: Is it that there?

21 MR. STUCKEY: Correct.

22 MR. WRIGHT: I don't have a very good copy.

23 MR. STUCKEY: It's exactly the same as the
24 one I have actually.

25 (ROE EXHIBIT A MARKED FOR IDENTIFICATION.)

1 ATTORNEY EXAMINER: For the record, I'll
2 show or indicate that Mr. Stuckey has produced, I guess
3 we'll call this Roe Exhibit A and this is apparently a
4 permit issued by the U.S. Department of Transportation
5 Federal Motor Carrier Safety Administration. The name
6 on the permit is Roe Transport, Inc., Sidney, Ohio.
7 Issuance date was May 8th, 2009.

8 MR. WRIGHT: Again, your Honor --

9 MR. STUCKEY: There's a better one.

10 MR. WRIGHT: I can read that. I think I
11 can read this.

12 MR. STUCKEY: Okay.

13 MR. WRIGHT: Again, your Honor, I guess
14 just as a preliminary matter, I would object to the
15 exhibit inasmuch as we're not contesting the
16 transportation authority of Roe Transport, Inc. in this
17 case.

18 ATTORNEY EXAMINER: I'll hold off on ruling
19 on that until --

20 MR. WRIGHT: That's fine.

21 ATTORNEY EXAMINER: -- Mr. Stuckey's
22 questions are completed. Thank you.

23 Q. Do you recognize this document?

24 A. Yes, I do.

25 Q. Did you draft this document?

1 A. I did not draft this document. It was
2 given to us by the Department of Transportation.

3 Q. And who is this letter concerning?

4 A. Roe Transport.

5 Q. And how did you receive this document?

6 A. We received it from the Department of
7 Transportation.

8 Q. Is this a fair and accurate copy of the
9 letter that you guys received from the U.S. Department
10 of Transportation?

11 A. It appears to be identical.

12 Q. And for the record, can you read the date
13 on which it was sent or that the permit was given?

14 A. Service date May 8th, 2009.

15 Q. Is this the date that you testified earlier
16 that, you know, you guys were given a permit to have
17 operating authority under Roe Transport, Inc.?

18 A. Yes.

19 Q. Okay. So this is well prior to the time of
20 this incident that is the subject of this proceeding?

21 A. Yes.

22 Q. Okay.

23 MR. STUCKEY: At this time, your Honor, I'd
24 like to admit this into evidence, what's been
25 previously marked as Exhibit A for the primary fact

1 that it shows the date on which they were given
2 operating authority under Roe Transport, Inc.

3 ATTORNEY EXAMINER: Well, before I do that
4 or rule on that, I believe we want to give Mr. Wright
5 an opportunity to cross-examine so --

6 MR. STUCKEY: Okay.

7 ATTORNEY EXAMINER: Do you have any further
8 questions for the witness?

9 MR. STUCKEY: Yes, I do, actually.

10 ATTORNEY EXAMINER: Okay.

11 Q. Let's go back to May 5 of 2010. Was a
12 motor carrier operated by Roe Transport, Inc. cited
13 that day?

14 A. Yes.

15 Q. Okay. What type of motor carrier was
16 involved in that citation?

17 A. Roe Transport.

18 Q. And what the truck and trailer -- was the
19 truck and trailer owned by Roe Transport, Inc.?

20 A. Yes, both units.

21 Q. Okay. And what was the truck number that
22 day?

23 A. Unit 396.

24 Q. Thank you. And was this truck and trailer
25 owned by Roe Transport, Inc. on May 9th --

1 A. Yes.

2 Q. -- I mean May 8th of 2009?

3 A. Yes.

4 Q. When you received this confirmation, the
5 letter I just handed you?

6 A. Yes.

7 MR. STUCKEY: May I approach the witness
8 again, your Honor?

9 ATTORNEY EXAMINER: Yes.

10 (ROE EXHIBIT B MARKED FOR IDENTIFICATION.)

11 MR. STUCKEY: Let the record reflect I'm
12 handing him a picture that was previously marked as
13 Exhibit B.

14 Q. Can you tell me what this picture is of?

15 A. This is a picture of unit 396.

16 Q. Did you take this picture?

17 A. I did.

18 Q. Is this a fair and accurate depiction of
19 the vehicle 396?

20 A. It is.

21 Q. When did you take this picture?

22 A. I took it on February 16th of this year.

23 Q. So you took the picture yesterday?

24 A. Yes.

25 Q. Is this a fair and accurate depiction of

1 that tractor and trailer as of yesterday?

2 A. Yes.

3 Q. Okay. Have any changes been made to this
4 tractor since May 5th of 2010?

5 A. No.

6 Q. So that picture accurately depicts the
7 picture of that tractor and trailer on the date of May
8 5th, 2010?

9 A. Yes. It's absolutely identical.

10 Q. Just as it was yesterday?

11 A. Yes.

12 MR. WRIGHT: I'm sorry, was your earlier
13 question, Mr. Stuckey, whether or not there are any
14 changes to this since what date, I'm sorry?

15 MR. STUCKEY: May 5th, 2010.

16 MR. WRIGHT: Okay. The date of the
17 incident, which is the subject of this proceeding?

18 MR. STUCKEY: Yes.

19 Q. Can you please state from the picture the
20 name of the company that is displayed on the side of
21 the tractor?

22 A. Roe Transport, Sidney, Ohio.

23 Q. And can you please state the DOT number
24 that is displayed on the side of the tractor?

25 A. 1879584.

1 Q. To recap, you testified that this picture
2 was taken yesterday, making this a current picture and
3 depiction of how this tractor looks right now. Is this
4 exactly how the tractor also looked on May 5 of 2010?

5 A. Yes. It is exactly how it looked May 5th
6 or May -- probably May the 10th, 2009.

7 Q. Okay. Do you recall the name of the driver
8 of the truck that was cited that day?

9 A. John Roe.

10 Q. And is he currently employed at Roe
11 Transport, Inc.?

12 A. No, he is not.

13 Q. What was Roe Transport, Inc. cited for that
14 day?

15 A. We were cited for mechanical failures on
16 the brakes which I am in total agreement with. We're
17 glad that it was caught. The repairs were made on the
18 site and we were cited with operating -- not having
19 operating authority.

20 Q. Okay. I would like to speak to you in
21 detail about this -- the operating authority charge.
22 You stated that in May of 2009 you guys received
23 operating authority. At that time you discontinued the
24 use of any operating authority and the use of the name
25 Roe Transportation Enterprises; is that correct?

1 A. Yes.

2 Q. Okay. What was your procedure in May of
3 2009 or early April 2009 to ensure that all the
4 tractors and all the trailers were changed over to
5 ensure that they said Roe Transport, Inc. rather than
6 the previous name?

7 A. When we obtained the authority, that
8 following weekend when every truck came in the door,
9 signs were changed, the a-t-i-o-n was taken off of
10 transportation. The old DOT numbers were removed from
11 the trucks. We use Bright clean, alcohol rubbing
12 compound, to try to even out the faded paint, because
13 obviously they've been on -- this is older equipment.
14 So the sun having faded the paint, and it was worse on
15 the red trucks. We do have some red trucks that you
16 can still see the shadow of the old numbers and the
17 name and so we tried to eliminate as much of that as
18 possible and applied the new stickers for the DOT
19 number.

20 Q. So May 5, 2010, did the truck and trailer
21 that you have a picture of in front of you, it had the
22 new name and the new DOT number; is that correct?

23 A. Exactly as you see it.

24 Q. How did you first become aware of the
25 citation on May 5th?

1 A. Phone call from the driver.

2 Q. From John Roe?

3 A. Yes.

4 Q. And can you explain to me in detail what
5 his explanation to you was of what was going on?

6 A. He explained to me the brake failure and
7 the repairs that would be needed there, not an issue.
8 Like I said, I understand completely. He said that we
9 did not have operating authority. I could not
10 understand that at all because obviously we do have
11 operating authority and I had him question the officer
12 there. And I wasn't familiar with Mr. Byrne, other
13 than the name, and he mandated that it was -- we did
14 not have operating authority, that the name on the
15 registration was not the same as the name on the side
16 of the truck and they were getting -- I asked the
17 number that he was pulling up, and the driver gave me
18 the old number. I said that's not displayed anywhere
19 on the unit. Where are they getting this number at? I
20 don't know, but this is what he's telling me. What do
21 we have to do to make this right?

22 Q. Well, before we get there, what did the
23 driver tell you on how they came up with that number,
24 the old number?

25 A. Off of the registration.

1 Q. Off of the registration.

2 A. The name on the registration that was in
3 the cab. That's the cab card.

4 ATTORNEY EXAMINER: And, Mr. Burkhead, when
5 you say the registration, you mean like papers that are
6 issued when the vehicle is plated?

7 THE WITNESS: Yes, sir.

8 ATTORNEY EXAMINER: License plated.

9 THE WITNESS: The IRP, that certificate.
10 Every motor vehicle must be licensed and registered for
11 every state that it's going to run into.

12 ATTORNEY EXAMINER: So your driver had
13 indicated that Mr. Byrne was relying on, or at least
14 one of the sources he was relying on, was the paperwork
15 for the vehicle registration?

