

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In Re: :
Brian Kaltreider : Case No. 12-1163-TR-CVF
:

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PROCEEDINGS

Before Sarah Parrot, Attorney Examiner, held at
the Offices of the Publics Utilities Commission
of Ohio, 180 East Broad Street, Hearing Room
11-D, Columbus, Ohio, commencing on Tuesday,
March 5th, 2013, at 11:33 a.m.

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On behalf of the Respondent,
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ATTORNEY EXAMINER PARROT: The Public Utilities Commission of Ohio is called for hearing at this time and place.

Case No. 12-1163-TR-CVF being in the matter of Brian Kaltreider, Notice of Apparent Violation and Intent to Assess Forfeiture.

My name is Sarah Parrot. I'm the Attorney Examiner assigned by the Commission to hear the case this morning.

And let's get started with appearances from the parties, and we'll start with the staff.

MR. JONES: Yes. Good morning, Your Honor. On behalf of the Staff of the Public Utilities Commission of Ohio, Ohio Attorney General Mike DeWine, Assistant Attorney General John Jones, 180 East Broad Street, Columbus, Ohio.

ATTORNEY EXAMINER PARROT: And on behalf of the Respondent?

MR. LUXENBURG: Your Honor, Mitch Luxenburg on behalf of Brian Kaltreider.

ATTORNEY EXAMINER PARROT: All right. Are there any preliminary matters that we need to

1 raise at this point before we get started with
2 our first witness?

3 MR. JONES: Your Honor, just as a
4 preliminary matter, the parties have agreed to
5 stipulate to evidence to the forfeiture in the
6 case.

7 And if you'd like, I could cover those
8 exhibits now or I could wait till later at the
9 time of the evidence.

10 ATTORNEY EXAMINER PARROT: Whatever your
11 preference is, Mr. Jones.

12 MR. JONES: Well, I guess I could just
13 do it now and get it out of the way.

14 ATTORNEY EXAMINER PARROT: Okay. That's
15 fine.

16 MR. JONES: Your Honor, I have a packet
17 up there on the bench. Staff Exhibits in that
18 packet, the Staff Exhibits 3 and 4, you'll
19 notice, are forfeiture assessment sheets that
20 were done by staff.

21 You're probably asking, "Why are there
22 two of them?"

23 Well, the one that was originally done
24 was Staff Exhibit 3. That calculation using the
25 civil forfeiture violations charge, which is

1 Staff Exhibit 5, that was used for this
2 calculation, but, unfortunately, they made a
3 mistake in using the numbers off this chart and
4 improperly inserted the wrong number here for
5 Staff Exhibit 3 for the no shipping papers and
6 also for the placards violation.

7 They have them as a forfeiture
8 assessment amount of \$900 for each one of those
9 violations. The correct assessment for both of
10 those violations, as reflected in Staff Exhibit
11 4, is in the amount of \$660 for each one of those
12 violations.

13 And that's the difference between these
14 two staff exhibits and these calculations that
15 were done by staff.

16 The calculation that was done for the
17 uniform permit, it was properly done and it's
18 reflected in both exhibits, Staff Exhibit 3 and
19 Staff Exhibit 4.

20 Staff Exhibit 5 is the chart that the
21 staff uses to assess the nature and gravity of
22 the points that are incorporated for staff
23 Exhibits 3 and 4.

24 And Staff Exhibits 5 -- or excuse me --
25 6 and 7 are the notices that went out to

1 Mr. Kaltreider, the Notice of Apparent Violation
2 and Intent to Assess Forfeiture on August 24th,
3 2011, again, reflecting the violations being
4 noted here by the staff of driver failing to
5 retain previous seven-days log. There was no
6 forfeiture assessed for that violation.

7 No shipping papers, there a \$900
8 violation was assessed by staff; and the same for
9 the placards violation, \$900.

10 And then the failure to file uniform
11 HazMat application, \$500 fine, forfeiture, there
12 that was assessed.

13 These were amounts that were taken in
14 from Staff Exhibit 3 at the time using that for
15 the basis for sending out these notices as to the
16 amounts that staff was indicating were the
17 calculations for those violations.

18 And, again, that was reflected
19 subsequently on March 19th, 2012 in staff Exhibit
20 7, which was the Notice of Preliminary
21 Determination that was sent to Mr. Kaltreider's
22 attorney, Mitchell Luxenburg, on March 19th,
23 2012.

24 Again, those same amounts that were
25 reflected in Staff Exhibit 6 are repeated in

1 Staff Exhibit 7.

2 But for purposes of clarifying the
3 record, again, these amounts that were reflected
4 in Staff Exhibit 6 and 7 should be consistent
5 with Staff Exhibit 4.

6 Staff Exhibit 4 is the controlling
7 document out of all these exhibits I just covered
8 with you as to the proper calculation that staff
9 would recommend to the Commission, if they were
10 to find violations in this case.

11 ATTORNEY EXAMINER PARROT: Thank you,
12 Mr. Jones.

13 Mr. Luxenburg, just to be sure I
14 understand your position with respect to the
15 staff's calculation of the forfeiture and the
16 amounts that were derived as reflected on Staff
17 Exhibit 4, it's my understanding, then, as
18 Mr. Jones has represented, that you have no
19 objection to how the forfeiture amounts were
20 calculated on that exhibit, and that should the
21 Commission find that either one or any, perhaps
22 all, of these violations were properly assessed
23 by the staff in this case, those would be the
24 amounts, the ones reflected on Staff Exhibit 4.

25 MR. LUXENBURG: Correct, Your Honor.

1 ATTORNEY EXAMINER PARROT: Very good.

2 MR. LUXENBURG: There's one other
3 preliminary matter.

4 ATTORNEY EXAMINER PARROT: Okay. Very
5 good.

6 MR. LUXENBURG: This would be a
7 continuing objection to whether or not the
8 hearing today is appropriate and whether or not
9 the Commission has authority to move forward.

10 Specifically, Rule 4901:2-7-07 of the
11 Ohio Administrative Code requires that the
12 Commission serve by certified mail a Notice of
13 Intent to Assess Forfeiture to Respondent within
14 90 days after the discovery of a violation but no
15 more than one year following the violation.

16 That Notice of Intent was never served
17 by certified mail upon my client. In fact, that
18 Notice of Intent was never served, period.

19 It was brought to the Commission's
20 attention in the first conference call. To this
21 date, I do not believe the Commission will be
22 able to prove that they served my client, which
23 would be a precursor to being able to proceed on
24 this.

25 Unless The Court is inclined to dismiss

1 it now, we will have that as a continuing
2 objection, unless The Court has some proof -- the
3 Commission has proof that it did, in fact, serve
4 by certified mail.

5 Absent that evidence, I would request
6 that the case be dismissed.

7 ATTORNEY EXAMINER PARROT: So you're
8 moving for a dismissal?

9 MR. LUXENBURG: Correct.

10 ATTORNEY EXAMINER PARROT: Do you have a
11 response, Mr. Jones?

12 MR. JONES: Your Honor, this is the
13 first time I've heard that argument.

14 I would, at some point, ask for a little
15 recess to go look to see how this was sent. I
16 haven't checked to see what the process that was
17 used by the staff for service, and I'd like to
18 have that opportunity to at least have a recess
19 to check that.

20 ATTORNEY EXAMINER PARROT: Okay. Very
21 good. We'll take this up at a later point.

22 Are there any other preliminary matters?

23 MR. LUXENBURG: That would be it, Your
24 Honor.

25 ATTORNEY EXAMINER PARROT: All right.

1 Staff, you may call your first witness.

2 MR. LUXENBURG: Briefly, Your Honor, on
3 that issue, you will request that and make a
4 ruling on that specific motion later?

5 ATTORNEY EXAMINER PARROT: The Bench is
6 not authorized to grant a dismissal of a case.
7 That's an issue that has to be taken to the
8 Commission.

9 MR. LUXENBURG: Okay.

10 ATTORNEY EXAMINER PARROT: So I'm not
11 authorized to issue such a ruling today anyway.

12 We will take it under advisement. I
13 will give staff the opportunity to check and see
14 whether they have the notice in the records and
15 we'll deal with that issue so the Commission can
16 have a full understanding of the issue and
17 whether or not, from staff's understanding, that
18 the notice was circulated as it's required to be
19 under the rules.

20 We'll take up that aspect of it after we
21 get through our witnesses.

22 MR. LUXENBURG: Okay. Thank you, Your
23 Honor.

24 ATTORNEY EXAMINER PARROT: All right.
25 Mr. Jones?

1 MR. JONES: Yes. Staff calls Sergeant
2 Timberlake to the stand.

3 (Thereupon Sergeant Timothy J.
4 Timberlake was sworn by Attorney Examiner
5 Parrot.)

6 DIRECT EXAMINATION

7 BY MR. JONES:

8 Q. Could you please state your name for the
9 record, please?

10 A. It's Timothy J. Timberlake.

11 Q. And where are you employed?

12 A. I'm a sergeant with the Ohio State
13 Highway Patrol assigned to the Warren Criminal
14 Patrol Team.

15 Q. And how long have you been so
16 employed?

17 A. I've been with the Highway Patrol for 22
18 years.

19 Q. And what are your duties and
20 responsibilities?

21 A. To enforce all traffic laws and criminal
22 laws within the State of Ohio, investigate
23 crashes outside of municipalities.

24 Q. Did you have an occasion to make a
25 traffic stop on May 17th, 2011 involving a driver

1 by the name of Stephen Fox?

2 A. Yes.

3 Q. And what was that occasion?

4 A. I observed Mr. Fox traveling eastbound
5 on Interstate 80. When I observed the U-Haul
6 vehicle that he was driving, he failed to signal
7 a lane change when he was changing lanes and he
8 also failed to drive within the marked lanes
9 while he was traveling.

10 Q. Okay. And approximately what time of
11 day was this?

12 A. Around five in the morning.

13 MR. JONES: Your Honor, can I approach
14 the witness?

15 ATTORNEY EXAMINER PARROT: You may.

16 Q. Sergeant Timberlake, I gave you a packet
17 of exhibits there. I just want to draw your
18 attention to the pictures that are in the packet
19 beginning at Staff Exhibit 2A, 2B on through 2M.

20 Is that the vehicle that -- does that
21 appear to be the vehicle that you stopped on that
22 date and time for the improper lane change?

23 A. Yes, sir.

24 Q. And what did you do to identify the
25 occupants of the vehicle?

1 A. When I approached the vehicle, I asked
2 the occupants in the vehicle for -- I asked the
3 driver for the driver's license and the rental
4 agreement for the vehicle. He produced a
5 driver's license from New Mexico that showed him
6 to be Stephen Fox.

7 Q. Okay. And who else was in the
8 vehicle?

9 A. There was a female subject in the
10 vehicle also that Mr. Fox had stated was his
11 babysitter and that she was just along with him
12 for the ride.

13 Q. Okay. And what else did you learn,
14 then, from your stop?

15 What other information did you learn
16 about the cargo and so forth?

17 A. Mr. Fox told me that he --

18 MR. LUXENBURG: Objection, hearsay.

19 ATTORNEY EXAMINER PARROT: Response, Mr.
20 Jones?

21 MR. JONES: This is from his
22 investigation, Your Honor, at the scene as to the
23 information he obtained from doing a stop of the
24 improper lane change of the driver, Mr. Fox.

25 ATTORNEY EXAMINER PARROT: The objection

1 is overruled.

2 A. Mr. Fox had told me that he was hauling
3 fireworks from a show in Indiana, I believe, to
4 Pennsylvania.

5 He had told me that the fireworks were
6 not his, that they belonged to someone else that
7 he had met at the show and that he was --

8 MR. LUXENBURG: Objection, hearsay.
9 This is all statements of a third party being
10 offered for the truth of the matter asserted.

11 MR. JONES: Your Honor, I would say that
12 this is an exception to the Hearsay Rule as to
13 801(d)(2)(D) where, you know, this is an
14 admission by a party opponent.

15 Under D it says, "A statement by the
16 party's agent or servant concerning a matter
17 within the scope of the agency or employment,
18 made during the existence of the relationship."

19 That fits this scenario where Mr. Fox
20 was paid by Mr. Kaltreider to haul this load of
21 fireworks. All his expenses were paid. He was
22 paid on top of the expenses.

23 MR. LUXENBURG: Objection. He's
24 testifying now, Your Honor.

25 MR. JONES: I'm just saying the basis

1 for why this is an agency relationship.

2 ATTORNEY EXAMINER PARROT: Thank you,
3 Mr. Jones.

4 The objection is overruled. Please
5 answer the question.

6 A. He basically told me that he met this
7 gentleman at the fireworks show in Indiana and
8 was hauling the fireworks to Pennsylvania for
9 him.

10 He initially told me that the person he
11 was hauling them for had rented the truck, was
12 paying the fuel, was paying the meals and
13 everything for him to get there, but he told me
14 that he was doing it as a favor to the person
15 that he had just met two days before.