16 THE WITNESS: His impression was that the
17 officer was looking at the registration, the name on
18 the registration.

19 ATTORNEY EXAMINER: I see.

20 THE WITNESS: I told him emphatically show
21 him the truck. Make sure he pulls the number off the
22 truck. And he said it didn't make any difference
23 because of the discrepancy. We needed to make sure
24 that the right name was on the registration in order to
25 get the truck freed up.

1 ATTORNEY EXAMINER: So the name that was on
2 the registration was --

3 THE WITNESS: Roe Transportation, Inc.

4 ATTORNEY EXAMINER: Oh, Roe Transportation,
5 Inc.

6 THE WITNESS: On the registration.

7 ATTORNEY EXAMINER: Not Roe Transport?

8 THE WITNESS: Correct. Which it really
9 shouldn't make any difference because if it was leased,
10 a leased vehicle or an owner-operator's vehicle, it
11 would then again have a different name all together.

12 Q. But to clarify, what was on the outside of
13 the truck?

14 A. Exactly what you see in the picture, Roe
15 Transport.

16 Q. When was the truck able to be moved again?
17 When were you able to continue on your operation of the
18 shipment?

19 A. The following day.

20 Q. May 6th.

21 A. The following day, May 6th, I had the vice
22 president go -- come down to the IRP office here, the
23 office right in Columbus, and get all the registration
24 cab cards for all of the units operating under Roe
25 Transport to get Roe Transport, Incorporated added to

1 the registration so that we were in compliance with
2 what the officer wanted or expected to see. After
3 this, we sent the driver up to the unit with the new
4 cab card and we were okayed. We did absolutely nothing
5 with our authority. It was active. It was good. We
6 didn't have to do anything with the truck. It was --
7 it had been done.

8 Q. Did you have to do anything else with
9 regards to the truck at all?

10 A. Oh, yes, the repairs to the brakes were
11 made.

12 Q. So in all, all you had to do in order to
13 make this truck able to move again, to continue on your
14 way, all you had to do was send a mechanic to change
15 the brakes, update the brakes, and have the
16 registration changed over from Roe Transportation, Inc.
17 to Roe Transport?

18 A. That's what we did.

19 Q. You did not do anything with regard to
20 applying, renewing, changing operating authority
21 whatsoever, DOT numbers?

22 A. Had no reason to.

23 Q. Let me ask you this: Did anybody from your
24 company or anybody from the state, anybody anywhere
25 change anything on the outside of the truck?

1 A. No. Not to my knowledge.

2 Q. No DOT number was put on the outside of the
3 truck?

4 A. No.

5 Q. No different one. No different name was
6 put on the outside of the truck?

7 A. No.

8 Q. Nothing was changed?

9 A. No.

10 Q. You were allowed to move the truck -- you
11 were allowed to continue on your way as soon as you got
12 the piece of paper inside the truck to say Roe
13 Transport?

14 A. Absolutely. And the truck has been
15 inspected all over the country since then with no
16 issues, and all of our other trucks are the same.

17 Q. Have you ever -- since May of 2009, when
18 all this transaction happened, have you ever been cited
19 or had any problems with operating authority outside of
20 this incident?

21 A. No.

22 Q. Never?

23 A. Never.

24 Q. Okay.

25 A. I have copies of the cab cards where we had

1 to get the name applied.

2 ATTORNEY EXAMINER: Okay. And when you
3 indicate cab card, again, that's the IRP paperwork?

4 THE WITNESS: Yes.

5 ATTORNEY EXAMINER: International
6 registration plan.

7 THE WITNESS: License plate registration if
8 you will.

9 ATTORNEY EXAMINER: Okay. I see.

10 MR. WRIGHT: We haven't seen that, by the
11 way.

12 ATTORNEY EXAMINER: Yes.

13 THE WITNESS: You're more than welcome to.

14 MR. WRIGHT: Well, it's not coming in as an
15 exhibit.

16 ATTORNEY EXAMINER: Well, we'll discuss
17 that later.

18 THE WITNESS: We have nothing to hide.

19 Q. With regards to Roe Transport, Inc.
20 operations, are audits normally done?

21 A. Yes. Internal audits. I believe we audit
22 every quarter to make sure that we know what's coming.
23 Of course, we've been doing this for a long time so we
24 know when things are due and the IRP, such as license
25 renewal, registration cards, when things need to be

1 paid.

2 We have safety meetings regularly to keep
3 the drivers up on the new changes to the rules and to
4 keep them -- the safety issues pertinent to the time of
5 the year present in their minds. So, yes, we do
6 internal audits. And, you know, we're not perfect.
7 Since the last audit we learned and we're continually
8 striving to excel, you know, to do things better.

9 Q. Okay. And when was the last time an audit
10 took place?

11 A. In June of 2010 with Mr. Barrett.

12 Q. Which is what he was talking about earlier,
13 correct?

14 A. Yes, sir.

15 Q. And when you went through this process with
16 him, was it your understanding that he checked the
17 operating authority of Roe Transport, Inc.?

18 A. I would assume that Mr. Barrett has checked
19 the operating authority prior to arrival to make sure
20 that the authority was accurate and was active.

21 MR. WRIGHT: Again, your Honor, objection,
22 we're not challenging the operating authority of Roe
23 Transport, Inc.

24 ATTORNEY EXAMINER: Well, given the
25 similarity of the names, I'll let the question and

1 answer stand.

2 Q. Just to recap, I want to make it very
3 clear, since May of 2009, no motor carrier, no tractor
4 and trailer has ever been operated, been sent out, been
5 name -- been used in the name of Roe Transportation
6 Enterprises, Inc.; is that correct?

7 A. Not for contract carrier authority, no.

8 Q. And on the date of the incident, May 5th of
9 2010, the outside of the truck looked exactly like that
10 picture, correct?

11 A. That is an identical representation of it.

12 Q. And after being placed out of service on
13 May 5th, 2010, on May 6th all that had to happen, all
14 the changes that were made, were updated brakes when
15 the mechanic came out and then updates to the
16 registration, correct?

17 A. That is all we did.

18 Q. Okay. And nothing was done to the outside
19 of the truck before the truck was moved and you went on
20 your way?

21 A. No. It's been -- I mean, it's been
22 washed. It's not been in any accidents. There's been
23 no cosmetic damage.

24 Q. I mean, on May 6th nothing was done?

25 A. No. Absolutely nothing was done.

1 MR. STUCKEY: No further questions, your
2 Honor, at this time. I'll follow-up.

3 ATTORNEY EXAMINER: Mr. Wright.

4 MR. WRIGHT: Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Wright:

8 Q. Good morning. Are we still in the
9 morning? Yes, I guess we are. Mr. Burkhead, how are
10 you this morning?

11 A. Fine, sir.

12 Q. How long did you say you've been employed
13 by Roe?

14 A. Since October of 2008.

15 Q. Okay. And you've held various positions --

16 A. Yes.

17 Q. -- with Roe?

18 A. Well, no, the same position. I'm director
19 of operations there. Basically multifunctional.

20 Q. Okay. Do you have folks under you?

21 A. Yes, sir.

22 Q. Okay. Now, when you did this changeover,
23 and we'll talk about that in a minute, but who would
24 have been actually responsible for seeing that the
25 vehicle markings were changed?

1 A. The mechanics.

2 Q. The mechanics, okay. Now, is the sum and
3 substance of your testimony that basically the
4 registration was in error and --

5 A. That's the only thing that changed.

6 Q. -- that Mr. Byrne relied on the
7 registration to get the -- to determine who the carrier
8 was?

9 A. I can only assume that he used the
10 registration, being that we had to change it in order
11 to utilize the truck again.

12 Q. Okay. So that's an assumption on your
13 part?

14 A. That's what we were told to do.

15 Q. Well --

16 ATTORNEY EXAMINER: And, Mr. Burkhead,
17 again, the registration at the time of the inspection
18 had -- what would that have read again? What was
19 exactly the name?

20 THE WITNESS: Roe Transportation.

21 ATTORNEY EXAMINER: Roe Transportation, I
22 see. With US DOT of -- DOT number of?

23 THE WITNESS: It did not have the DOT
24 number on the registration.

25 ATTORNEY EXAMINER: I see. Okay.

1 THE WITNESS: Just the name.

2 ATTORNEY EXAMINER: I see. Okay. All
3 right. Thank you. Mr. Wright.

4 Q. And, in fact, the registration tells who
5 owns the vehicle, correct?

6 A. Yes, sir.

7 Q. It would not say anything at all about
8 under whose authority the vehicle was being operated,
9 correct?

10 A. There is an area for that.

11 Q. Okay.

12 A. It's not required.

13 Q. Okay.

14 A. And that is where we added the name Roe
15 Transport with the DOT number applied to it.

16 Q. Okay. And that has not been submitted as
17 an exhibit today; is that correct?

18 A. I have it right here.

19 Q. Okay.

20 MR. WRIGHT: May I approach, your Honor?

21 ATTORNEY EXAMINER: Yes.

22 Q. Can I borrow this for a moment?

23 A. Yes, sir. That's before and after. The
24 one with Roe -- lacking the Roe Transport is the one
25 that we had at the time of the inspection.

1 Q. So there's one there before and then one
2 after?

3 A. Exactly. The one with Roe Transport, Inc.
4 on it is what we had to do on May 6th in order to
5 utilize the equipment again.

6 MR. WRIGHT: Your Honor, can I have a
7 moment?

8 ATTORNEY EXAMINER: Let's go off the
9 record. I'd like to see them myself.

10 MR. STUCKEY: Can I say something on the
11 record --

12 ATTORNEY EXAMINER: Yes.

13 MR. STUCKEY: -- prior to that. I just
14 want to make known that I did not have this in my
15 possession prior to today or I would have obviously
16 given it to him.

17 MR. WRIGHT: Your Honor, we'll get it to
18 you momentarily.

19 ATTORNEY EXAMINER: Fine.

20 (Off the record - recess)

21 ATTORNEY EXAMINER: Back on the record.

22 MR. WRIGHT: Here, do you want to look at
23 it now?

24 ATTORNEY EXAMINER: Yes. Thank you. We'll
25 proceed with these two copies.

1 MR. WRIGHT: All right. I guess I may have
2 to -- if I may stand here.

3 ATTORNEY EXAMINER: You can certainly stand
4 next to the witness.

5 Q. I think you've already testified, but from
6 looking at this, these two registrations, am I correct,
7 Mr. Burkhead, that there is no DOT number listed on
8 here; is that right?

9 A. There is on this one. We had it put on
10 there because we got this shut down -- we had this in
11 the truck and we were told we didn't have authority.
12 And so we made sure that that was put on there along
13 with the name that's on the side of the truck so no one
14 would again say you don't have authority, the truck is
15 not marked right, the registration is wrong, to
16 eliminate doubt.

17 Q. So as I understand it, the -- and we're
18 probably going to have to mark these.

19 ATTORNEY EXAMINER: I believe we will,
20 yes. And for the record, this might help a little bit
21 for anyone reading the transcript later. Mr. Burkhead
22 is pointing to two --

23 MR. WRIGHT: Let's mark them. Do you want
24 to mark these?

25 MR. STUCKEY: Okay.

1 (ROE EXHIBITS C AND D MARKED FOR
2 IDENTIFICATION.)

3 Q. Mr. Burkhead, we've marked these as --
4 these two registrations, cab registration as C and D,
5 do you see that?

6 A. Uh-huh.

7 Q. Now, would I be correct that Exhibit C
8 would have been the one that would have been on the
9 truck on the day of the inspection; is that right?

10 A. Correct.

11 Q. And for the record, the name listed on this
12 is Roe Transportation, Inc.; is that correct?

13 A. Yes.

14 Q. Now, there's previous testimony that has
15 been presented from Mr. Barrett that indicated that the
16 number from Roe Transportation, Inc. was actually
17 assigned at some point to Roe Transportation
18 Enterprises, Inc. Do you have reason to disagree with
19 that or dispute that?

20 A. Not to my knowledge, no.

21 Q. Okay. Just a simple question. So, again,
22 what's been marked as Exhibit C would have been what
23 was in the cab on the date of the inspection, right?

24 A. Yes.

25 Q. Now, what is the expiration date on that

1 registration?

2 A. 2-28-2010.

3 Q. 2-28-2010. And you understand the day of
4 the inspection, of course, was 5-5-2010, May 5; is that
5 correct?

6 A. Yes.

7 Q. So essentially at the time of the
8 inspection the paperwork made available to Mr. Byrne
9 would have indicated that you were operating with
10 expired tags; is that right?

11 A. Yes. According to that one. I know
12 that --

13 Q. Well, you're the one that provided these,
14 sir.

15 A. Well, I brought these in to show what we
16 had to do.

17 Q. All right.

18 A. But I --

19 Q. There's not a question pending.

20 A. We had registration at that time. I may
21 not have that 2010-2011.

22 MR. WRIGHT: Would your Honor like -- are
23 you going to ask a question?

24 ATTORNEY EXAMINER: Perhaps.

25 MR. WRIGHT: Okay. I don't think I'm going

1 to ask anything else on that. Do you want to ask your
2 questions now or do you want me to continue?

3 ATTORNEY EXAMINER: Please continue.

4 MR. WRIGHT: Okay. Give me just a moment
5 if you would, please.

6 A. If it is a question that we had a valid
7 registration at that time --

8 Q. There's no question pending.

9 A. -- we can provide that.

10 Q. Let's talk for a minute about -- just so
11 we're clear.

12 MR. WRIGHT: Did you mark this picture?

13 MR. STUCKEY: I did, B.

14 Q. Exhibit B, sir, do you have a copy of that
15 picture there?

16 A. Yes. It's right here. I think it's the
17 same.

18 Q. Just so I'm clear, that picture was taken
19 by you this week; is that right?

20 A. Yesterday.

21 Q. And that depicts how that unit looked as of
22 February 16th, 2011; is that correct?

23 A. There's been nothing else done to it.

24 Q. Well, if it were that simple -- well,
25 strike that. Strike that.

1 Now, the suggestion is that -- well, let me
2 make sure I understand this. Back to C and D again,
3 Exhibits C and D, the -- and Exhibit C I guess is
4 what -- the registration that would have been in the
5 truck on the day of the inspection. You got me? You
6 on the same page there?

7 A. Obviously this would have not been the one
8 that was in the truck, I got these out of the truck
9 files and we keep copies.

10 Q. Well, wait a minute, you previously
11 testified that it was.

12 A. Well, I didn't realize the date on it
13 here. That's why it wasn't originally entered in as
14 evidence.

15 Q. Okay. So now having seen that there's an
16 expired date on there, you're changing your story
17 basically?

18 A. No. I'm saying it must not be the right
19 one because we had a valid registration.

20 Q. What was the error on the registration --

21 A. The name.

22 Q. -- that caused there to be a problem?

23 A. The name.

24 Q. The name of the carrier?

25 A. Yes.

1 Q. And on C it's Roe Transportation, Inc.,
2 right?

3 A. That's what's on all of them, correct.

4 Q. Now, when you changed -- is your testimony
5 that you created Roe Transport, Inc. on or about May 8
6 of 2009, thereabouts; is that right?

7 A. That would be pretty accurate.

8 Q. And you did a number of things in
9 conjunction with that change including, allegedly,
10 changing the vehicle markings; is that right?

11 A. Yes, they were.

12 Q. And it was your testimony you were very
13 diligent about doing it; is that right?

14 A. It is, yes.

15 Q. Is one of the things that -- why didn't you
16 have that changed?

17 A. What?

18 Q. The registration.

19 A. Because we were told we didn't need to.
20 It's a -- do we need to?

21 Q. Well, was Roe Transportation, Inc. at that
22 time -- was it a defunct company?

23 A. Roe Transportation, Inc.?

24 Q. Roe Transportation, Inc., yes.

25 A. Roe Transportation, Incorporated has not

1 been active since then. It is not --

2 Q. Okay. When you say incorporated, that's
3 the same as Roe Transportation, Inc.? I just want to
4 make sure we're talking about the same thing.

5 A. Yes. Roe Transportation, Inc., that's what
6 that stands for.

7 Q. All right. Could you understand how there
8 could be some confusion, because --

9 A. I understand with the various names.

10 Q. Yes.

11 A. I believe I've been through this as many
12 times as you have or more.

13 Q. Sure.

14 A. And I do understand; however, I cannot
15 understand how -- it's got to be one or the other. You
16 either go with the decals on the side of the truck, and
17 look up the authority by that, or you go by the name on
18 the registration. And if there is a discrepancy, which
19 obviously there was, because the DOT number didn't
20 match the Roe Transportation.

21 Q. And you have no explanation for that?

22 A. I have no idea why he kept calling out the
23 old number. I don't know. Unless they were going off
24 the name and that -- there's no other explanation for
25 it, otherwise why were we told that the name had to be

1 changed on the registration.

2 Q. So basically you -- are you suggesting that
3 Mr. Byrne's testimony about matching up the number on
4 his ISS screen in his vehicle with what was on the
5 truck, that that was false?

6 A. I'm not implying that he was -- that he has
7 made a false statement. I do know that we had
8 operating authority. We were not operating under Roe
9 Transportation Enterprises at that time. At the point
10 this truck was stopped, it was operating under Roe
11 Transport, Incorporated.

12 Q. How would --

13 A. And I cannot explain why that hold-up under
14 the Roe Transportation Enterprises.

15 (phone ringing)

16 ATTORNEY EXAMINER: We'll go off the record
17 for a second.

18 (Off the record - recess)

19 ATTORNEY EXAMINER: Back on the record,
20 please.

21 Q. Mr. Burkhead, are you saying -- did you
22 just say that on the day of the inspection, May 5,
23 2010, that Roe Transportation Enterprises, Inc. didn't
24 exist?