16 He had told me that there was
17 approximately \$7,000 worth of fireworks on the
18 vehicle, and that's when I contacted Sergeant
19 Ogden, the Commercial Vehicle Unit, because there
20 was no placards or anything on the vehicle, no
21 shipping papers with the vehicle.

22 Q. Okay. So based on your training and
23 experience, you had gathered information to make
24 you of the opinion that you needed to call
25 another officer who was in the area of doing the

1 inspections of the -- that would be enforcement
2 of the Federal Motor Carrier Safety Regulations,
3 issues?

4 A. Yes.

5 Based on what I had, I believed that he
6 needed to have placards and logbooks and shipping
7 paper for the vehicle.

8 I contacted Sergeant Ogden because
9 that's the area he deals with and would be more
10 apt to know exactly what he needed.

11 Q. Okay. Let me back up for a second. I
12 want to cover this.

13 First of all, what was -- what's your
14 area of jurisdiction?

15 A. At that time I was assigned to the
16 Canfield Patrol Post which covered Mahoning
17 County.

18 Q. Okay. And what equipment were you
19 issued for that -- for your duties?

20 A. My uniform, my patrol car, the equipment
21 in my patrol car, the computer, all the shotguns
22 and everything that goes along with it.

23 Q. So you had a marked cruiser?

24 A. Yes, sir.

25 Q. You had the uniform as you have in court

1 here today?

2 A. Yes, sir.

3 Q. Okay. Have you went through any
4 training?

5 A. Yes. I attended the Ohio State Highway
6 Patrol Training Academy here in Columbus for six
7 months.

8 After that training, I went through 90
9 days of riding along with another officer, field
10 training.

11 Q. Okay. And so the information -- what
12 information, then, did you rely on, then, for
13 thinking that you had to call Sergeant Ogden or
14 call another officer to do the inspection?

15 A. I'm not -- I'm not -- I can't do motor
16 vehicle inspections. I'm not certified to do the
17 inspections.

18 Just based on my training and everything
19 that had been presented to me, I believed that
20 the vehicle needed -- that he was in violation
21 because he didn't have the placards or the
22 shipping papers or logbooks.

23 I was unsure, so that's the reason I
24 called Sergeant Ogden.

25 Q. Okay. And how long was it, then,

1 approximately afterwards that he then arrived?

2 A. I would say less than a half hour after
3 I called him.

4 Q. Okay, okay. And what did you do after
5 he arrived?

6 A. We escorted the vehicle off the roadway
7 to the next exit at the truck stop, we were near
8 an exit, to get off the road for officer safety.

9 At that truck stop I issued Mr. Fox a
10 written warning for the violation.

11 Sergeant Ogden completed the inspection
12 on the vehicle.

13 MR. JONES: Your Honor, that's all the
14 questions I have of this witness.

15 ATTORNEY EXAMINER PARROT: Thank you.

16 Mr. Luxenburg?

17 CROSS-EXAMINATION

18 BY MR. LUXENBURG:

19 Q. Sergeant Timberlake, my name is Mitch
20 Luxenburg. We met previously. I represent
21 Mr. Kaltreider. I have just a few quick
22 questions for you.

23 You said that based upon your training
24 you believed that it needed placards and papers.
25 Then later on you said you're not trained and you

1 weren't sure and that's why you called your
2 colleague.

3 A. I'm not -- I'm not certified to do the
4 inspections and it's not something I deal with.

5 I was given basic information on what is
6 needed in a commercial vehicle, and that's the
7 reason I conferred with Sergeant Ogden, because
8 that's his area of expertise. That's not my area
9 of expertise.

10 Q. So would it be fair to say you're not
11 qualified to make a determination on whether or
12 not placards and permits were necessary?

13 A. (No answer given.)

14 Q. You said you're not trained, so,
15 therefore, you're not qualified?

16 A. No. I have training in -- I have basic
17 training in what is needed. I don't have -- I'm
18 not certified to do an inspection.

19 Based on my experience and my training,
20 I know that a truck driver needs to have a
21 logbook if he's traveling over a certain amount
22 of miles; that he needs to have shipping papers
23 for his load; if it's a hazardous material load,
24 then he needs to have a placard on the vehicle.
25 I do know that from my training and experience.

1 Q. You said a truck driver, correct?

2 A. Right.

3 Q. Is Mr. Fox a truck driver?

4 A. At this instance, yes, he was.

5 Q. What do you mean "at this instance"?

6 A. Because this vehicle he was being --
7 this vehicle was in commerce. He's hauling
8 hazardous material in the vehicle. He was
9 required to have the proper documentation and the
10 proper license to haul the hazardous material.

11 Q. Does he have a commercial driver's
12 license?

13 A. He has a Class C with hazardous material
14 specifications, endorsements, on his driver's
15 license.

16 Q. So Mr. Fox has the necessary
17 endorsements to haul this type of material,
18 correct?

19 A. On his license, yes.

20 Q. Okay. If just a regular person with a
21 personal driver's license was driving this truck,
22 you would still call them a truck driver even
23 though they didn't have the CDL?

24 A. With 2,000 pounds of explosives on the
25 vehicle, yes, sir, I would.

1 Q. Is that the determination when you
2 become a truck driver, how much is in the back of
3 the truck?

4 A. (No answer given.)

5 Q. I mean, the distinction between a truck
6 driver and not, is it not having a commercial
7 driver's license not necessarily what you're
8 taking?

9 A. (No answer given.)

10 Q. If I were to go out and rent a U-Haul
11 that's empty, I wouldn't be a truck driver?

12 A. No, sir, if you're hauling your personal
13 items in it, correct.

14 Q. If I'm hauling my personal items, I'm
15 not a truck driver?

16 A. Right.

17 Q. If I put 2,000 pounds of furniture in
18 the back, am I a truck driver?

19 A. If you're being paid to haul that load,
20 yes, you are.

21 Q. That's not what I asked. If I'm not
22 being paid to haul it, if I put 2,000 pounds of
23 furniture in my truck, am I now a truck driver?

24 A. I guess it would depend on who the
25 furniture belonged to and, like I said, if you

1 were being paid to haul it or not.

2 Q. Right.

3 A. Just driving the truck in itself in a
4 U-Haul truck this size, no.

5 Q. Okay. So to clarify, earlier you said
6 because he was hauling stuff and had 2,000 pounds
7 of explosives...

8 Your opinion that he's a truck driver is
9 because he has a CDL with a HazMat permit that he
10 can haul it and that he had fireworks on the back
11 of his truck, that's what qualified him as a. --

12 A. I don't believe he had a permit to haul
13 it.

14 Q. I'm sorry. But he has an endorsement on
15 his license that would allow him to haul
16 hazardous material, does he not?

17 A. Yes.

18 Q. So he has a HazMat endorsement on his
19 license, correct?

20 A. Yes.

21 Q. So if I personally go and I buy 2,000
22 pounds of fireworks and I haul it in a U-Haul, my
23 own personal U-Haul, not my own personal but I
24 rent a U-Haul, I put fireworks in the back and I
25 drive it...

1 A. You drive it or you pay someone else?

2 Q. I drive it.

3 Am I a truck driver?

4 Am I required to pull these permits and
5 get these placards?

6 A. I don't know. That's when I would call
7 Sergeant Ogden and ask him because I'm unsure.

8 Q. So I need to know, you're either
9 qualified to answer these questions or you're
10 not.

11 MR. JONES: Your Honor, I'm going to
12 have to object. I mean, the extent of his
13 testimony is what it is as to why the reason he
14 made the stop and the reason why he called
15 Sergeant Ogden.

16 ATTORNEY EXAMINER PARROT: I'm not sure
17 that was a question that you just objected to,
18 Mr. Jones.

19 I guess, if you could pose a question,
20 then we'll go from there, I think.

21 BY MR. LUXENBURG:

22 Q. Well, I'm asking specific questions
23 about what qualifies it as needing a placard or
24 not.

25 You're saying you have the training but

1 not that far of training, so you're answering
2 some and you're not answering other questions
3 regarding what are the requirements for somebody
4 to have a placard and a HazMat permit. You
5 either have the qualifications and training to
6 answer that or you don't.

7 A. No, I don't.

8 MR. JONES: I'm going to have to object.
9 This is asked and answered several times.

10 ATTORNEY EXAMINER PARROT: And I still
11 didn't hear a question in there.

12 Can we put a question to the witness?

13 BY MR. LUXENBURG:

14 Q. Do you have the qualifications to state
15 to a reasonable degree of certainty in the police
16 enforcement field as to whether the -- the
17 criteria of when a HazMat placard or permit is
18 required?

19 A. No, I don't.

20 Q. Was Mr. Kaltreider with the vehicle?

21 A. No, he was not with the vehicle.

22 Q. Did you ever speak to Mr. Kaltreider?

23 A. I did not, no.

24 Q. Never called him on the phone the next
25 day?

1 A. I did not, no.

2 Q. So the extent of your involvement was
3 you witnessed some sort of traffic infraction,
4 you pulled over Mr. Fox for that?

5 A. Yes.

6 Q. Asked him what was on the truck?

7 A. Yes.

8 Q. He makes some statements to you about
9 who the owner of it was?

10 A. Yes.

11 Q. And in terms of compensation, you're
12 saying Mr. Fox told you that he was being -- that
13 the gas was being paid for and his meals?

14 A. That's what he told me, yes.

15 Q. It wasn't just that the fuel was being
16 paid for?

17 A. No.

18 Q. Or just the truck?

19 A. No.

20 Q. And so, in your opinion, the distinction
21 between a truck driver and not a truck driver is
22 whether or not they're compensated?

23 A. No. I -- that's why I would call
24 Sergeant Ogden and say, "This is what I have. I
25 have 2,000 pounds of explosives on a vehicle and

1 the guy's telling me this."

2 That's when Sergeant Ogden made a
3 decision to come out and go further with the
4 stuff.

5 Q. When you say "explosives"?

6 A. Fireworks.

7 Q. Fireworks. There's various degrees of
8 explosives, correct?

9 A. Yes.

10 Q. These were just fireworks that you could
11 buy at any store on the roadside?

12 A. As far as I know, yes.

13 Q. In fact, you don't know what was in the
14 truck, do you?

15 A. I know it had fireworks in it.

16 Q. You know it had fireworks, but you don't
17 know what types, kinds, what type of permit, if
18 any, you needed for those?

19 A. Right, no.

20 Q. That's correct?

21 A. Yes, that's correct.

22 Q. Once you got up to the next rest stop
23 and you parked the truck and Sergeant Ogden took
24 over, did you stay with him while he did the
25 inspection or you left?

1 A. I think I was there for a short period
2 of time. I don't remember exactly how long I
3 stayed and when I left.

4 Q. You did not stay for the entire time?

5 A. I don't believe so, no.

6 Q. So you don't know what happened to the
7 truck?

8 At that moment you didn't know what had
9 happened to the truck, correct?

10 A. Yes.

11 Q. Other than what you know about
12 Mr. Kaltreider that you learned from Mr. Fox, do
13 you know anything else about Mr. Kaltreider?

14 A. No, sir.

15 Q. What he does for a living?

16 A. No, sir.

17 Q. What type of driver's license he has?

18 A. No, sir.

19 Q. Did you write up any report as a result
20 of that incident?

21 A. The only thing I did was issue Mr. Fox a
22 written warning for a violation.

23 Q. And does that look like a regular ticket
24 but it just says "warning" or is it something
25 different?

1 A. It's a smaller, yellow piece of paper.

2 Q. Did you have any contact with Mr. Fox at
3 all after that evening?

4 A. After?

5 Q. After you departed the scene, have you
6 had any more contact with Mr. Fox?

7 A. No.

8 Q. And have never had any contact with
9 Mr. Kaltreider?

10 A. No.

11 Q. And so worst case scenario, the
12 compensation was gas for the truck, which
13 wouldn't really be compensation, it would just be
14 covering the expense, correct?

15 A. That's what he told me, yes.

16 Q. Right. So worst case scenario, he's
17 telling you he's paying for the gas, the truck,
18 and bought him some meals?

19 A. That's what he told me, yes.

20 Q. In your professional opinion, you
21 believe that that's a person who has been hired
22 to transport, that's a hired truck driver?

23 A. At that time I wasn't sure that Mr. Fox
24 was being honest with me the way he was speaking
25 with me.

1 Q. But assuming, since you've represented
2 what the facts are, that those are the facts, do
3 you believe that he's a hired truck driver?

4 A. I believe he's being compensated if he's
5 being fed.

6 Q. So the compensation of food you think is
7 enough to classify him as a truck driver?

8 A. That I don't know. That's where I would
9 defer to the Commercial Unit.

10 MR. LUXENBURG: Thank you, Sergeant
11 Timberlake.

12 ATTORNEY EXAMINER PARROT: Any redirect,
13 Mr. Jones?

14 MR. JONES: No.

15 ATTORNEY EXAMINER PARROT: Thank you
16 very much. You're excused.

17 You may call your next witness.

18 MR. JONES: It would be Sergeant Ogden.

19 (Thereupon Sergeant Alan Ogden was sworn
20 by Attorney Examiner Parrot.)

21 DIRECT EXAMINATION

22 BY MR. JONES:

23 Q. Would you please state your name for the
24 record, please?

25 A. Alan Ogden.

1 Q. And where are you employed?

2 A. I work out at the Warren District
3 Headquarters Commercial Enforcement Office.

4 Q. And what are your job duties and
5 responsibilities?

6 A. I'm a commercial enforcement supervisor
7 for the Warren District.

8 Q. And how long have you been employed
9 there?

10 A. At Warren, I've been up there for 13
11 years. I've been with patrol for 20.

12 Q. And what training certifications do you
13 have?

14 A. For the mixup part of it, the commercial
15 part?

16 Q. For the commercial part.

17 A. We attend a two-week school dealing with
18 the vehicle and the driver; a week of general
19 HazMat; a week of cargo tank, bulk other; and
20 then we have refreshers throughout.

21 Yearly we meet yearly for updates and
22 then we have our monthly roll-call meetings at
23 our facility.

24 Q. So your job duties and responsibilities
25 include enforcement of the Federal Motor Carrier

1 Safety Regulations and also the HazMat
2 regulations?

3 A. That is correct.

4 Q. And you have had review of those
5 guidelines, those regulations, as it concerns
6 your job for enforcing those provisions?

7 A. Yes.

8 Q. Okay. And what is the scope of
9 your jurisdiction?

10 A. As far as?

11 Q. What's the scope of your jurisdiction?

12 A. As far as my job, the whole State of
13 Ohio?

14 Q. Yes. Your post and your area of
15 supervision.

16 A. We have -- right now we currently have
17 10 counties, so that's where I work out of. The
18 Warren District encompasses 10 counties.

19 Q. Okay.

20 A. And where the stop occurred is one of
21 those counties. Mahoning County is one of those
22 counties.

23 Q. Okay. All right. And what equipment is
24 issued to you to perform your duties?

25 A. I'm a regular trooper first as far as

1 the clothing, the uniform, the gun, the car.

2 In addition to that, we're issued
3 equipment for the commercial part of it; i.e.
4 creepers, wheels, shocks, computers, printers,
5 bolt seals, wire seals. The list just goes on
6 and on.

7 Q. Okay. And then you are here in a
8 uniform today. This is the uniform you wear on a
9 regular basis for your job?

10 A. One of two. We have a black TD uniform
11 when we're doing actual inspections.

12 Yes, this is what I wear mainly.

13 Q. And you have a marked cruiser?

14 A. That is correct, yes.

15 Q. What's issued with your cruiser, any
16 equipment?

17 A. Everything that I just listed above.

18 Q. Okay.

19 A. Everything is packed in my Chevy
20 Tahoe.

21 Q. Okay.

22 A. So it's quite full.

23 Q. And when you do an inspection, do you
24 generate any documentation?

25 A. Yes, I do.

1 Q. And would you describe that?

2 A. It's in the form of a report that's
3 given to the driver and one that is uploaded to
4 saver which then is retrieved and pulled down as
5 far as any fines that would be assessed by the
6 Public Utilities Commission.

7 Q. All right. So kind of give us a general
8 description of a typical inspection and what
9 information you would collect and what you would
10 do with that information.

11 A. The information I would collect would be
12 much like what Sergeant Timberlake was
13 describing; your driver's license, registration.

14 I'll go one step further and look for
15 their medical card, shipping papers if they have
16 any, registration for the truck, logbooks.

17 Depending on which kind of inspection,
18 if I'm doing a Level 1, 2, or 3, regardless, I'm
19 going to get all that information as far as the
20 truck's concerned, the driver's concerned, the
21 vehicle's concerned, and then conduct the
22 inspection.

23 Like I said, if it's a 1, 2, or 3, I'm
24 going to do a walk-around.

25 If it's a 1, those are generally done --

1 I usually only do those at the scale facilities,
2 which you then measure the brakes, check the load
3 and the whole thing.

4 For this particular incident, it was a
5 full inspection basically because it does not
6 have -- it has brakes, but the brakes that were
7 on it were hydraulic.

8 We did check everything out once we got
9 to the Petro, so that's why we did a Level 1 at
10 the Petro Station.

11 Q. Okay. I have before you a packet there
12 of exhibits, Staff Exhibits. I'm going to start
13 there with Staff Exhibit 1.

14 Would you please first identify that
15 document for the record, please?

16 A. This is a copy of the report that was
17 generated on the 17th of May, 2011.

18 Q. Okay. And so on May 17th, 2011, did you
19 have occasion to be called to an area where there
20 was a stop of a U-Haul vehicle and the call was
21 made by Sergeant Timberlake?

22 A. That's correct. I was working a six A
23 shift. I was en route to the office, and the
24 office is about 45 minutes, when I heard Sergeant
25 Timberlake request a Commercial Enforcement Unit.

1 I was already en route that way and I
2 just contacted him over the radio and advised him
3 I would be en route to his location. I drove
4 immediately to where he was at.

5 Q. Okay. And once you arrived, what did
6 you do?

7 A. I began just inquiring of what was going
8 on and the situation and who and what he had.
9 Basically I started my inspection.

10 Q. Okay. And walk us -- why don't you walk
11 us through your inspection as to what you did?

12 A. Part of what we're doing here is to make
13 sure we establish that, first of all, I have
14 jurisdiction to even inspect the truck.

15 Again, much like Tim was describing,
16 there was a female who -- when she was in the
17 passenger's side, she was the babysitter. The
18 driver was -- Mr. Fox, he was the driver. At
19 which time I began inquiring to the fact -- the
20 ownership.

21 I know that Tim has testified to as far
22 as what he was able to obtain, but my part is to
23 make sure that, first of all, I have jurisdiction
24 to inspect this truck.

25 At which time I began speaking to

1 Mr. Fox about the load, where it originated from
2 and where it was going to, as that's required on
3 our reports. That's part of the documentation
4 for the report.

5 At which time he advised me that he was
6 at a show in Bowling Green, Indiana at the Waynes
7 World, and he was en route to Orangeville,
8 Pennsylvania with some fireworks.

9 I began to question him about the
10 ownership of the fireworks. I asked him if he
11 owns the fireworks, at which time he stated he
12 did not own the fireworks, that the fireworks
13 were owned by a Brian Kaltreider and he was
14 transporting them for him as a favor.

15 I asked him how does he know
16 Mr. Kaltreider? Does he work for Kaltreider? Is
17 he part of -- an employee?

18 At which point he stated, no, he was not
19 an employee. He had just met him that previous
20 weekend. The stop was on a Tuesday. He had just
21 met him prior to, just a few days prior to.

22 I asked him if he -- what's his
23 responsibility as far as payment for the U-Haul
24 or gas? What was his responsibility for
25 transporting this load?

1 He advised me that Mr. Kaltreider had
2 paid for the U-Haul, the gasoline, and that he
3 gave Stephen -- or Brian gave Stephen \$200 in
4 cash for which he was transporting the load.

5 He did state to me that he has -- that
6 Mr. Fox, he occasionally does transport fireworks
7 as part of his business. However, that
8 particular load on this particular day was not,
9 which could be a reason why he has a Class C with
10 hazardous materials on it.

11 The fireworks we're going to -- and this
12 is something that was continually stressed to me,
13 was that it was going to a church. It was going
14 to Pennsylvania for a fireworks show at a church,
15 which the church was nonprofit.

16 He kept stressing the fact that the
17 church was a nonprofit organization, the church
18 is a nonprofit organization. Mr. Kaltreider was
19 going to put on a show for this church which was
20 nonprofit. He kept going over it as if it really
21 had any bearings on the whole situation.

22 At which time I began inspecting the
23 truck. You know, from what he was telling me,
24 from what I could see in front of me, I believed
25 completely that I had jurisdiction to inspect

1 this truck and I rightfully did so.

2 Q. Did you learn the value of the cargo?

3 A. \$7,000 for the fireworks. \$7,000 for
4 the fireworks.

5 Q. And so you also learned that this was an
6 interstate transport?

7 A. Correct. It originated in Bowling
8 Green, Indiana and was going to end up in
9 Orangeville, PA. That's on my inspection report
10 as well.

11 Q. Okay. So you gathered all this
12 information from your inspection. You conducted,
13 from looking at Staff Exhibit 1, a full
14 inspection; is that correct?

15 A. That is correct, uh-huh.

16 Q. And can you describe what a full
17 inspection is?

18 A. Part of this was conducted on the
19 roadside, but part of it is done in the safe
20 haven of the truck stop, the Petro truck stop.

21 One of the things we stress to our guys
22 continually is we do not under no circumstances
23 want them doing a Level 1 Inspection along the
24 roadside.

25 A Level 1 inspection, you're checking

1 the brakes, you're checking brake lines, you're
2 checking hoses, you're checking underneath of the
3 truck, which requires the truck to be chalked and
4 then we would use a creeper to go underneath it.
5 That's why part of it was done on the roadside
6 and part of it was done at the Petro Station.

7 Load securement is verified to make sure
8 that the load was properly secured, and to check
9 for HazMat, the presence of HazMat.

10 Q. Okay, okay.

11 So just to look at the information in
12 the report that you generated -- well, when did
13 you generate this report?

14 A. That day.

15 Q. That day?

16 A. I began at, according to this, 5:34 and
17 finished at 7:32.

18 Q. Okay.

19 A. So at 7:32 the report was printed out.
20 A copy was given to Stephen Fox, the driver of
21 the truck.

22 Q. Okay. All right.

23 A. And I usually -- what I do at the end of
24 my day, prior to securing it at the end of the
25 day, I upload all the reports that were generated

1 that day. I upload them at the end of the
2 shift.

3 Q. What do you mean you upload them?

4 A. Upload them to the computer, upload them
5 to the server.

6 Q. To the commission?

7 A. That is correct, or the safer
8 [phonetical], right.

9 Q. Right, okay.

10 And there's a report number here on the
11 first page at the top. What -- where's that come
12 from?

13 A. That's the next sequential number for
14 that particular computer that we're using.

15 Q. So whenever --

16 A. It's automatically generated.

17 Q. Okay. So then you have a block of
18 information then that talks about the driver
19 information and also then to the left you have
20 other information. Where did you get the
21 information to the left of the driver
22 information?

23 A. Which page are you on?

24 Q. I'm on Page 1.

25 A. Okay.

1 Q. And there's another person identified
2 and then an address left of the driver
3 information, top of the report.

4 A. Oh. Who the shipper was, that's
5 correct.

6 Q. Right.

7 A. Right.

8 Q. So where -- where did you get this
9 information?

10 A. Stephen Fox was on the phone and gave me
11 the phone, which at that time I spoke to
12 Mr. Kaltreider on the phone to get that
13 information.

14 Q. Okay. So you did speak with
15 Mr. Kaltreider?

16 A. That's correct.

17 Q. That --

18 A. I didn't call him. Stephen had called
19 him.

20 Q. Mr. Fox?

21 A. That's correct, the driver.

22 Q. Okay. And he verified the load?

23 A. He gave me the address and we discussed
24 what the load was.

25 Q. Okay, okay.

1 And so you took down the information he
2 gave you as to his address and his telephone and
3 so forth?

4 A. Correct, that's correct.

5 Q. Okay. All right.

6 And then the next block there is, I
7 guess, where the inspection occurred.

8 A. That's correct.

9 Q. And then you got the other -- the other
10 information there is the origin destination; is
11 that correct?

12 A. That's correct.

13 Q. And the cargo?

14 A. What he was hauling.

15 Q. You have down as HazMat, right?

16 A. That's correct.

17 Q. And the vehicle identification, you
18 marked all that down as to identifying the
19 vehicle itself; is that correct?

20 A. Yes. This is verified --

21 MR. LUXENBURG: We'll stipulate to the
22 report. I don't know if that's what you're
23 doing. I have no problem with the report.

24 I don't mean to cut you off if you want
25 to go somewhere with it.

1 We'll stipulate to the report, and any
2 further jurisdictional questions are not being
3 raised. Whether or not he had the authority to
4 make the stop and do the inspection is not an
5 issue.

6 MR. JONES: Okay. So the violations and
7 everything that's noted there?

8 MR. LUXENBURG: The report can speak for
9 itself. We're not challenging the authenticity
10 of the report or what it says.

11 MR. JONES: Okay.

12 BY MR. JONES:

13 Q. I just want to point out, though, from
14 the inspection notes, the information that you
15 recorded that for inspection notes, would you
16 repeat that information for the record?

17 A. Down at the bottom here?

18 Q. Yeah.

19 A. It says, "Inspection notes." I put on
20 here that Waynes World Fireworks, that was just
21 for my -- where it was coming from.

22 And then also that Brian Kaltreider paid
23 for U-Haul rental, fuel, and gave the driver \$200
24 cash.

25 I also put down here the truck gross

1 vehicle weight rating that's taken from the side
2 of the truck, and also that the truck was weighed
3 by the portable scale team and at that time
4 weighed 16,000 pounds at the stop.