25 A. No. I'm not saying that at all.

1 Q. Okay. I'm just --

2 COURT REPORTER: Wait, you're both talking
3 at the same time.

4 ATTORNEY EXAMINER: Yes, one at a time.

5 Q. What did you say? I misunderstood you
6 then.

7 A. The vehicle was not being operated by Roe
8 Transportation Enterprises on that day.

9 Q. And you have no explanation other than your
10 belief possibly that it was the registration as to why
11 Mr. Byrne would have been using the 5428 -- no, I'm
12 sorry, the 846123 US DOT number on the day of the
13 stop?

14 A. I cannot tell you why they used -- that
15 number was used. I was not there at the scene. Okay.
16 I don't know.

17 Q. Is it possible that one of your mechanics
18 might have missed a DOT number on a vehicle?

19 A. It's absolutely possible. That's why the
20 truck was checked out.

21 Q. Checked out, what do you mean?

22 A. The truck was checked out to verify that
23 the right number was on the truck and that there was
24 nothing on the exterior of the truck that was wrong.

25 ATTORNEY EXAMINER: And, Mr. Burkhead,

1 you're saying it checked out, this is after the
2 inspection?

3 THE WITNESS: At the -- before we could
4 leave.

5 ATTORNEY EXAMINER: At the roadside, at the
6 rest area.

7 THE WITNESS: Right.

8 Q. Would that have been the next day, by the
9 way?

10 A. It would have been on May the 6th, yeah.

11 Q. May the 6th, right.

12 A. The repairs were made, the truck was
13 verified, the new registration was taken.

14 Q. And I think you already testified to this,
15 but I want to be clear, there's no suggestion on your
16 part or on your driver's part, who's no longer with the
17 company, that Mr. Byrne changed or requested that
18 anything be changed on the vehicle markings; is that
19 right?

20 A. No. That is correct.

21 Q. No, you agree with me?

22 A. Yes.

23 Q. Okay. You would have received a copy of
24 the driver/vehicle examination report that we talked
25 about earlier with Mr. Byrne, correct?

1 A. I had a copy of it, yes.

2 Q. But I mean you would have received a copy
3 of that in your possession from the driver?

4 A. Yes, I did see it.

5 Q. At, I don't know, a day or two after the
6 inspection probably?

7 A. He brought it down then. That had to be
8 given to the mechanic to sign off on the repairs.

9 Q. Right. Now, so at that point in time --
10 well, the first point in time would have been on the
11 phone with your driver and then when you saw the
12 report, you were certainly aware that we had this lack
13 of operating authority violation that had been levied
14 against you. Is it your testimony that this is a --
15 could have been a simple mistake or misunderstanding?

16 A. I think it was. I think that the
17 officer -- that it wasn't intentional. I can't see why
18 anyone would want to do something like that
19 intentional. But I believe that it was put in in error
20 because it is obvious the number displayed were not
21 what he was pulling up. And I don't -- like I said, I
22 wasn't there. I only know what my driver was -- told
23 me. I know what we -- the stand we took as a company,
24 because it's going to be fixed regardless, because we
25 don't take chances and we don't run illegally.

1 Q. We appreciate that.

2 A. And --

3 Q. We appreciate that.

4 A. Nothing we do is worth getting hurt or
5 hurting others.

6 ATTORNEY EXAMINER: And, Mr. Burkhead, when
7 you say you believe it was -- you know, it was in
8 error --

9 THE WITNESS: Yes.

10 ATTORNEY EXAMINER: -- you're indicating,
11 if I understand correctly then, that --

12 THE WITNESS: On one of the old
13 registrations and there -- oh, my goodness.

14 (phone ringing)

15 ATTORNEY EXAMINER: We'll go off the record
16 again.

17 (Off the record - recess)

18 ATTORNEY EXAMINER: Back on the record.

19 Mr. Burkhead, I just want to make sure I understood you
20 earlier when you were -- a few minutes ago when you
21 were suggesting that you believe an error had been made
22 during the time of the inspection and you believe that
23 Mr. Byrne had -- Mr. Byrne had been looking at the
24 registration that was with the vehicle. Okay. And you
25 believe that that registration had said on it the name

1 of the carrier was what you believe?

2 THE WITNESS: It would have been under
3 this.

4 ATTORNEY EXAMINER: It would be Roe
5 Transportation, Incorporated?

6 THE WITNESS: Right.

7 ATTORNEY EXAMINER: And then it's your
8 thought that by typing that name into the federal
9 database, that the incorrect, you know, US DOT number
10 was pulled up and so forth?

11 THE WITNESS: Yes, sir, I do.

12 ATTORNEY EXAMINER: I see. Because it's
13 your testimony that the vehicle that was inspected was
14 operating under the Roe Transport, Inc. name?

15 THE WITNESS: Absolutely. Absolutely.

16 ATTORNEY EXAMINER: I see.

17 THE WITNESS: And that's why we took this
18 precaution.

19 ATTORNEY EXAMINER: And you're indicating
20 that, although we have Exhibit C here, which you
21 believe is an example of what the incorrect
22 registration, you're saying that actually was not the
23 registration for that vehicle?

24 THE WITNESS: It wouldn't be the one that
25 was carrying --

1 ATTORNEY EXAMINER: Because it had --

2 COURT REPORTER: You're both talking at the
3 same time.

4 ATTORNEY EXAMINER: I'm sorry. You're
5 indicating that Exhibit C actually is probably not the
6 registration for that vehicle because it had an
7 expiration date of 2-28-10 and the inspection was
8 several months later in May?

9 THE WITNESS: That's a prior one. It's for
10 that unit, but it's a prior one.

11 ATTORNEY EXAMINER: All right.

12 MR. WRIGHT: We'll let the record speak for
13 itself on that, your Honor. We believe there's
14 conflicting testimony on that point, but be that as it
15 may. Almost done.

16 - - -

17 CONTINUED CROSS-EXAMINATION

18 By Mr. Wright:

19 Q. Mr. Burkhead, you would agree with me that
20 the DOT number for -- well, strike that.

21 Presently, Roe Transportation Enterprises,
22 Inc. has a DOT number, do they not?

23 A. Roe Transport --

24 Q. Transportation Enterprises, Inc., has a DOT
25 number?

1 A. Yes, they do.

2 Q. And is it 846123?

3 A. Yes, it is.

4 Q. Okay. And Roe Transport, Inc. has a DOT
5 number; is that correct?

6 A. Yes, it does.

7 Q. And am I correct that that number is
8 1879584?

9 A. Yes, it is.

10 Q. Those numbers are quite different, are they
11 not?

12 A. Oh, yes.

13 Q. Okay.

14 ATTORNEY EXAMINER: And before you go
15 further, Mr. Wright. Mr. Burkhead, was there a US DOT
16 number associated with Roe Transportation, Inc.?

17 THE WITNESS: On the old registration, none
18 that I could find, no. But I did have the one put on
19 here, like I said, just as a precautionary to avoid
20 that from happening.

21 ATTORNEY EXAMINER: But, again, you're
22 suggesting that if the Roe Transportation, Incorporated
23 name was typed into a federal database, that might have
24 somehow created this chain of events that resulted in
25 the officer or inspector finding the wrong US DOT

1 number and so on.

2 THE WITNESS: I see no other explanation
3 for it. That doesn't change the fact that we weren't
4 operating that truck as Roe Transportation
5 Enterprises. It was being operating properly under Roe
6 Transport, Inc. and I cannot -- the only thing we can
7 do is display on the truck the sticker and the name up
8 to date. Beyond that, I cannot change what someone
9 does.

10 ATTORNEY EXAMINER: And when you say the
11 stickers, you mean the markings on the side of the
12 cab?

13 THE WITNESS: Right.

14 ATTORNEY EXAMINER: Okay.

15 Q. Just to kind of close that loop.
16 Mr. Burkhead, Roe Transportation, Inc., now either
17 defunct or inactive, had a DOT number at one time, did
18 it not?

19 A. Yes.

20 Q. And that DOT number was 846123, was it not?

21 A. Yes.

22 Q. Okay. Assume for me, if you will, that for
23 purposes of the question, assume for me, that the
24 846123 number was displayed on the truck on May 5th,
25 2010. Just assume that for me for purposes of this

1 question. Are you with me?

2 A. Yes.

3 MR. STUCKEY: I'm going to object to the
4 question.

5 MR. WRIGHT: Well, may I finish it?

6 ATTORNEY EXAMINER: Well, let Mr. Wright
7 finish the question first.

8 Q. Assuming that, would Mr. Byrne have had any
9 way of knowing that the move that day, May 5th, 2010,
10 was being done under someone else's authority?

11 A. To repeat the question you're saying to
12 assume that the old DOT number was displayed?

13 Q. Yes. When you say the old DOT number,
14 you'd be talking about the one that Roe Transportation,
15 Inc., now Roe Transportation Enterprises, Inc., had,
16 yes.

17 A. If you're assuming that, you're assuming
18 that the name was not correct on the side of the truck
19 also?

20 Q. I did not say anything about -- I'm not
21 assuming anything about the name at all.

22 ATTORNEY EXAMINER: Mr. Stuckey?

23 MR. STUCKEY: I want to object to the
24 question as being confusing. He obviously doesn't
25 understand what the question is.