5 Q. Okay.

6 A. And that weight was done also at Petro's
7 truck stop.

8 Q. Okay. So then that would make the
9 weight of the cargo itself approximately 2,000
10 pounds?

11 A. Approximately 2,000 pounds, that's
12 correct.

13 Q. All right. And what's the -- what's
14 the -- is there any significance as to the gross
15 vehicle weight of the vehicle with its cargo
16 going interstate for purposes of --

17 A. It determines -- under the definition of
18 what a commercial vehicle is, it does, yes, it
19 does.

20 Q. Okay. Can you elaborate on that?

21 A. For interstate commerce, any vehicle
22 over 10,001 pounds and intrastate is 26,001
23 pounds as far as our jurisdiction and what we can
24 inspect for.

25 Now, granted, also there may be a

1 difference here as far as the hazardous material.
 2 You know, if you have 1,000 pounds of a certain
 3 product, or depending on the tables that's in our
 4 Hazardous Material Regulations book, if they're
 5 placarded, too.

6 I mean, you could have -- essentially
 7 some of these vehicles that are transporting
 8 hazardous material are not necessarily 10,000
 9 pounds, but they have 1,000 pounds or 2,000
 10 pounds of, say, oxygen cylinders, at which time
 11 we're going to be able to inspect those as
 12 well.

13 Q. Okay. Well, I just want to also have
 14 you look at the second page of the report, of the
 15 examination report.

16 A. Uh-huh.

17 Q. And there's a box of information
 18 provided there near the top that provides
 19 hazardous class. Do you see that information
 20 provided in the box?

21 A. 1.4. I believe it's 1.4G to be exact.

22 Q. Where'd you get that from?

23 A. The material that was loaded in the
 24 truck here, if you'd refer to the photos.

25 Q. Okay, yeah, let's go to the photos.

1 If you would, could you -- you took
2 photos --

3 A. That's correct, yes.

4 Q. -- of the vehicle and the cargo?

5 A. Uh-huh, right.

6 Q. And if we start with Staff Exhibit 2A,
7 please, what's that depict?

8 A. 2A, that's the front of the truck. And
9 then just basically I take photos of the sides of
10 the truck and then the rear of the truck.

11 Q. Okay. So 2B is the side of the truck?

12 A. Right.

13 Q. And 2C is?

14 A. Just another picture of the side of the
15 truck.

16 Q. The side?

17 A. Uh-huh.

18 Q. And I guess staff Exhibit 2D?

19 A. This is the beginning of the pictures of
20 the load themselves. These boxes titled "Big
21 Bombs" are the ones that were labeled 1.4G.

22 These are little -- almost like a cube with
23 multiple tubes within them which would you light.

24 We've all seen them probably. They just
25 shoot up in the air. That's basically what the

1 big bombs were.

2 Q. And then --

3 A. They were -- they're like -- they're
4 wrapped. To tell you how much is in there, I'm
5 not really sure as far as number of actual
6 exploding devices, but they were wrapped.

7 Q. They were wrapped?

8 A. Uh-huh. Almost like a tissue paper type
9 material.

10 Q. Okay. And Staff Exhibit 2E is a little
11 bit closer up of those boxes and the markings?

12 A. That's correct, yes.

13 Q. Okay. And I see that there's an orange
14 triangle or diamond on the box where it says
15 1.4G. What's that symbol supposed to indicate?

16 A. That's the -- that's the label that
17 denotes what class it is. It's a 1.4G.

18 If you look down below, it also has the
19 Unit Number 0336, which goes to the number that's
20 on top in the orange label.

21 Q. Okay. Staff Exhibit 2F?

22 A. Again, just another picture of the
23 box.

24 Q. 2G?

25 A. Same.

1 This is just to show -- 2H would be just
2 to show you how full this load really was, this
3 trailer or box trailer or truck was.

4 Q. Okay. 2I?

5 A. Same.

6 Q. 2J?

7 A. The rear with the picture of the license
8 plate. That's one of the things that we want to
9 take a picture of, would be the license plate of
10 the vehicle.

11 Again, 2K would be the right side.

12 L is the same.

13 M is the same. Again, just a picture of
14 the four sides.

15 Q. Okay. So these pictures were taken by a
16 camera that was issued to you --

17 A. That's correct.

18 Q. -- to perform your duties?

19 A. Yes.

20 Q. Are these pictures that start at staff
21 Exhibit 2A and go all the way through to staff
22 Exhibit 2M, are these accurate representations of
23 what you saw when you conducted the inspection?

24 A. Yes.

25 Q. And you had these photographs developed

1 by your post?

2 A. Actually, I don't -- I didn't have them
3 developed.

4 I just -- again, we upload those to our
5 photograph -- our lab in Columbus.

6 Q. Oh.

7 A. Then at the request they could be, but
8 they're stored.

9 Q. They're digital?

10 A. They're all digital, yes, sir.

11 Q. I see.

12 A. Correct.

13 Q. I see. Now, if you would -- there's a
14 HazMat Regulations book up there. I'd like to
15 have you refer to the code section that has
16 fireworks as a hazardous material.

17 A. I don't have my glasses on, so bear with
18 me.

19 Okay, page 121.

20 The question is what again?

21 Q. Yeah. Where do you find in the HazMat
22 Regulations that the fireworks 1.4G that you had
23 for cargo in this case would be a classification
24 under the HazMat Regulations?

25 MR. LUXENBURG: Objection as to the

1 foundation.

2 He didn't state that he referred to this
3 book when he determined the violations, et
4 cetera. I don't know that there's been any
5 foundation laid for referring to this text.

6 He either knows the information or he
7 doesn't. He didn't say he referred to it. He
8 didn't say it supplemented him in any way, shape,
9 or form.

10 Q. Well, you had marked that this -- the
11 cargo was what type of cargo?

12 MR. LUXENBURG: There's an objection on
13 the table. I don't know if he wants to respond
14 to it.

15 ATTORNEY EXAMINER PARROT: Are you
16 trying to ask some foundational questions, Mr.
17 Jones?

18 MR. JONES: Well, I'm asking a question
19 that already -- I think the foundation has been
20 laid, Your Honor, in the sense that he's already
21 testified, you know, from the markings of the
22 box, knowing what the contents of the boxes are,
23 being fireworks, that his report indicates that
24 this is a hazardous material cargo.

25 Now I'm just asking him to tie it to

1 what regulation does this fit for purposes of
2 identifying that provision.

3 ATTORNEY EXAMINER PARROT: Your
4 objection's overruled.

5 Please answer the question, please.

6 A. For the sake of the inspection, we
7 operate on two different rule books. One would
8 be the Federal Motor Carrier Safety Regulations,
9 which deals with logbooks, the general truck and
10 so forth. Then we work out of the HazMat,
11 Hazardous Material, rule book.

12 For the sake of the hazardous material
13 we're dealing with here, we deferred to the
14 Hazardous Material rule book.

15 Under that we look for the table of the
16 hazardous materials and then we'll look the
17 material up, go work through the table itself,
18 refer to the charts.

19 As far as when -- this -- some of the
20 stuff that we do as far as when we'll refer to
21 the book as far as when they need placarded,
22 which amount, Table 1 or Table 2 depending, and
23 then determine the requirements of the
24 placarding, what placard is needed.

25 This is what we -- we work out of this

1 book --

2 Q. Okay.

3 A. -- for the HazMat.

4 This is what we work out of for the non
5 HazMat.

6 Q. Okay. And did you identify that
7 provision, then, for the fireworks?

8 A. That's correct.

9 Q. And I don't think you said anything.
10 What was the section?

11 A. This table here, the 172, deals with the
12 actual table itself, so we would look under the
13 table at 172.101 and begin to work across looking
14 for the material, the UN number, the packing
15 group, the label codes, special provisions and so
16 forth.

17 Q. Okay.

18 MR. LUXENBURG: Are you moving to admit
19 that as an exhibit, because we have not been
20 provided a copy?

21 MR. JONES: That's the Hazardous
22 Material Regulations itself. It's a published
23 recognized regulatory rule book.

24 MR. LUXENBURG: Do you have copies for
25 me?

1 ATTORNEY EXAMINER PARROT: It's not
2 necessary to move to admit it.

3 MR. JONES: You wouldn't admit the rule
4 book in a proceeding.

5 BY MR. JONES:

6 Q. And also, if you would, for the placard
7 violation piece, where would you find that as
8 well there in the HazMat Regulations?

9 A. We're looking at 172.504. That's where
10 you'll find the Tables 1 or 2.

11 Q. And what table is it under?

12 A. It's a Table 2.

13 Q. Okay. And what's it say there?

14 A. Placards required for 1,000 or more,
15 1,001 or more, for that particular material,
16 1.4.

17 Q. So you have 1.4, which is the class,
18 right?

19 A. That's correct, yes.

20 Q. And the amount of the weight here was
21 over 1,000 pounds?

22 A. That's correct, yes.

23 Q. And so because this load met that
24 description, that's why the placard was required
25 for this load; is that correct?

1 A. That is correct, yes.

2 Q. Now, do the Federal Motor Carrier Safety
3 Regulations provide any exceptions for occasional
4 transportation of personal property by
5 individuals?

6 A. Exemptions?

7 Q. Exceptions. I'm sorry.

8 A. Yes. If you're transporting personal
9 items such as household goods, if I'm moving my
10 family, I'm not going to be subject to the rules
11 under this section or these rule books.

12 Q. And can you find that in the Federal
13 Motor Carrier Safety Regulations, that provision
14 that lays out what the exceptions are?

15 A. The exact section, I can't --

16 Q. If I were to refer you to 390.3(f), do
17 you find that they have exceptions there to
18 regulations?

19 A. Yes.

20 Q. Okay. And what exceptions are provided
21 for occasional transportation of personal
22 property?

23 A. School buses as defined in 390.5;
24 federal transportation by the Federal Government,
25 a state, any political subdivision of a state,

1 federal -- what else do you want? I mean, which
2 ones do you want?

3 Q. The one that talks about the occasional
4 transportation of personal property.

5 A. By an individual not for compensation
6 or -- not for compensation nor in the furtherance
7 of a commercial enterprise.

8 Q. Commercial enterprise, okay.

9 So why doesn't that exception apply in
10 this case?

11 A. Because the fact is, No. 1, he doesn't
12 own the materials. The materials do not belong
13 to him.

14 He's being compensated. That's from his
15 own mouth, he's being compensated. He was given
16 \$200 in cash by the owner of the fireworks to
17 haul the fireworks. He's being compensated.

18 So if you read that right there, he's --
19 he is being compensated.

20 Q. Okay. And how about the fact that he's
21 going to a church, is that a commercial
22 enterprise?

23 A. Right. He's being -- I believe he's
24 being paid by the church to display the
25 fireworks.

1 But regardless of what he does with the
2 fireworks, the fact is there's \$7,000 worth of
3 fireworks being driven across the state in a
4 vehicle by an individual who's being compensated
5 to haul them.

6 What he does with them is -- he could be
7 taking them back to his house or he could be
8 taking them to his business that Mr. Kaltreider
9 owns, a fireworks business, for all I know. I
10 don't -- I mean, he could be doing that. I don't
11 know.

12 For this particular move, he told me he
13 was taking it to a church for a fireworks
14 display.

15 With all that put together, yes, you're
16 right.

17 MR. JONES: Can I have a second, Your
18 Honor?

19 ATTORNEY EXAMINER PARROT: Uh-huh.

20 (Short discussion off the record.)

21 BY MR. JONES:

22 Q. Sergeant Ogden, the Staff Exhibit 1,
23 this is a copy of the report that you would have
24 issued that day?

25 A. That is correct. Because it has "Staff

1 Exhibit 1" at the bottom, mine would not have had
2 that on that. This is a copy.

3 Q. There's no signatures on that one?

4 A. That is correct, yes.

5 Q. The one that you would have filled out
6 that day, would you have gotten signatures?

7 A. Yes, I did. Mine would be under my
8 name. Stephen would have signed under his name,
9 that's correct.

10 Q. And so that would have then been
11 issued -- a copy of this report would have been
12 issued to Mr. Fox at the scene?

13 A. It would have been given to him, yes,
14 that's correct.

15 Q. And you would keep all these records and
16 these are records that you have to keep in the
17 ordinary course of business to keep for your
18 records for your duties?

19 A. As far as reports, we don't make copies
20 of reports. They're stored on the computers
21 themselves.

22 Q. You keep them electronically?

23 A. That's correct. They're kept
24 electronically, that's correct.

25 Q. So they're business records you keep in

1 your business?

2 A. That is correct.

3 Q. Okay. And you also keep an electronic
4 file of the pictures as well?

5 A. That's stored in Columbus. I don't have
6 access to those.

7 Q. Okay.

8 A. Once they're uploaded, they're stored in
9 Columbus and only certain people have access to
10 retrieve those.

11 Q. Okay.

12 MR. JONES: That's all the questions, I
13 have, Your Honor.

14 ATTORNEY EXAMINER PARROT:
15 Mr. Luxenburg?

16 CROSS-EXAMINATION

17 BY MR. LUXENBURG:

18 Q. Sergeant Ogden, you have never met
19 Mr. Kaltreider before today, correct?

20 A. That is correct.

21 Q. He was not at the scene?

22 A. No, he was not.

23 Q. He was not a driver?

24 A. No, he was not.

25 Q. Not a passenger?

1 A. No.

2 Q. Wasn't in the vehicle?

3 A. No.

4 Q. Your only dealings were with Mr. Fox,
5 correct?

6 A. Yes, that's correct, and the female that
7 was in the car.

8 Q. Did you speak to the female at all?

9 A. We spoke to her and also her parents.

10 Q. And her parents?

11 A. Yes.

12 Q. Did you find Mr. Fox to be truthful?

13 A. There's still some things to this day, I
14 mean, if you want my opinion, I'm still not
15 comfortable with, but it is what it is.

16 Do I think he was 100 percent truthful
17 with me, no.

18 Q. What parts do you think he wasn't
19 truthful about?

20 A. How it is that you just meet somebody
21 and you give them \$7,000 to haul fireworks you've
22 never met.

23 If he's never -- if Brian wasn't with
24 him, they never met, why would you just do that?

25 I don't understand why you would give

1 somebody \$7,000 worth of fireworks to transport
2 across, you know, the country.

3 Q. But that doesn't factor into whether or
4 not there was a violation here, correct?

5 A. No, it doesn't.

6 Q. So there's things that you thought
7 smelled a little bit sketchy maybe about Mr. Fox,
8 but it didn't affect your decision on whether or
9 not a violation occurred?

10 A. That's correct.

11 Q. Correct?

12 A. That's correct.

13 Q. And you had referenced earlier if you're
14 hauling your own personal stuff, occasionally you
15 would not need any special permits or anything?

16 A. Right. I mean, if I'm hauling my own
17 stuff, it's my stuff.

18 Q. Let's define "stuff," though. If you're
19 hauling --

20 A. It could be anything.

21 Q. If you're hauling your own fireworks,
22 this quantity of fireworks, you need a permit or
23 you don't?

24 A. It's my stuff and I'm taking it home,
25 why would you -- see, that's another thing; why

1 would I need \$7,000 worth of fireworks for 4th of
2 July?

3 Q. But that doesn't -- but that doesn't
4 matter to whether or not there was a violation,
5 does it?

6 A. What, the fireworks or if it's my stuff?

7 Q. If it's -- the distinction is whether or
8 not it's your stuff. But if it's \$7,000 or
9 \$4,000, it doesn't matter if it's your own stuff,
10 correct?

11 A. It does matter if it's your own stuff or
12 not.

13 Q. Okay. This is -- I'm sorry. Let's go
14 this route.

15 If I go to Phantom Fireworks, which I
16 saw many on the way down, as well as many of your
17 colleagues on the way down, be careful driving
18 back, I stop off at Phantom Fireworks and I buy
19 2,000 pounds worth of fireworks off the shop, not
20 fancy explosives, just bottle rockets, aerial
21 displays, whatever, and buy 2,000 pounds and I
22 spend \$7,000, and I put it in the back of my
23 Suburban, do I need a special permit for that?

24 A. A special permit, no.

25 Q. Do I need a HazMat permit? Do I need to

1 placard my vehicle or anything?

2 A. See, that's the thing. With the amount
3 of weight that you have there, you should.

4 As far as it -- what's the purpose? Are
5 you in commerce or not in commerce?

6 Q. It's my own personal fireworks and I'm
7 going to have one heck of a 4th of July party.

8 A. But that's not the case here.

9 Q. I'm asking you, if those were the facts,
10 it's personal fireworks...

11 A. If it was -- if it was personal, I
12 probably would not have done the inspection, if
13 that was the case.

14 If it was his stuff, if it was his
15 stuff, he was hauling it, he's on his way, I
16 would have let him go.

17 Q. Okay. Now, it's not personal stuff,
18 hauling for somebody else, it's less than 1,000
19 pounds.

20 A. Right.

21 Q. Do I need a HazMat?

22 A. No.

23 Q. So in this particular case --

24 A. Not -- it depends on what you have.

25 Q. In this particular case, the relevant

1 facts were, for you, the class of fireworks, it
2 was 1.4 and above?

3 A. Right.

4 Q. And it was more than 1,000 pounds?

5 A. Right.

6 Q. Those are the relevant facts why you say
7 in this particular case you need the HazMat
8 placard --

9 A. Right.

10 Q. -- and --

11 A. Endorsement.

12 Q. -- endorsement?

13 These different papers, correct?

14 A. Right.

15 Q. In this particular case, Mr. Fox has a
16 Class C, a CDL, a commercial driver's license,
17 correct?

18 A. With a HazMat endorsement.

19 Q. And he has the endorsement to carry this
20 amount of product, correct?

21 A. That's correct.

22 Q. And you believe that Mr. Fox was paid to
23 transport these fireworks?

24 A. Yes.

25 Q. These are the relevant facts to your

1 determination on whether or not there's a
2 violation?

3 A. Right.

4 Q. Correct?

5 A. That's correct.

6 Q. Nothing else really matters. It's the
7 amount, weight?

8 A. He could have been hauling Little Tikes
9 toys in the back of that truck. It's -- the fact
10 is that he's hauling -- it's a -- he's in
11 commerce. These Little Tikes, he's going to make
12 money with these Little Tikes.

13 They're going to the church. The church
14 has bought these Little Tikes from
15 Mr. Kaltreider. He's still in commerce.

16 Q. Okay. So --

17 A. He's still subject and he's being
18 compensated, so it doesn't matter really even if
19 he's empty.

20 Q. I understand the rules apply, but in
21 this particular case, the HazMat placard and
22 permit are necessary --

23 A. That is correct.

24 Q. -- because it's not Little Tikes, it's
25 fireworks?

1 A. That is correct.

2 Q. Right. So if I have 2,000 pounds of
3 Little Tikes that cost me \$7,000, I don't need a
4 HazMat application for that?

5 A. No, you do not.

6 Q. So, again, the relevant facts here are
7 we have a commercial driver that's being paid?

8 A. Correct.

9 Q. Hauling a certain type of fireworks in a
10 certain amount?

11 A. That is correct.

12 Q. If there were less than 1,000 pounds,
13 would he need the HazMat?

14 A. The -- no, he would not need the
15 placard.

16 Q. He wouldn't need any of this?

17 A. No.

18 Q. We wouldn't be here today if it was less
19 than 1,000 pounds?

20 A. Right.

21 Q. Did you have to call any of your
22 supervisors for assistance on this?

23 A. No. The only person I called was the
24 portable scale team to come down.

25 Q. That was it?

1 A. That's it.

2 Q. You never emptied the truck?

3 A. No.

4 Q. In fact, you weren't allowed to empty
5 the truck, correct?

6 A. What do you mean "allowed"?

7 Q. Well, because of the hazardous
8 material...

9 A. We could have off-loaded it. We could
10 have found a place to off-load it.

11 Q. So if Mr. Kaltreider had gone to Indiana
12 with the U-Haul and bought 2,000 pounds of
13 fireworks and spent \$7,000, and he personally
14 drove that U-Haul from Indiana to Pennsylvania,
15 he would not have needed a permit?

16 A. But I believe that he also sells
17 fireworks.

18 Q. Okay.

19 A. So if he's doing that, yes, he still
20 needs the --

21 Q. But you don't know whether or not he
22 sells fireworks.

23 A. Well, I mean, I'm just saying that's the
24 discussion we had that day was that --

25 Q. You suspect that he sells fireworks, but

1 nobody told you that?

2 A. Nobody told us directly. I mean, I
3 didn't talk to him directly about whether or not
4 he --

5 Q. But you actually had him on the phone --

6 COURT REPORTER: I'm sorry.

7 MR. JONES: Objection, Your Honor. He's
8 not giving the witness an opportunity to answer.

9 A. -- about whether or not he does or does
10 not have a business.

11 That night on the phone it was 5:00 in
12 the morning. We just basically discussed, told
13 him, what was going on, what we had, what he
14 needed to get legal, his information, and that
15 was pretty much the gist of what we talked about.
16 That's the conversation we had.

17 Q. Right. So you never asked him, "What do
18 you plan to do with these fireworks"?

19 A. No.

20 Q. But if he's not in the business of
21 selling fireworks, and he rents a U-Haul and
22 drives from Indiana to Pennsylvania, and they're
23 his fireworks, then he would not be required --
24 we wouldn't be here today, correct?

25 A. I mean, we could go on and on about

1 what-ifs. The facts were he did.

2 Q. If these were the facts --

3 A. But they're not the facts.

4 MR. LUXENBURG: I'm going to have to
5 object, Your Honor, to the relevance of this.

6 He keeps on making up new facts, but
7 that's not the facts we're dealing with in this
8 proceeding.

9 MR. LUXENBURG: He is an expert on the
10 law. You have asked that he testify to such.

11 So I am allowed to ask an expert witness
12 on whether or not under certain situations things
13 would be required.

14 A. I believe we've already answered this.
15 I mean, you've asked this question before and
16 I've already answered that question.

17 Q. Let's do it one more time just to make
18 sure.

19 MR. JONES: I object. This is asked and
20 answered. We've been around the block ten times
21 here. He's badgering the witness.

22 ATTORNEY EXAMINER PARROT: I'd like to
23 hear the question.

24 Q. If Mr. Kaltreider went to Indiana and he
25 purchased this amount of fireworks and

1 transported it himself to his home in
2 Pennsylvania, we wouldn't be here today if it
3 were him, correct?

4 A. I would still ask him what he's doing
5 with these fireworks.

6 Q. Okay. And you had that opportunity on
7 the telephone, correct?

8 A. But I got the information I needed.

9 It's just like if I stop a guy and he's
10 hauling for USX or whatever, it could be any
11 company, Company Joe out there, my questioning
12 about where he's going, coming to, and what he's
13 hauling is coming from the driver.

14 I'm not -- I don't have the opportunity,
15 nor will I take the time, to call every owner of
16 every company of every driver that I stop in a
17 year's time. There's no way to do that.

18 They know where they're coming from.
19 They know what they're being used for. Most
20 drivers out there knows what's in the back of the
21 truck. 99.9 percent of the time they know what's
22 in the truck. They know what they're hauling.

23 I go off of what the driver's say on a
24 daily basis without calling the company owners,
25 without even company supervisors.

1 These drivers need to know what's in the
2 back of those trucks, okay? They need to know if
3 they're hauling HazMat or not. They need to know
4 that. They must know that stuff.

5 If I stop a driver and he says, "I don't
6 know what's in the back," and it's loaded with
7 HazMat, he needs to know there's HazMat in there.

8 I'm going off the word of drivers every
9 day, drivers alone every day.

10 Q. Now, if he's the driver and he's being
11 compensated to transport something, isn't he the
12 carrier?

13 A. Not -- no.

14 Q. He's a carrier for hire?

15 A. No.

16 How is he -- how is he the carrier?

17 It's just like me working for -- if I
18 work for you and your company and it's Big E
19 Trucking, and I'm working for you, I'm the driver
20 and you're the carrier.

21 Q. And the definition of a "carrier,"
22 though, is somebody who provides --

23 A. Who's operating under that authority.

24 Who's he operating under? Who's he
25 hauling it for?

1 Q. And it would have to be a transportation
2 company.

3 A. Not necessarily.

4 Q. Wouldn't Mr. Fox not be a private
5 carrier?

6 He was not working for his company. He
7 was being compensated to transport stuff for
8 somebody else.

9 A. He --

10 Q. He is a private for-hire carrier.

11 A. He did not pay for the truck. That was
12 paid for by Mr. Kaltreider. He did not pay for
13 the gasoline. That was paid for by Mr.
14 Kaltreider. He did not own the product that was
15 in the truck. Mr. Kaltreider paid for that.

16 The only thing that he was given was
17 \$200 cash to move the load.

18 Q. How do you figure Mr. Kaltreider, by the
19 definition in the statutes that you used to cite
20 me with, is a carrier?

21 What is the definition of a carrier?

22 A. He owns everything. He's doing
23 everything. The driver is under the authority of
24 Mr. Kaltreider. He's telling him what to do.

25 Q. Show me the definition in the statutes

1 that state that that person exercising authority
2 and control or any of those factors decide who is
3 the carrier.

4 A. As far as the definition of what a
5 carrier is?

6 Q. Well, you have to be a carrier for any
7 of these rules to apply, so please tell me which
8 sections that you cited relate to Mr. Kaltreider
9 being the carrier.

10 A. I'm really -- I mean, seriously, I can
11 hardly read this book without my glasses.

12 Q. Would you like to borrow my reading
13 glasses?

14 MR. JONES: I've got reading glasses
15 here, too. Would that help?

16 A. Let me see if I can find it in here.

17 Under the definition of a commercial
18 motor vehicle just talks about a vehicle that's
19 being used to transport on a highway in
20 interstate commerce to transport passenger
21 property if the vehicle, one, is over 10,000
22 pounds, designed to carrie passengers.