1 MR. WRIGHT: Let me try again.

2 ATTORNEY EXAMINER: Well, if you can
3 clarify it, Mr. Wright.

4 Q. Again --

5 A. To assume that it was displayed on there,
6 then he would pull up under the old number.

7 Q. In other words, he'd be using the number to
8 the -- the DOT number on the truck to get into the ISS
9 database, right?

10 A. If it did that, yes.

11 Q. And that's what you heard him testify that
12 he did here, right?

13 A. He said he pulled it up by the name and
14 then verified across.

15 ATTORNEY EXAMINER: Mr. Stuckey?

16 MR. STUCKEY: His witness has already
17 testified today to the fact that he pulled up the name
18 and then with the name came the DOT number. He's
19 asking if there's any other way that that can happen,
20 he's already had his witness testify --

21 MR. WRIGHT: We'll bring our witness back
22 to make it clear because perhaps it isn't.

23 ATTORNEY EXAMINER: Okay. We'll continue
24 with the questions.

25 MR. WRIGHT: I don't think that's an

1 accurate characterization of his testimony. But let's
2 move on.

3 Q. Why did you feel it was important to
4 present us with a picture today? Was that at your
5 attorney's suggestion? I'll strike that.

6 Why did you feel it was important?

7 A. Why? Because, number one, it is --

8 MR. STUCKEY: Objection.

9 A. You can see how clearly it's marked.

10 MR. STUCKEY: Attorney-client privilege.

11 MR. WRIGHT: No. No. I asked him --

12 MR. STUCKEY: You're asking why that was
13 introduced --

14 COURT REPORTER: One at a time.

15 ATTORNEY EXAMINER: Too many people going
16 at once.

17 MR. WRIGHT: Your Honor, the witness has to
18 respond to the exhibit. He took the picture. I'm
19 asking him why he took the picture.

20 MR. STUCKEY: And any reason why we're
21 using the picture, taking a picture, has to do with how
22 we prepared for this trial and why we prepared for this
23 trial, which would be attorney-client privilege.

24 MR. WRIGHT: Are you telling me that I
25 can't --

1 MR. STUCKEY: There's no reason --

2 MR. WRIGHT: I can't test this picture?

3 MR. STUCKEY: You can test the picture. He
4 already said he took the picture. But the reason why
5 he took the picture or why we're introducing it has
6 nothing -- is irrelevant. It's between me and my
7 client. That's attorney-client privilege. You can
8 test the authenticity of it, but the authenticity has
9 no -- has nothing to do with the reason why it's being
10 introduced, why it's authentic.

11 MR. WRIGHT: I'll try the question again
12 then.

13 Q. How does this picture fit into your defense
14 here, if you will?

15 A. You can clearly see that it's not easily --
16 it's not easily mistaken. It's not like it's an off
17 white color marking, that the numbers are not --
18 they're very contrasting numbers. White on black.

19 Q. Okay. I believe you testified, did you
20 not, sir, that when you looked at -- when you look
21 at -- this is what?

22 MR. STUCKEY: B.

23 Q. When you look at B, Mr. Burkhead, you'll
24 notice that the word transport is off center. That
25 would have been because you had removed the i-o-n that

1 would have said Roe Transportation --

2 A. You were told that's what happened.

3 Q. -- Inc. at some point?

4 ATTORNEY EXAMINER: And if you could help
5 me gentlemen, the i-o-n is?

6 THE WITNESS: The t-i-o-n -- a-t-i-o-n.

7 MR. WRIGHT: Roe Transportation.

8 ATTORNEY EXAMINER: Oh, I see. I
9 understand.

10 MR. STUCKEY: It was testified earlier that
11 in 2009 it was switched.

12 ATTORNEY EXAMINER: Yes. Thank you. The
13 i-o-n from transportation.

14 MR. STUCKEY: Yes.

15 ATTORNEY EXAMINER: Thank you.

16 Q. Okay. So I think it's your testimony, sir,
17 that this basically says it all, right? This is --
18 you're testifying that this is the way that truck
19 looked on the day of the inspection?

20 A. Yes.

21 Q. 5-5-2010, even though the picture was taken
22 much later than that?

23 ATTORNEY EXAMINER: And for the record,
24 Mr. Wright is holding up Exhibit B from Roe.

25 MR. WRIGHT: B, I'm sorry.

1 ATTORNEY EXAMINER: B, like boy.

2 MR. WRIGHT: B as in boy, yes, that's
3 correct.

4 Q. Now, that being the case, do you have any
5 explanation for why Roe didn't take a picture of this
6 sooner and submit it to us if this was a simple
7 misunderstanding? Why you didn't come forward sooner?
8 Why not only right after the violation happened, but
9 later at a telephone conference that I believe you
10 participated in with a transportation staff member
11 here, why later at prehearing, why?

12 A. Why what?

13 Q. Why we never were presented with something
14 like this previously until today?

15 A. Quite honestly I figured this matter would
16 be taken care of before this. And that's why we
17 appealed it, because it was not right.

18 Q. Right. And that would have been the
19 easiest way to take care of it, wouldn't it be, to
20 provide us with a picture?

21 A. If I had known that would have taken care
22 of it then, yes, I would have given it to you then. I
23 would have taken one back then. But that didn't change
24 what was on the registration. We did that the next
25 day.

1 Q. But the registration -- the next day,
2 you're talking the day after the inspection?

3 A. Right.

4 Q. The registration was inaccurate on the day
5 of the inspection?

6 A. No.

7 Q. What did you change then?

8 A. We had Roe Transport, Inc. added to it.
9 Didn't have to be added to it. And you know that it
10 doesn't have to be there, but it is there for the sole
11 purpose of making it irrefutable to anyone that looks
12 at that registration what DOT number we're operating
13 under. So they can look at that and look at the side
14 of the truck and say they're both the same.

15 ATTORNEY EXAMINER: And, for the record,
16 Mr. Burkhead is pointing to Roe Exhibit D as part of
17 the registration that has a title US DOT of carrier
18 responsible for safety.

19 MR. WRIGHT: May I see this, please?

20 ATTORNEY EXAMINER: Yes.

21 MR. WRIGHT: Are you done?

22 ATTORNEY EXAMINER: Yes.

23 Q. Okay. So we're very clear then, sir, the
24 basic difference between Exhibit C and Exhibit D is
25 that Roe Transport, Inc. was added and the DOT number

1 for Roe Transport, Inc. was added. Neither of those
2 appeared on C; is that correct?

3 A. Correct.

4 Q. So, again, on May 5th, 2010, anybody
5 looking at that registration -- just by looking at that
6 registration, I should say, that tells you nothing
7 about operating authority for that particular move,
8 correct?

9 A. Correct.

10 Q. Okay.

11 MR. WRIGHT: One moment, your Honor.

12 Q. And you have no reason to dispute Mr.
13 Byrne's testimony that between May 5th, 2010 and today,
14 and today, your company, any of your companies, never
15 made a contact to District 2 headquarters to inquire
16 about that violation?

17 MR. WRIGHT: And if you want some
18 foundation, counsel, perhaps I should have provided it,
19 I apologize.

20 Q. That would have been -- if somebody would
21 have called to inquire about it, that would have
22 probably come from you; is that right, as part of your
23 job duties?

24 A. Most likely myself or Chad.

25 Q. And to the best of your knowledge, neither

1 you or Chad --

2 A. Chad Roe.

3 Q. -- Chad Roe made any contact to District 2
4 headquarters at the phone number listed on that report
5 to inquire about the lack of operating authority
6 violation we're talking about today?

7 A. We have made inquiries about it when I
8 spoke to someone to appeal it. Because that was --

9 Q. Oh, I'm sorry. I thought I was clear about
10 that. District 2 headquarters, you know, Mr. Byrne
11 operates out of District 2 headquarters.

12 A. Oh.

13 Q. You heard him testify.

14 A. His headquarters?

15 Q. Yes. Yes, sir. Do you have any reason to
16 dispute his testimony that no one made such contact?

17 A. No, I don't have any reason to.

18 Q. Okay.

19 MR. WRIGHT: That's all, your Honor. Thank
20 you.

21 ATTORNEY EXAMINER: Mr. Burkhead, before
22 Mr. Stuckey asks a question, I better ask one that I
23 have in my mind.

24 - - -

25 EXAMINATION

1 By Attorney Examiner:

2 Q. You said that on the day of the inspection
3 the driver had been in touch with you about what the
4 violations were; is that correct?

5 A. Correct.

6 Q. And was it -- I believe that day or the
7 next day, you were out at the rest stop where the
8 inspection occurred and you made the corrections to the
9 brake violations and so forth, right?

10 A. The mechanic did, yes.

11 Q. Was there -- knowing what the driver had
12 said about the operating authority issue, was there any
13 consideration given at that time to taking a photograph
14 of the vehicle right then and there?

15 A. No. I really didn't.

16 Q. It really didn't occur to you to take it
17 then, to photograph then?

18 A. I didn't think we would need it. We had
19 made the changes to the registration, so -- that just
20 remedied the situation.