23 Let me see.

24 Or designed or used in transportation of
25 15 passengers, including the driver.

1 As far as what the definition of a --

2 Q. Sergeant, I'm not going to disagree with
3 you.

4 A. Just if you look under the, "Employer
5 means any person engaged in a business affecting
6 interstate commerce who owns or leases a
7 commercial motor vehicle in connection with that
8 business, or assigns employees to operate it, but
9 such terms does not include the United States or
10 any State or political subdivision."

11 Right there if you look at the
12 definition of "employers," he's an employer.
13 Mr. Fox is the employee. Thus, the definition of
14 carrier and driver.

15 Q. You've just -- you've just basically
16 commingled five different statutes. You're
17 talking about an employee.

18 In this particular case, he rented a
19 U-Haul, he doesn't own or lease it, correct?

20 A. Right, he leased it.

21 Q. No, he rents -- he rented it.

22 A. Right.

23 Q. And what is the definition of a
24 "carrier"?

25 Not the definition of an "employer," but

1 what is the definition of a "carrier"?

2 Because if he's not a carrier, there is
3 no liability under any of the statutes you
4 quoted.

5 So look at the statutes that you cited
6 him for that you determined on the spot that he
7 was responsible for and tell me how
8 Mr. Kaltreider is a carrier under any of the
9 applicable sections, not the ones that are
10 convenient but the applicable sections.

11 A. First of all, we're going to determine
12 whether, in fact, this is a commercial vehicle,
13 which we can determine that it is a commercial
14 vehicle under these laws. I just read the
15 definition. The fact is that its over 10,000
16 pounds or more, okay, so we can determine the
17 fact is is this a commercial vehicle.

18 All right. If we're going to go on to
19 look at what it is that they do, the difference
20 an employee, an employer, what do they do? How
21 does it affect the transportation of these goods?
22 Is it a farmer?

23 We're going down through all these
24 definitions. We can read all the definitions
25 here that we have.

1 Q. Well, let's go with 4901:2-6-14(a)
2 which states, "A carrier means any carrier
3 subject to rules adopted under 4919.76 of the
4 Revised Code, motor transportation company as
5 defined in 4921.02 of the Revised Code, contract
6 carrier by motor vehicle as defined in 4923.02,
7 or private motor carrier under 4923.20 which
8 transports the following through commerce."

9 If you look at each of those sections,
10 4919.76, relevant section 4921.02, 4923.02,
11 4923.20, not a single definition would apply to
12 Mr. Kaltreider.

13 They are all motor transportation
14 company, private motor carrier additional,
15 transporting of not-for-hire carriers.

16 These would all apply to Mr. Fox.
17 Mr. Fox could have been cited for all of this,
18 but you cannot point to any definition of the
19 sections that you cited, not other sections that
20 may apply to other things, but no section here
21 would apply to a motor vehicle carrier under the
22 sections that you quoted, that you cited him for.

23 A. We can also look at the fact that you
24 can rent anything. I could rent a commercial
25 tractor trailer from Aims Leasing Logistics.

1 Q. But you don't like hypotheticals or your
2 attorney doesn't.

3 A. I'm just saying -- we're talking
4 about what -- where I'm going at is why I'm doing
5 what I'm doing with him.

6 He can rent this truck and it could be
7 part of his fleet for 30 days before he even has
8 to mark that. This truck could have been leased
9 from Aims Leasing and they're driving this truck
10 because their truck broke down and they're just
11 running it for one. As far as markings are
12 concerned, he can lease that truck.

13 Did I look at the lease agreement on the
14 time that he's leasing it?

15 I don't know how long he leased it for.
16 He could have leased it for 29 days. He could
17 have leased it for 25 days. I don't know.

18 Q. But wouldn't you have to know that
19 before you could find him in violation?

20 A. Well, I mean, as far as if I'm going
21 through -- yes, you can as far as looking at when
22 he -- if he -- as far as markings.

23 This gentleman told me, with what I'm
24 looking at, as far as coming to and from one
25 place to another within just days, okay?

1 I'm talking more like the big trucks
2 that you see that they've got garbage in there.
3 You know they've been in there for more than two
4 days. They've had it for a couple months.
5 They've had it and they just never bothered to
6 mark it.

7 He could have -- he could have -- Mr.
8 Kaltreider could have been leasing this thing on
9 a long-term agreement. He could have been.

10 Q. But in order to get to the violations
11 that you're getting to, not only can you not
12 point to anything in the statute that says he's a
13 carrier, you also have to jump through a lot of
14 speculation and conjecture.

15 And I agree with you, things don't smell
16 right.

17 MR. JONES: Objection, Your Honor, to
18 the characterization.

19 Q. But you know as a police officer --

20 MR. JONES: Objection.

21 ATTORNEY EXAMINER PARROT: Do you have a
22 question pending there, Mr. Luxenburg?

23 Q. You have actually no definition that you
24 can point to and no specific facts beyond
25 speculation and conjecture that Mr. Kaltreider is

1 the carrier?

2 A. Again, I'm just going to go with the
3 fact is I'm talking with the driver who tells me
4 what he's doing out here on a daily basis. He's
5 hauling material or goods for certain people.
6 That's who I work for.

7 We can sit here and testify to the fact
8 that many of times our guys don't do that and
9 we're violating wrong carriers because guys
10 aren't asking the questions.

11 They're going off Aims Leasing. They're
12 violating Aims Leasing for violations that have
13 nothing to do with Aims Leasing.

14 Aims Leasing does not -- is not the
15 carrier in this situation. It was Joe Blow who's
16 renting or leasing this truck because his truck's
17 down for two days.

18 That information comes from the driver
19 himself and/or shipping papers and/or logbook.

20 In this case we had none of that. We
21 had no shipping papers. We had no logbook to go
22 from.

23 So based on everything that I've just
24 told you, a driver can be driving a big truck in
25 which he's not -- it's not their company truck.

1 It's another company.

2 But if our guys write down the DOT
3 number off the side of that truck, we're
4 violating Aims Leasing. Aims Leasing has nothing
5 to do with it. Aims Leasing's just leasing the
6 truck or renting the truck to Joe Blow who's
7 transporting a load.

8 Now I have to find out based on
9 everything I have -- the registration is going to
10 come back Aims Leasing. Everything in that
11 book that -- his -- everything in there's going
12 to come back -- insurance is going to come back
13 Aims Leasing, everything.

14 Nothing in that truck will show to me
15 that that truck is owned by Joe Blow. It's Aims
16 Leasing.

17 My responsibility now is to inquire of
18 the driver, "Driver, who do you work for?"

19 And, "I work for Joe Blow. Here's the
20 shipping paper that has Joe Blow's name at the
21 top. Here's Joe Blow's stuff."

22 "What about, do you have the leasing
23 agreement with you?"

24 "Well, no, I don't," or, "yes, I do."

25 Regardless, here's that. That's another

1 piece of information we can use. His logbook has
2 on here.

3 Unfortunately, for this particular stop,
4 I had none of that to go on. No shipping papers,
5 there was no logbook.

6 The only thing I had to go on that day
7 was what the driver told me of what he was doing
8 and who he was working for and hauling for,
9 period.

10 Q. And to be fair to you, sometimes you're
11 going to get it wrong because you don't have all
12 the information available, correct?

13 A. I'm wrong every day.

14 Q. You do the best you can?

15 A. I do the best with what we've been
16 given.

17 In this case what I was told is what I
18 went with.

19 Q. And in order to draw the conclusions
20 that you drew, particularly that he's a carrier,
21 you did have to go beyond some of the evidence
22 and speculate a little bit in order to find these
23 violations?

24 A. I think as far as we're going here,
25 speculation, whatever you want to call it, I

1 knew -- I went with the fact is who he told me he
2 works for, who's paying him to haul this load,
3 who owns it, where it's going to. That's what I
4 went with.

5 We can -- we can -- as far as markings
6 and stuff like that, that has no relevance here
7 because of the time frame.

8 But, again, I'm going back to these
9 other trucks. We have to ask questions.

10 Q. I just want to talk about this
11 particular one, though.

12 A. Right. We have to ask questions.

13 And when I'm with a driver on a small,
14 straight truck for two hours, I think that we can
15 all probably draw the conclusion there were many
16 questions asked that night.

17 There was many questions about why was
18 this 18-year-old girl with this guy.

19 Why was -- none of it made sense as to
20 why you would let somebody give you \$7,000 worth
21 of -- there were a lot of questions asked that
22 night.

23 Do I remember every question and answer
24 that was given that night over two years ago?

25 No, I don't. I can't recall every single

1 question that was asked.

2 The ones that I felt were pertinent
3 were, No. 1, who do you work for? Where's the
4 load going to? Where's the load coming from? Is
5 he paying you? Are you receiving anything from
6 him?

7 That's it. That's where we -- that's
8 where we went from.

9 Q. You did speak to Mr. Kaltreider that
10 night. Do you remember speaking to him?

11 A. Again, I remember speaking to him
12 briefly. I remember us discussing the fact of
13 what we had.

14 I can't recall if I even asked -- I
15 think I'm maybe getting two phones -- because we
16 called the mother of the kid -- whether or not he
17 knew who was with him.

18 Then just getting the basic information,
19 that was pretty much it, and what he needed to do
20 to get legal.

21 Q. If Mr. Kaltreider were a carrier, he
22 would have also needed to have a HazMat placard
23 and permit, correct?

24 A. Why would he need a HazMat placard and
25 permit?

1 Q. Well, if he --

2 A. He would need -- he would need the
3 registration requiring -- I mean his -- which he
4 didn't have the HazMat registration.

5 But as far as he, the owner, why would
6 he need -- he's not operating the vehicle. He
7 doesn't -- he's not required to have a HazMat
8 endorsement on his driver's license.

9 Q. No. Would he have needed shipping
10 papers or a placard?

11 A. Because he's at home where he was at?

12 Q. Well --

13 A. I'm not -- I'm not sure where you're
14 going.

15 Q. But he was cited for needing these
16 things. Now you're saying he didn't need them.

17 A. Under these laws, the inspection report,
18 he's the carrier.

19 Q. Okay. So as the carrier, he needed
20 these things?

21 A. Right. The truck driver needed to have
22 this. There should have been training. There
23 should have been other things that he needed as
24 well. Whether or not he had that, I'm not sure
25 as far as the training part of it.

1 Q. It --

2 A. As far as this part of it, he didn't
3 have it.

4 Q. It's the carrier's responsibility to get
5 the placard and shipping paper or the driver?

6 A. It's the carrier's responsibility to
7 make sure it's there, to make sure everything's
8 proper. They were under his control.

9 Q. And the carrier's responsibility for
10 placards --

11 A. Training, that's what I'm talking about.
12 There should have been training. I don't know if
13 he received the training or not. I don't know.

14 Q. Who received the training?

15 A. Mr. Fox. If he received the proper
16 training, I don't know if he has or he has not.
17 I don't know.

18 Q. Okay. I want to go back to the specific
19 violations that you cited him for.

20 A. Okay.

21 Q. 177.817A, right?

22 A. Okay. He did not have shipping papers
23 in the truck.

24 Q. Who was required to have those, the
25 carrier?

1 A. He's responsible to have them in the
2 truck.

3 Q. Who is?

4 A. The driver.

5 Q. The driver's responsible?

6 A. That's correct.

7 Q. So the driver not having those would be
8 the driver's failure?

9 A. But it's not a driver violation, though.
10 It's a -- it's not a driver violation.

11 Q. Well, what is it?

12 A. It goes on the vehicle.

13 Again, we're going back to training
14 here. It's like, "I know what I should do or
15 don't do." I don't know if he received that
16 training or not.

17 Q. So it says, "A person may not accept a
18 hazardous material for transportation --

19 A. Right.

20 Q. -- or transport a hazardous material by
21 highway unless that person has received the
22 shipping papers prepared in accordance with Part
23 172 of this subchapter."

24 A. Right.

25 Q. So that would be the driver who has to

1 get that?

2 A. Well, that's something that's provided
3 to the driver. He should have that.

4 Q. By whom?

5 A. The -- whoever he's getting the material
6 from, the shipper.

7 Q. Well, actually, it says here the
8 carrier, that the violation you charged him with
9 is being the carrier.

10 A. Right. Because it's not like it's
11 Sunoco Oil or I'm being paid to transport a
12 product from Sunoco Gasoline. It's not that.

13 He owns -- he -- it's his own stuff.

14 Do you see what I'm saying?

15 It's not -- it's the carrier's
16 responsibility to make sure he has all that stuff
17 in the truck with him.

18 Q. So if Mr. Kaltreider were to go and pick
19 this stuff up?

20 A. He would have the shipping papers.

21 Q. He would need to have it?

22 A. Yes.

23 Q. Even though it's his product?

24 A. Yes.

25 Q. Because he's the carrier?

1 A. That's correct.

2 Q. Okay. And 177.823A, "No placards and/or
3 markings when required," you believe that
4 Mr. Kaltreider is a carrier and, therefore, he
5 would need to have that?

6 A. The truck would need it. He would not
7 need it himself, but the truck would need to be
8 placard.

9 Q. And if the truck didn't have it, it's
10 the liability of the carrier?

11 A. Right, that's correct.

12 Q. So again -- and then, "Failure to file
13 Uniform HazMat application" also --

14 A. Carrier.

15 Q. -- carrier responsibility?

16 A. Yes.

17 Q. So if Mr. Kaltreider was driving this
18 vehicle, because you believe he's a carrier --
19 and you believe he's a carrier because you're not
20 sure what he's doing with the product when he
21 gets to Pennsylvania, you think he might be
22 selling it, correct?

23 A. He needs -- that's correct.

24 Q. You're speculating that he was selling
25 these fireworks?

1 A. Well, I'm not speculating. I'm going,
2 again, off what I was told. He was taking these
3 to a church to do a display for the church.

4 Q. Okay. Do you think that's commerce,
5 then?

6 A. Yes, absolutely.

7 Q. Okay. So that makes him a carrier.

8 And so what did you do with the truck
9 once you parked it?

10 A. We parked it at the Petro. He was put
11 out of service for his logbook, placarding, and
12 for the shipping papers.

13 Q. What is that supposed --

14 A. He was put out of service for only those
15 three things.

16 Q. And you didn't tell Mr. Kaltreider he
17 could come pick it up and take it because he
18 owned it?

19 A. I explained to him what he needed to do
20 to get legal on the phone. I again told Mr. Fox
21 what he needed to do to get legal in order to
22 leave there.

23 One, he's out of service for 10 hours
24 for his logbook. Two, he'd have to pick up a
25 shipping paper for what he had in the truck.

1 Three, you have to get the load properly
2 placarded.

3 And that's one reason we took him to the
4 Petro, because everything he needed to do was at
5 that facility and that area.

6 Q. And did you mark the vehicle and make
7 sure he couldn't leave until he had a service
8 decal?

9 A. Yes. It was placed on the truck. An
10 orange decal was placed on the truck, not on the
11 driver but on the truck.

12 Q. And how did that truck leave that
13 facility?

14 A. How did he?

15 I left and went to the office.

16 Q. So you're pre- --

17 A. As I do every time I put somebody out of
18 service.

19 Q. And you're presuming, then, that they
20 took care of the paperwork so that they could
21 pick up the truck and go?

22 A. That's exactly right.

23 They're also explained if they leave
24 without being legal after being placed out of
25 service, which is a whole other problem for the

1 driver if he does that, so he was explained that.

2 I felt that everything that he was --
3 everything was explained to him clearly. He knew
4 what he needed to do to get legal.

5 After I gave him the paperwork, I left.
6 I'm assuming he made it home.

7 Q. You don't know whether or not they
8 actually got legal before they left?

9 A. As far as -- I didn't wait around, no, I
10 did not. No, I did not wait around.

11 Q. It's possible for them to hop in and
12 take off?

13 A. Oh, they do it -- they probably do it
14 all the time. Not necessarily this driver. I'm
15 just speaking the many of individuals I've placed
16 out of service over the years, I'm sure that
17 there's some that have done it because I know
18 I've caught people doing it from other
19 inspectors.

20 Q. But, again, looking at the definition of
21 "carrier" in the statutes, can you point to any
22 specific section that he's been cited for that
23 would qualify Mr. Kaltreider as a carrier?

24 A. I'm just going to go, again, with what I
25 just testified. The fact is that, you know, I'm

1 going off his word, as I do others, and I have
2 done it in the past. I believe that he was the
3 carrier.

4 Q. Taking --

5 A. I believe Mr. Fox was the driver.

6 Q. Taking Mr. Fox for his word, everything
7 holding true for argument's sake, can you point
8 to any section which would still make
9 Mr. Kaltreider the carrier?

10 A. Not from where I'm at right now, no.

11 Q. How were you able to do it that day when
12 you cited him, then?

13 A. Again, I'm going to go to the fact is --
14 I don't know what you want to tell me.

15 MR. JONES: I'm going to object, Your
16 Honor. You know, I think we've been around the
17 block 20 times here. He's just harassing the
18 witness at this point.

19 ATTORNEY EXAMINER PARROT: I think we've
20 got the best answer that we're going to get on
21 this one, so...

22 Q. When you said there was \$7,000 worth of
23 fireworks, did you see any receipt for that --

24 A. No.

25 Q. -- or that was told to you by

1 Mr. Fox?

2 A. Yes.

3 Q. Mr. Fox told you?

4 A. Yes.

5 Q. Did you issue any citation to Mr. Fox
6 directly?

7 A. Just this inspection report.

8 Q. No monetary fine was assessed against
9 him?

10 A. We don't -- our reports are generated.
11 Everything is forwarded down. The fines come
12 from the Public Utilities Commission.

13 MR. LUXENBURG: Okay. Nothing
14 further.

15 ATTORNEY EXAMINER PARROT: Any redirect?

16 MR. JONES: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. JONES:

19 Q. Sergeant Ogden, would you refer to the
20 Federal Motor Carrier Safety Regulations 390.5
21 and find and read the definition for "Motor
22 Carrier"?

23 A. The commercial -- the definition of what
24 again?

25 Q. "Motor Carrier" under 390.5.

1 MR. LUXENBURG: I would object just to
2 relevance. That's not the applicable definition
3 to the statutes which have been cited.

4 A. "Means a for-hire motor carrier or a
5 private motor carrier."

6 ATTORNEY EXAMINER PARROT: The objection
7 is overruled.

8 Please continue.

9 A. "Means a for-hire motor carrier or a
10 private motor carrier. The term includes a motor
11 carrier's agents, officers and representatives as
12 well as employees responsible for hiring,
13 supervising, training, assigning, or dispatching
14 of drivers and employees concerned with the
15 installation, inspection, and maintenance of
16 motor vehicle equipment and/or accessories. For
17 purposes of Subchapter B, the definition includes
18 the terms employer and exempt motor carrier."

19 Q. Okay. Would you further read in that
20 section "Private Motor Carrier" definition?

21 A. "Means a person who provides
22 transportation of property or passengers, by
23 commercial motor vehicle, and is not a for-hire
24 motor carrier."

25 Q. Okay. So do these definitions apply in

1 this case for Mr. Kaltreider?

2 A. Yes, both of them.

3 Q. Both of them?

4 A. Yes.

5 Q. And it's your opinion, based on the
6 information you got from the scene of the
7 inspection, that there was an agency relationship
8 between Mr. Fox and Mr. Kaltreider?

9 A. Yes.

10 Q. And, yet, you did have a conversation
11 with Mr. Kaltreider after you spoke with Mr. Fox
12 when you were at the site of the inspection?

13 A. Yes.

14 Q. Okay. And you told Mr. Kaltreider the
15 situation that you had with Mr. Fox?

16 A. Yes.

17 Q. He was aware of the load, the stop?

18 A. Right.

19 Q. What was going on; is that correct?

20 A. That's correct. And what he would need
21 to do to get legal.

22 Q. And what he, Mr. Kaltreider, would need
23 to do to get legal?

24 A. What he, the driver, his carrier of the
25 load, would need to do.

1 Q. What his driver would need to do?

2 A. Yes.

3 Q. Because the truck's under Mr.
4 Kaltreider's control, right?

5 It's his -- it's all under his name and
6 everything; is that correct?

7 MR. LUXENBURG: Objection. He's
8 testifying for the witness.

9 ATTORNEY EXAMINER PARROT: Overruled.

10 A. Yes.

11 Q. So based on your inspection, based on
12 your training, you're asking the Commission to
13 find the violations here of failure to retain the
14 previous seven day's log of duty status, no
15 shipping papers, no placards, and failure to
16 register as a HazMat registration?

17 MR. LUXENBURG: Objection, Your Honor.

18 Q. Is that what you're asking?

19 MR. LUXENBURG: He said -- he already
20 testified that the violations came from the
21 Public Utilities Commission. He's not asking for
22 anything.

23 MR. JONES: Your Honor, he's the one
24 that wrote out the report here. I don't
25 understand the objection.

1 MR. LUXENBURG: He's already
2 testified.

3 MR. JONES: He can recommend to the
4 Commission based on his report.

5 ATTORNEY EXAMINER PARROT: I'll allow
6 the witness to answer the question to the best of
7 his ability.

8 A. What's the question again?

9 Q. What's your recommendations to the
10 Commission as to the violations that you noted in
11 your inspection report for failure to register
12 the HazMat registration, the placards, the
13 shipping papers, and the logbook violations that
14 you've noted here against Mr. Kaltreider?

15 MR. LUXENBURG: Objection, asked and
16 answered.

17 ATTORNEY EXAMINER PARROT: Overruled.

18 MR. LUXENBURG: Thank you.

19 A. Find him guilty.

20 What's -- is that what you want to know?

21 Q. What's your recommendation to the
22 commission, yeah?

23 A. That he be found guilty of these charges
24 and of these violations that I've listed on my
25 report.

1 Q. Okay. And that's all based on your
2 inspection and your experience and all that?

3 A. That's correct.

4 Q. Okay. And this is all based on your
5 opinion, right?

6 This is your opinion that these are
7 violations; is that correct?

8 A. That's correct.

9 MR. JONES: Your Honor, that's all I
10 have.

11 ATTORNEY EXAMINER PARROT:
12 Mr. Luxenburg?

13 MR. LUXENBURG: Brief recross.

14 RE CROSS-EXAMINATION

15 BY MR. LUXENBURG:

16 Q. This is also based upon a lot of
17 speculation on your part, correct?

18 MR. JONES: Objection. There's no
19 foundation for that.

20 MR. LUXENBURG: Absolutely there is.

21 MR. JONES: There's none, Your Honor.

22 ATTORNEY EXAMINER PARROT: Overruled.

23 A. The question again?

24 Q. You've also had to put in a little bit
25 of speculation on this, correct?

1 MR. JONES: And I object again.

2 ATTORNEY EXAMINER PARROT: Overruled.

3 MR. JONES: Continuing objection.

4 ATTORNEY EXAMINER PARROT: Noted.

5 A. As far as speculation, I'm just going on
6 what the driver told me.

7 MR. LUXENBURG: Nothing further.

8 ATTORNEY EXAMINER PARROT: Okay. Thank
9 you very much.

10 Thank you very much, Sergeant. You are
11 excused.

12 Let's go off the record.

13 (Discussion off the record.)

14 ATTORNEY EXAMINER PARROT: At this point
15 we're going to take a break for 10 minutes and we
16 will reconvene at that point.

17 Thank you.

18 MR. JONES: Thank you.

19 (Discussion off the record.)

20 ATTORNEY EXAMINER PARROT: Earlier at
21 the outset of the proceeding, Mr. Luxenburg had
22 moved for a dismissal on the basis that the
23 Notice of Intent to Assess Forfeiture was not
24 issued pursuant to Commission Rules.

25 Mr. Jones, you had asked, I believe, for

1 some time to do a little digging and look into
2 that issue.

3 You've now been given time to do that.
4 I think at this point it would be appropriate to
5 respond to his motion.

6 MR. JONES: Yes. Thank you, Your Honor.
7 I appreciate that.

8 Your Honor, I could not access the old
9 rule. The rule -- there was a rule change.

10 ATTORNEY EXAMINER PARROT: I'm aware of
11 that.

12 MR. JONES: Okay. And the new rule went
13 into effect as of September 5th, 2011.

14 In that rule it says -- this is
15 4901:2-7-07, Notice of Intent to Assess
16 Forfeiture.

17 A, it says, "Within ninety days of
18 discovery of a violation, but no later than one
19 year following the violation, the staff may serve
20 a Notice of Intent to Assess Forfeiture for that
21 violation upon one or more respondents."

22 Then it goes on to say what the notice
23 shall contain.

24 And that -- that's -- that was effective
25 September 5th, 2011.

1 Of course, this inspection occurred in
2 May, May 17th, 2011.

3 Let me walk you through what was
4 attempted here by the Commission to get certified
5 mail service on Mr. Kaltreider here.

6 I can mark this as an exhibit.

7 I have that certified mail receipt shows
8 that it was sent out on July 21st, 2011.

9 And the first attempt, then, to get
10 certified service was July 23rd, as indicated by
11 the post office, and there was no claim for it
12 then.

13 And then the second attempt was made on
14 July 28th, 2011. Again, the -- it went
15 unclaimed.

16 So there were two attempts by the post
17 office to complete the certified mail service to
18 Mr. Kaltreider at the address provided in the
19 inspection report and provided to Sergeant Ogden,
20 and that would be the Pennsylvania address of 463
21 Harrison Road, Orangeville, Pennsylvania 17859.
22 That's where the attempted certified mail
23 service, the multiple service attempts, were made
24 to serve him by certified mail within the 90-day
25 time frame.