21 COURT REPORTER: I can't hear you.

22 Q. Okay. A little bit louder.

23 A. Oh, I apologize. No, I didn't.

24 Q. So basically you're saying that -- because
25 when you went to the site of the inspection and you saw

1 what you believed was the correct identification
2 numbers and names on the cab, you felt that although
3 the driver had said there was a lot of confusion over
4 the issue about who the carrier was, you felt -- you
5 didn't really see any need to take a photograph of the
6 cab?

7 A. I didn't because we went to the expense
8 already of changing that, so --

9 Q. You went to the -- you just went to the
10 registration issue and took care of that?

11 A. Right. That's what I was told was the
12 issue.

13 Q. I see. Okay. And the changes to the
14 registration were made after this inspection; am I
15 correct?

16 A. Right. The vice president made the changes
17 to that.

18 ATTORNEY EXAMINER: All right. Mr. Wright,
19 did you have any further questions?

20 MR. WRIGHT: I don't believe I do.

21 ATTORNEY EXAMINER: Okay. Mr. Stuckey.
22 Thanks for your patience.

23 - - -

24 REDIRECT EXAMINATION

25 By Mr. Stuckey:

1 Q. You were asked by Mr. Wright whether or not
2 you made an inquiry to the number on the report or to
3 anyone regarding the citation?

4 A. Right.

5 Q. You stated no. Well, how did you come to
6 light of knowing that you needed to have the
7 registration changed? How did you find that out
8 without contacting someone?

9 A. Well, through contact of the officer at the
10 time, that we were told that's what had to happen. The
11 name on the registration had to reflect the same as the
12 name on the side of the truck.

13 Q. Okay. And --

14 MR. STUCKEY: May I approach? I want to
15 look at C and D. I'm sorry.

16 ATTORNEY EXAMINER: Yes, you may approach.

17 Q. On the date of the citation, did Mr. Byrne
18 cite you for having expired plates; is that --

19 A. No. No. The registration I was issued
20 there is obviously not the accurate one.

21 Q. In C the only thing we're trying to reflect
22 here is the fact that, you know, it had Roe
23 Transportation, Inc. on it?

24 A. That was my purpose, yes. Not the fact
25 that it's --

1 Q. Not that it's expired?

2 A. Not the exact one.

3 Q. There's another one exactly like this, just
4 a different expiration date that would be what was in
5 the truck on that date.

6 A. Absolutely. And it's the same -- the ones
7 prior to those, the years prior to that is identical to
8 that one.

9 Q. And on the one that you had on May 6th, in
10 order to move forward, it still shows Roe
11 Transportation, Inc., correct, on the registration?
12 That did not change?

13 A. No, because that's who it's registered to.

14 Q. All that was changed is that Roe Transport,
15 Inc. was placed on here with the correct DOT number.
16 The same name and DOT number that were on the outside
17 of the truck, correct?

18 A. Yes.

19 Q. That's the only change?

20 A. Right.

21 Q. And that's the only change you made in
22 order to move the truck from that point, correct?

23 A. There has been no other changes made to our
24 authority in any way to the trucks, and no one else --

25 Q. It was just added to the registration?

1 A. Yes. No one else was -- identified trouble
2 in any other state.

3 Q. Okay. Did you personally go out to the
4 truck on May 6th?

5 A. I did not go out to the truck on May 6th.
6 They came down. They took the stuff up to it and
7 brought it back down --

8 Q. But you did not go see the truck while it
9 was out of service?

10 A. No. I was going off by everything I was
11 told from my mechanic, from my representatives there.

12 Q. The first time you saw the truck after this
13 incident was back at Roe Transport, Inc. in Sidney,
14 Ohio, correct?

15 A. Right.

16 Q. Okay. And just to clarify from one of his
17 questions, where you took i-o-n off of transport, from
18 transportation, which made it transport, that change,
19 along with putting the new DOT number, those changes
20 were made in May of 2009, correct?

21 A. A year prior to this.

22 Q. You testified that mechanics were told to
23 do that or mechanics had the job or duty of --

24 A. Well, the shop foreman's duty was to make
25 sure and ensure that the mechanics had done it. He

1 kept record of each one that was done, the DOT
2 numbers. There was only, I think, 19 trucks at the
3 time. There was only X amount of DOT numbers made of
4 new ones and they were checked off as they were applied
5 to the trucks and a checklist was completed.

6 Q. Did you personally review that this was
7 completed? Did you personally review the documents
8 stating that every truck, including number 396, was
9 completed?

10 A. Yes.

11 Q. And that was in May or --

12 A. With John McClain, he was our foreman at
13 the time.

14 Q. But that was in May of 2009, correct?

15 A. Yes.

16 Q. When you reassured yourself or reviewed the
17 documents saying that --

18 A. Right. I personally didn't do it. That's
19 why I have people that work under me. I'm not able to
20 be everywhere at once.

21 Q. You heard testimony earlier today from
22 Officer Byrne or Inspector Byrne, correct?

23 A. Yes.

24 Q. He testified that he pulled the name --
25 pulled the DOT number by first putting in the name,

1 correct?

2 A. Yes.

3 Q. Okay. So he testified that DOT number was
4 not put in to pull up the information for your company,
5 correct?

6 A. He stated that the name -- he used the name
7 first and then got the DOT number and then drove up
8 beside it and verified it.

9 MR. STUCKEY: Okay. No further questions
10 at this time.

11 ATTORNEY EXAMINER: Mr. Wright, any
12 additional questions?

13 MR. WRIGHT: I think I have two. They're
14 very narrow.

15 ATTORNEY EXAMINER: Okay.

16 - - -

17 RECROSS-EXAMINATION

18 By Mr. Wright:

19 Q. You learned -- you initially learned about
20 the lack of operating authority violation not from any
21 inquiry you made here or to District 2, you learned
22 about that from your driver over the phone.

23 A. The driver and the report.

24 Q. And the report. Yes. Thank you. Now,
25 your testimony a moment ago indicated that you changed

1 out, if you will, all the units. The markings on all
2 the units including 369?

3 MR. STUCKEY: 396.

4 MR. WRIGHT: Huh?

5 MR. STUCKEY: 396.

6 MR. WRIGHT: 396. Thank you.

7 Q. Unit 396 several days after -- sometime in
8 May of 2009; is that fair?

9 A. Yes.

10 Q. Okay. And, again, in your opinion, sir,
11 would a picture taken at that time or even roughly that
12 time have perhaps -- could that have gone a long way
13 toward clearing this up, in your opinion?

14 A. No, I don't believe so.

15 MR. STUCKEY: I want to object as it's been
16 asked and answered. It's not cross. I did not ask him
17 that.

18 A. I can say no, because if it were such a
19 simple matter --

20 ATTORNEY EXAMINER: Just a minute.

21 A. -- then this would resolve it right now.

22 ATTORNEY EXAMINER: Just a minute, please.

23 Mr. Wright, you were asking whether a photograph had
24 been -- if a photograph had been taken in May of 2009,
25 approximately --

1 MR. WRIGHT: Yes.

2 ATTORNEY EXAMINER: -- would that have
3 helped toward resolving matters?

4 MR. WRIGHT: I'll tell you what, I'll
5 withdraw the question. I'll withdraw the question.

6 A. How can I prove the date this was even
7 prepared --

8 MR. STUCKEY: Hang on, sir.

9 ATTORNEY EXAMINER: You don't need to say
10 anything.

11 MR. WRIGHT: I'll withdraw the question. I
12 have a different question.

13 Q. You personally reviewed the paperwork on
14 all change orders, all units for May of 2009; is that
15 right? That's what you testified to.

16 A. Yeah, the documentation is on the --

17 Q. Including unit 396?

18 A. He had verified that all the trucks had
19 been changed, yes.

20 Q. And it's fair to say that even up to today,
21 you've never provided us with a copy of that paperwork,
22 have you?

23 A. No one's requested it.

24 Q. You don't think that might have helped?

25 A. This is -- it's quite obvious that it was a

1 misunderstanding on somebody's part. We were
2 operating -- we had operating authority.

3 Q. And wouldn't a good way of establishing
4 that be to show that you changed over everything and
5 you personally reviewed it sometime in May of 2009?

6 A. If that's all that was required to avoid a
7 \$600 fine, if that's what you needed to satisfy that it
8 was never asked with any information that he have --

9 Q. It was neither asked nor was it provided?

10 A. Either way.

11 Q. Despite the fact that you knew what the
12 nature of the violation was?

13 A. Right.

14 MR. WRIGHT: Okay. That's all I have.
15 Thank you very much.

16 ATTORNEY EXAMINER: All right.
17 Mr. Stuckey, any further questions?

18 MR. WRIGHT: Are we going to go round and
19 round?

20 ATTORNEY EXAMINER: No, I just wanted to
21 provide the opportunity.

22 MR. STUCKEY: I appreciate that. No, I
23 won't go any further.

24 ATTORNEY EXAMINER: Thank you. Mr. Wright,
25 did you want to recall your witness?

1 MR. WRIGHT: Can I have a couple minutes to
2 confer?

3 ATTORNEY EXAMINER: Confer, okay. I have a
4 question for him but we'll go off the record --

5 MR. WRIGHT: For?

6 ATTORNEY EXAMINER: For Mr. Byrne, yes.
7 But we'll go off the record for a few minutes.

8 MR. WRIGHT: Can I have five minutes?

9 ATTORNEY EXAMINER: Sure.

10 MR. WRIGHT: Knowing that he's got to come
11 back on the stand anyway, I guess.

12 ATTORNEY EXAMINER: Yes. And if we have no
13 further questions for Mr. Burkhead, then he can take
14 his seat?

15 MR. WRIGHT: I do not. Do you want to deal
16 with the exhibits first, before we go on?

17 ATTORNEY EXAMINER: Oh, good point.

18 MR. STUCKEY: I want to move now into the
19 record Roe Exhibits A, B, C and I believe D into the --

20 MR. WRIGHT: Can you set them side by
21 side. I'm sorry, I didn't mean to interrupt you.

22 MR. STUCKEY: Okay.

23 MR. WRIGHT: Why don't you move them
24 individually and I'll comment on them then.

25 MR. STUCKEY: I move to move Exhibit A

1 into evidence, which is previously marked as Roe
2 Exhibit A.

3 MR. WRIGHT: Your Honor, I would -- the
4 admission -- I don't object to the admission, per se,
5 for the limited purpose that it establishes permit
6 contract carrier authority in Roe Transport, Inc., an
7 entity whose authority we're not challenging today.

8 MR. STUCKEY: As of May 8th, 2009.

9 MR. WRIGHT: Yes. May 8th, 2009.

10 ATTORNEY EXAMINER: Okay. Then we'll admit
11 Roe Exhibit A into evidence.

12 MR. WRIGHT: I would object to its
13 admission for any other purpose other than what I just
14 said.

15 ATTORNEY EXAMINER: Okay.

16 MR. STUCKEY: And I'll move for Roe Exhibit
17 B into evidence.

18 MR. WRIGHT: And, again, your Honor, I
19 would agree that that accurately depicts the way the
20 truck looked on February 16th.

21 ATTORNEY EXAMINER: Of 2011.

22 MR. WRIGHT: 2011. And nothing more.

23 ATTORNEY EXAMINER: All right.

24 MR. STUCKEY: Well, I would argue that
25 foundation has been set that the one who took the

1 picture also showed that the picture was taken
2 yesterday, which is what it showed yesterday and his
3 testimony showed that nothing has been done as of --

4 MR. WRIGHT: That's fine.

5 ATTORNEY EXAMINER: Okay. We'll admit Roe
6 Exhibit B into evidence then.

7 MR. STUCKEY: I move Exhibit C into
8 evidence.

9 MR. WRIGHT: Let's go off the record.

10 ATTORNEY EXAMINER: Okay. Off the record,
11 please.

12 (Off the record - discussion)

13 ATTORNEY EXAMINER: We'll go back on the
14 record. And, Mr. Stuckey, you were offering Exhibit C
15 into evidence.

16 MR. STUCKEY: Into evidence, correct.

17 ATTORNEY EXAMINER: And, Mr. Wright, you
18 have -- for Exhibit C, you have no objections to that?
19 Or did you want some sort of --

20 MR. WRIGHT: I will say -- indicate that
21 the record will speak for itself on the import of that
22 document. I guess I would have one clarification
23 question, if I could ask this of counsel and perhaps
24 the witness as well. Is -- this is the sequence, C and
25 D, right? Is that right?

1 MR. STUCKEY: Correct. The date registered
2 would have been 2-24-2009. This is registered the day
3 after the incident.

4 MR. WRIGHT: Okay. So I'd like the record
5 to reflect that we have no paperwork between --
6 covering the period 2-28-2010 to 5-6-2010 and that's --

7 MR. STUCKEY: We can reflect that. And
8 I'll go off of -- that's fine.

9 MR. WRIGHT: Okay.

10 ATTORNEY EXAMINER: So we'll admit Exhibit
11 C into evidence based on everything that was agreed
12 upon.

13 MR. STUCKEY: Correct.

14 MR. WRIGHT: Yes.

15 MR. STUCKEY: And then I would move for
16 Exhibit D to be moved into evidence as previously
17 marked.

18 MR. WRIGHT: Exhibit D is the --

19 MR. STUCKEY: The one after the date.

20 MR. WRIGHT: Yes. Yes. That's fine.

21 ATTORNEY EXAMINER: All right. We admit
22 Exhibit D into evidence as well.

23 MR. WRIGHT: Okay. I know it's getting
24 late. Can we take just a couple minutes?

25 ATTORNEY EXAMINER: Let's take a five-

1 minute break.

2 (Off the record - recess)

3 ATTORNEY EXAMINER: Let's go back on the
4 record. Mr. Byrne, would you reoccupy the witness
5 stand so we can make sure the court reporter hears
6 you. Thank you.

7 - - -

8 MICHAEL J. BYRNE

9 having been previously sworn, testified as follows:

10 - - -

11 REBUTTAL EXAMINATION

12 By Attorney Examiner:

13 Q. All right. And I'll remind you you're
14 still under sworn testimony, Mr. Byrne.

15 A. Yes.

16 Q. Thank you. Okay. Just to clarify in my
17 mind, you had testified earlier, and that was quite a
18 while ago now, that at the time of the inspection you
19 did not rely on the registration. Did you examine the
20 registration? Did that come into play at all?

21 A. I would have looked at the registration for
22 purposes of using the vehicle information.

23 Q. The vehicle information, just to make sure
24 the vehicle was properly plated and so forth?

25 A. Well, specifically like the make and VIN

1 number.

2 Q. I see.

3 A. And I do like to verify the VIN number with
4 what's on the door of the vehicle.

5 Q. That's vehicle identification number?

6 A. Yes.

7 Q. Okay. But as far as entering information
8 into this ISS database, you're stating you really did
9 not rely on the registration --

10 A. No.

11 Q. -- am I correct? Okay. You just relied on
12 the name of the carrier that was on the door of the cab
13 and then when you entered that, you pulled up a US DOT
14 number which you're saying was identical to what was on
15 the vehicle cab?

16 A. Right. Yes.

17 Q. Okay. Thank you.

18 ATTORNEY EXAMINER: Mr. Wright.

19 MR. WRIGHT: If I could put, your Honor,
20 just a little finer point on it than that.

21 ATTORNEY EXAMINER: Okay.

22 - - -

23 DIRECT REBUTTAL EXAMINATION

24 By Mr. Wright:

25 Q. The truck went by, you caught part of the

1 name, is that your testimony?

2 A. Yes.

3 Q. And you started typing something in?

4 A. Uh-huh.

5 Q. All right.

6 A. Yes.

7 Q. But what got you to Roe Transportation
8 Enterprises, Inc. was the DOT number; is that correct?

9 A. Say it again, Bill.

10 Q. All right. You typed it in, you got
11 several Roe companies that came up; is that right?

12 A. That could very well be.

13 Q. I believe you testified you couldn't
14 remember how many, but there were multiple?

15 A. Yes.

16 Q. All right. So the next step in the process
17 for you was to try to match the DOT number on the truck
18 with a DOT number on the screen for one of those
19 companies.

20 A. Yes.

21 Q. Is that correct?

22 A. Yes.

23 Q. And, again, we're talking about the ISS
24 database. And upon pulling up alongside the truck, you
25 got a number, a DOT number off the truck.

1 A. Uh-huh.

2 Q. And you matched it up with a DOT number on
3 the screen in your vehicle.

4 A. Yes.

5 Q. And by doing so, you backed into the name
6 of the carrier, didn't you? The carrier being --

7 A. Roe Transportation.

8 Q. Roe Transportation Enterprises, Inc. or Roe
9 Transportation? The DOT numbers, the DOT numbers match
10 and -- and I guess I'm asking you, did -- they matched
11 up or corresponded with a company?

12 A. Yes.

13 Q. All right. And that company was, I believe
14 you testified earlier, Roe Transportation Enterprises,
15 Inc.?

16 A. Yes.

17 Q. Are you changing that now?

18 A. No.

19 Q. Okay. But the key was you went -- you
20 keyed off a federal DOT number.

21 A. Uh-huh?

22 Q. You only used the company name to initiate
23 a search?

24 A. Yes.

25 Q. In that database?

1 A. You want to use the word -- well, I don't
2 even --

3 Q. Well, is that accurate?

4 A. Oh, yeah.

5 Q. I mean, that's what got you started on your
6 search?

7 A. Call it kind of a little bit of a -- maybe
8 probable cause in a sense and then follow up on it.

9 Q. Okay.

10 A. By let's look at the side of the truck and
11 let's verify this. This DOT number and the carrier
12 markings.

13 Q. And the DOT number, though, was what led
14 you, again, to determine the carrier's name. You then
15 would have inquired of the driver about whether or not
16 he was operating under that name?

17 A. Yes.

18 Q. That's your previous testimony?

19 A. Yes.

20 MR. WRIGHT: Okay. That's all. Thank you.

21 ATTORNEY EXAMINER: Mr. Stuckey, anything
22 else?

23 MR. STUCKEY: Just a few. Hopefully
24 quick.

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CROSS REBUTTAL EXAMINATION

By Mr. Stuckey:

Q. First thing, there's an Exhibit C there that was admitted into evidence. A couple questions about that. It's been previously argued by counsel here that it's possible that Exhibit C was in the truck at the time of the incident. Let's assume that that is the case.

A. Okay.

Q. That his argument is true.

MR. WRIGHT: Your Honor, I believe the record might reflect that, so it might be more than just attorney argument.

ATTORNEY EXAMINER: All right.

Q. You stated earlier that you're very conscientious -- conscientious was your word -- and that you observe as much as possible. If you look to the expiration date on that registration, you see that as of the date of the incident, which would have been May 5th of 2010, correct?

A. Uh-huh.

Q. That obviously that would have been an expired registration, correct?

A. Right.

Q. Had that been the case --

1 A. We are to assume, right?

2 Q. Correct. Just assuming that that's the one
3 that was in the truck.

4 A. Okay.

5 Q. Being conscientious and observing and doing
6 your due diligence, would you have not have cited the
7 driver for expired plates or expired registration?

8 A. I can't cite a driver for expired plates.
9 I do not have the authority to do that.

10 Q. Okay. But would you have marked that in
11 the report? Would you have done anything further at
12 that point, had he --

13 A. I may have told the driver -- usually when
14 it comes to expirations, I'm not real concerned about
15 it. I want to be able to make sure that I've got the
16 information at least that I need for the vehicle. I do
17 ask where is your current -- where is your current IRP
18 cab card. I like to have the most recent, but if they
19 don't have it, I'm going to go with what I have.

20 Q. But it would send a red flag? I mean, it
21 would have been something --

22 A. I would at least have told the driver tell
23 your company that they need a current copy in the
24 vehicle.

25 Q. All right. With respect to the

1 registration, I guess you can look at D or -- I mean,
 2 it would be C. I'm sorry. It would still be C. You
 3 don't have to look at either of them. You stated in
 4 your previous question -- in his previous question that
 5 you did not really rely on the registration, correct?
 6 That the registration just checked vehicle information?

7 A. The registration helps.

8 Q. But it's not something you rely on. You
 9 more rely on the database --

10 A. I don't totally rely on the registration.

11 Q. Okay.

12 A. I use multiple things to rely on.

13 Q. Okay.

14 MR. WRIGHT: Your Honor, could I ask for a
 15 clarification. Rely on for what purpose? Are we
 16 talking about operating authority now?

17 MR. STUCKEY: For operating authority,
 18 correct.

19 MR. WRIGHT: Okay. Do you rely on that for
 20 operating authority is the question. Is that what you
 21 understood to be the question?

22 THE WITNESS: Not alone by itself, no.

23 MR. WRIGHT: Okay.

24 Q. My question is, and your expertise has
 25 shown through this testimony, I believe you can answer

1 this question, you stated earlier to me that you were
2 not there when it was pulled out of service, back into
3 service, and they were allowed to keep going. So you
4 did not really know why or what they had to do to get
5 that back going again?

6 A. Right.

7 Q. Testimony earlier today was that, one, a
8 mechanic came, fixed the brakes; two, the registration
9 on D was changed and that was added, correct? My
10 question to you is if those two things were the only
11 two things that were done, why were they operating
12 under no operating authority and nothing done to the
13 outside of the truck if, as you stated today, you found
14 the other DOT number on the outside of the truck
15 earlier?

16 MR. WRIGHT: Your Honor, that was an
17 awfully long question.

18 ATTORNEY EXAMINER: Yeah, kind of got lost
19 in the question.

20 MR. STUCKEY: Let me -- I'm sorry, I lost
21 myself to be honest with you.

22 Q. You stated that you found the out of
23 service, the operating authority, DOT number on the
24 outside of the truck for Transportation, Inc. or
25 Enterprises, Inc., not Transport, Inc.

1 A. That is correct.

2 Q. That's your testimony. If that is true,
3 assume that is true. I'll assume that is true.

4 MR. WRIGHT: You want me to object?

5 MR. STUCKEY: Probably fair.

6 MR. WRIGHT: I'm kidding.

7 MR. STUCKEY: Probably fair.

8 Q. Assume that is the case, why is it -- what
9 could be your explanation of why nothing on the outside
10 of the truck had to be changed before that truck could
11 be moved on later? Why is it that the registration and
12 the brakes were the only two things that had to be
13 changed before operating authority was valid?

14 A. Registration is not my business. I have no
15 business whatsoever to tell them to change anything on
16 the vehicle registration. That is not my business.
17 That is above and beyond my work.

18 Q. I understand that. What I'm saying is,
19 wouldn't it be your understanding, had the assumption
20 been true, whereas you found that wrong DOT number on
21 the side of the truck, wouldn't you assume that that
22 would have to be changed before that truck can be moved
23 again?

24 A. The registration?

25 Q. No, the outside of the truck. The

1 DOT number?

2 A. Oh, yeah.

3 Q. That would have to be changed, right?

4 A. If it was displaying Roe Transport, the
5 proper carrier name, which would be on the MCS-150
6 which --

7 Q. Correct.

8 A. Anyway -- okay. They would have to display
9 the proper carrier name as basically what is the
10 federal --

11 Q. Before it can move again?

12 A. -- fed system.

13 Q. And your testimony today is that it did not
14 show that correct DOT number on the side of the truck,
15 correct?

16 A. It did not show the US DOT for Roe
17 Transport.

18 Q. And you heard testimony earlier that the
19 only two things that were changed before that vehicle
20 was moved was the registration and the brakes. You
21 heard that, correct?

22 A. Correct.

23 Q. Wouldn't it be fair to say that if that --
24 if both your stories were true, that they would have
25 had to change something on the outside of the vehicle

1 before it could move?

2 A. I have no idea. I have no way of
3 knowing that they --

4 Q. But had those two sides of the story been
5 true, assume for me, wouldn't you agree that they would
6 have --

7 A. You're saying assume that they took care of
8 the brakes and they took care of the markings.

9 Q. The registration. No, no, nothing with the
10 outside of the truck. I'm asking --

11 A. Registration has nothing to do --

12 Q. I agree. That's my point. I totally agree
13 with you. But you're saying that the wrong DOT number
14 was on the outside of the truck.

15 A. Right.

16 Q. He stated that nothing on the outside of
17 the truck was changed before that truck moved again.
18 Wouldn't that throw up a red flag? Why wouldn't the
19 outside of the truck be changed before it can move
20 again --

21 A. The outside of the truck would have to be
22 changed.

23 Q. I agree.

24 MR. WRIGHT: And, your Honor, I think the
25 question presupposes a fact that it is certainly not in

1 accord with the record and that is that it is
2 Mr. Byrne's job to sit and babysit --

3 THE WITNESS: Yeah.

4 MR. WRIGHT: -- and make sure all
5 corrective action is taken. He testified quite to the
6 contrary.

7 MR. STUCKEY: I totally agree. I'm asking
8 him to assume had he been there, if that would -- you
9 know, if the wrong number was on the outside of the
10 truck, that it would have to be changed before it could
11 move.

12 MR. WRIGHT: And I believe he's indicated
13 that the answer to that is yes.

14 MR. STUCKEY: Which goes against the
15 testimony earlier that nothing was done to the outside
16 of the truck.

17 THE WITNESS: And had the vehicle been
18 caught -- had the vehicle been caught -- well, they
19 left the rest area and the markings had not been
20 changed, the vehicle would have been reinspected and
21 the driver would have been issued a citation by the
22 Ohio State Highway Patrol.

23 MR. STUCKEY: Totally agree. No further
24 questions.

25 ATTORNEY EXAMINER: All right. Thank you.

1 I believe that wraps matters up for today unless anyone
2 has any further concerns.

3 Oh, I'm sorry, briefs, were the parties
4 interested in filing briefs? It doesn't have to be
5 done, but I'll allow you the opportunity to do so.

6 MR. WRIGHT: That's up to you. Does your
7 Honor feel the need for briefs? I don't --

8 ATTORNEY EXAMINER: I don't feel it's
9 essential.

10 MR. WRIGHT: Okay, well --

11 ATTORNEY EXAMINER: You can do so if you
12 wish.

13 MR. WRIGHT: Just so you know -- we're off
14 the record.

15 ATTORNEY EXAMINER: Okay. Off the record
16 for a minute.

17 (Off the record - discussion)

18 ATTORNEY EXAMINER: Okay. We'll go back on
19 the record. The parties have decided they will not
20 file briefs. In that case I'd like to thank everyone
21 for attending today through some difficult and long
22 testimony and this meeting is adjourned. Thank you.

23 (The proceedings concluded at 12:50 p.m.)

24

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 February 17, 2011, and carefully compared with my original stenographic notes.

CATHERINE PASSMORE
 Certified Shorthand Reporter and
 Notary Public in and for the
 State of Ohio

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Case No(s). 10-1274-TR-CVF

Summary: Transcript Transcript of Roe Transportation Enterprises hearing held on 02/17/11.
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Passmore,
Cathy