1 So then it was then returned back to the
2 Commission and listed or stamped "Unclaimed."

3 I also want to state for the record that
4 under the Commission's Rules or under Chapter
5 4901:2-7 that covers forfeitures and compliance
6 orders, there it provides under the definitions,
7 let's see, for service, which would be
8 4901:2-7-03 -- okay, this is the effective date
9 as well, September 5th, 2011.

10 It says that, unless otherwise provided
11 by this chapter, "Service upon a respondent shall
12 be made by ordinary or certified United States
13 mail, by courier service, or by personal
14 service."

15 It says, "Service is effective upon
16 receipt by any person, except that service by
17 ordinary or certified United States mail is
18 effective upon mailing and service by facsimile
19 transmission or electronic mail is complete upon
20 transmission."

21 These -- like I said, I will mark this
22 for the record as to the attempts.

23 I do note that service then was
24 subsequently made to Mr. Kaltreider at another
25 address in Pennsylvania on August 24th, 2011, and

1 that's a 4982 Campwoods Road, Glenville,
2 Pennsylvania 17329, which is a different address
3 than what was provided to us from the inspection.

4 And that's where service, then, was
5 obtained, and service on that date, on August
6 24th, was by regular mail service.

7 Your Honor, you know, in this situation,
8 you know, every attempt was made.

9 Diligence, we tried to get
10 Mr. Kaltreider served as to what the rule
11 requires.

12 We went through that process with the
13 United States mail service trying to provide that
14 certified mail receipt. It came back unclaimed.

15 The rule was subsequently changed that
16 now just regular ordinary mail service is
17 permissible to complete that service. Service
18 was subsequently completed.

19 We think there's, you know, substantial
20 compliance here with that rule as far as the
21 attempts being made and diligence of the
22 Commission to follow through and locate
23 Mr. Kaltreider to provide that notification.

24 ATTORNEY EXAMINER PARROT:

25 Mr. Luxenburg, did you have anything to add at

1 this point to your motion?

2 MR. LUXENBURG: Yeah. I don't think
3 substantial compliance applies here.

4 The rule is strict. The rules that have
5 been provided to Mr. Kaltreider as part of his
6 case were not the new rules. It would be the old
7 rules that applied. I don't think the new rules
8 were retroactive.

9 I believe that although certified mail
10 was attempted, it was attempted at the wrong
11 address.

12 And they also have Mr. Kaltreider's
13 phone number, so they could have called him and
14 didn't.

15 So, again, we would renew our motion
16 that substantial compliance does not apply here.

17 They did fail to serve by certified mail
18 the Notice of Intent to Forfeiture within the
19 applicable time period. They admit as much.

20 Therefore, we renew the motion.

21 ATTORNEY EXAMINER PARROT: So your issue
22 is that it was sent to the wrong address?

23 I just want to be sure I have an
24 understanding of what the basis is.

25 MR. LUXENBURG: No. Specifically the

1 issue is that he wasn't served as required by the
2 rule.

3 ATTORNEY EXAMINER PARROT: That's what I
4 -- I'm trying to pin that down.

5 What do you mean by that?

6 That's a broad statement.

7 What's your specific -- the basis for
8 your motion here?

9 Is that it was sent to the incorrect
10 address?

11 MR. LUXENBURG: No. He never received
12 it.

13 ATTORNEY EXAMINER PARROT: Well, I don't
14 think that's an issue under the rules.

15 The rules say that the service is
16 complete upon the Commission sending out the
17 Notice, so...

18 MR. LUXENBURG: But it says here in the
19 rules provided, in the Notice provided to
20 Mr. Kaltreider, that the Ohio Administrative Code
21 requires that the Commission serve by certified
22 mail a Notice of Intent to respondent within 90
23 days after the date of a violation but no more
24 than one year following."

25 "Serve" means --

1 ATTORNEY EXAMINER PARROT: But the
2 Commission's service rule then goes on to say
3 that service by certified mail is effective upon
4 mailing.

5 MR. LUXENBURG: That's after the
6 change.

7 ATTORNEY EXAMINER PARROT: No. That's
8 even prior -- that's in the version that was
9 effective in October of 2007.

10 MR. LUXENBURG: Well, then my issue
11 would be that they served it at the wrong address
12 and he never received a Notice --

13 ATTORNEY EXAMINER PARROT: Okay. That's
14 why I want to be clear what it is you're
15 arguing.

16 MR. LUXENBURG: He never received a
17 Notice of Intent to Assess Forfeiture, period.

18 ATTORNEY EXAMINER PARROT: Okay. You're
19 saying that it was sent to the wrong address.

20 Is that your issue?

21 MR. LUXENBURG: I suppose that would be
22 --

23 ATTORNEY EXAMINER PARROT: Is that what
24 you're claiming?

25 MR. LUXENBURG: That's not what I'm

1 claiming. That's a fact, but, yes, they did send
2 it --

3 ATTORNEY EXAMINER PARROT: But you're
4 arguing that the rules require that he actually
5 receive it?

6 MR. LUXENBURG: At some point in time,
7 he should receive it by regular -- I mean, the
8 new rule says by regular or certified mail.

9 ATTORNEY EXAMINER PARROT: And you're
10 relying on Rule 7?

11 MR. LUXENBURG: Correct.

12 ATTORNEY EXAMINER PARROT: Is that what
13 you're pointing to?

14 MR. LUXENBURG: Correct.

15 ATTORNEY EXAMINER PARROT: And what
16 language specifically?

17 MR. LUXENBURG: "OAC requires that the
18 Commission serve by certified mail a Notice of
19 Intent to Assess Forfeiture to a respondent."

20 If they mail it to the wrong address, I
21 can't believe that that would count even under
22 the continuing rule that you're referencing.

23 ATTORNEY EXAMINER PARROT: But I'm
24 asking you for specific language within these
25 rules that you're relying on.

1 MR. LUXENBURG: 4901:2-7-07, "OAC
2 requires that the Commission serve by certified
3 mail a Notice of Intent to Assess Forfeiture to a
4 respondent within 90 days after the discovery of
5 a violation but no more than one year following."

6 ATTORNEY EXAMINER PARROT: But where in
7 there is it talking about the respondent
8 receiving the notice?

9 MR. LUXENBURG: I would argue that
10 "serve" means that they are actually served with
11 a copy.

12 While I understand that PUCO seems to
13 govern their own rules...

14 ATTORNEY EXAMINER PARROT: Well, I'm
15 reading this rule in conjunction with the service
16 rule, so...

17 ATTORNEY EXAMINER PARROT: Anything
18 else, Mr. Jones, on this issue?

19 As I noted before, any time there's a
20 motion to dismiss, it's the Commission's practice
21 to -- The Court will defer on a ruling and the
22 Commission will ultimately issue a ruling.

23 I just want to make sure that we have --
24 that the record is clear as to what the basis for
25 the motion is.

1 In light of the fact that we don't have
2 a written motion that was filed prior to the
3 hearing, I'm taking a little bit of time here to
4 try to flush out your arguments so that the
5 Commission has a full picture of what the issue
6 is.

7 MR. JONES: I apologize, Your Honor, I
8 don't have a copy of the old rules to be able to
9 pursue this.

10 ATTORNEY EXAMINER PARROT: I do,
11 Mr. Jones.

12 If there's anything else, though, that
13 you feel you wish to add at this point.

14 MR. JONES: I have nothing else to
15 add.

16 ATTORNEY EXAMINER PARROT: I think we're
17 -- I think I have an understanding of what the
18 basis for the motion is, so that's -- that's
19 good.

20 MR. JONES: I do want to admit this into
21 evidence.

22 ATTORNEY EXAMINER PARROT: So that would
23 be Staff Exhibit No.?

24 MR. JONES: Staff Exhibit 8, maybe.

25 ATTORNEY EXAMINER PARROT: Yes.

1 And just so the record is clear,
2 that's -- I'll let you describe for the record
3 what that is exactly, Mr. Jones.

4 MR. JONES: Yes. Your Honor, this is a
5 certified mail notification to the Commission.
6 The date shows the mailing going out from the
7 Commission and the attempts made by the postal
8 service to attempt to serve by certified mail to
9 recipient for July 23rd, 2011 and July 28th,
10 2011, and that it was returned unclaimed unable
11 to forward.

12 ATTORNEY EXAMINER PARROT: Okay. And
13 have you provided copies to the Respondent and
14 the court reporter, please?

15 MR. JONES: I have copies.

16 Just to clarify, it's the bottom one,
17 not the top one. They scroll off two at a time.
18 It's the bottom one on that page there that's
19 relevant to this case.

20 ATTORNEY EXAMINER PARROT: Mr. Jones,
21 did you have any further witnesses to call today?

22 MR. JONES: No, Your Honor.

23 And I would like to move for the
24 admission of Staff Exhibits, Staff Exhibit 1,
25 then 2A through M, Staff Exhibit 3, 4, 5, 6, 7,

1 and 8.

2 ATTORNEY EXAMINER PARROT: Are there any
3 objections to the admission of any of the Staff's
4 exhibits, Mr. Luxenburg?

5 MR. LUXENBURG: No, Your Honor.

6 ATTORNEY EXAMINER PARROT: At this time,
7 Staff Exhibits 1 through 8 shall be admitted.

8 Anything further, Staff?

9 MR. JONES: Nothing, Your Honor.

10 ATTORNEY EXAMINER PARROT:
11 Mr. Luxenburg?

12 MR. LUXENBURG: One moment, Your
13 Honor.

14 (Short discussion off the record.)

15 MR. LUXENBURG: At this time, we'll call
16 Brian Kaltreider to the stand.

17 (Thereupon Brian Kaltreider was sworn by
18 Attorney Examiner Parrot.)

19 ATTORNEY EXAMINER PARROT: Please be
20 seated.

21 DIRECT EXAMINATION

22 BY MR. LUXENBURG:

23 Q. Would you please state your full name
24 for the court reporter?

25 A. Brian Lee Kaltreider.

1 Q. Mr. Kaltreider, how old are you?

2 A. 38.

3 Q. And what is your current address?

4 A. It's 4982 Campwoods Road, Glenville,
5 PA.

6 Q. Can you describe the area in which you
7 live?

8 A. Farms.

9 Q. It's farms?

10 A. Yeah, it's rural farmland.

11 Q. Tell me a little bit more about the
12 community you live in.

13 A. It's a small community. There's a
14 church at the bottom of the hill. We live up on
15 the top of the hill with a neighboring farm.
16 Then there's a farm down at the bottom.

17 They consist of about 100 acres each on
18 the farm, and probably a total of 10 or 12 houses
19 total in the community.

20 Q. How long have you lived there for?

21 A. Pretty much all my life.

22 Q. And you're married?

23 A. Yes, sir.

24 Q. Kids or no kids?

25 A. My wife has two and I have one.

1 Q. And you are a close-knit community?

2 A. Uh-huh.

3 Q. For the court reporter, I just need all
4 responses to be verbal, a yes or no.

5 A. Yes, yes. Sorry.

6 Q. What is your occupation?

7 A. I build houses.

8 Q. Tell me a little bit more. What do you
9 mean you build houses?

10 A. Basically -- and I don't do the
11 foundation work, but I subcontract the foundation
12 work.

13 All the woodwork from the deck material
14 up to the roof, the finished roof, and then the
15 finished woodwork inside. I also specialize in
16 doing home theater rooms.

17 Q. And what else do you do?

18 A. I also drive race cars for ARCA Racing
19 Series.

20 Q. So you are an amateur or a professional
21 race car driver?

22 A. It's actually considered professional.

23 Q. And that would be NASCAR, correct?

24 A. Yes. Our cars are funded out of Jack
25 Rousch's.

1 Q. And there's a racetrack near your
2 house?

3 A. Yes, Pocono Raceway.

4 Q. And that's where you do a lot of your
5 racing?

6 A. Uh-huh, yeah, twice a year when the
7 series comes into town.

8 Q. You also hold or held special permits or
9 licenses as it relates to fireworks, correct?

10 A. Yes. I had a 1.3 Federal ATF license to
11 display fireworks for shows.

12 Q. So you could display fireworks for
13 shows, and you also had a special permit to
14 transport fireworks?

15 A. Yes. That license is given to you once
16 you're deemed as a responsible person.

17 That license basically allows you to go
18 to a show and help set the show up. You can
19 actually touch the 1.3 fireworks.

20 Q. Before I find out a little bit more
21 about the 1.3 fireworks, tell me, you have or
22 have not ever done professional fireworks' shows,
23 though?

24 A. No.

25 Q. You have not?

1 A. No.

2 Q. So you have a license for it, but it's
3 never been your business?

4 A. No.

5 Q. And you've never done it for-hire?

6 A. No.

7 Q. For pay?

8 A. No.

9 Q. What do you mean "1.3"?

10 A. 1.3 is the classification that the
11 Federal Government uses for import. It
12 classifies the firework as a high explosive, and
13 the net weight of the explosive compound can be
14 over 500 grams per unit.

15 Q. Before you tell me a little bit more
16 about that, what was involved with getting this
17 special permit through the ATF?

18 A. They do background checks on you. They
19 send you out to five databases with fingerprints.

20 They come down and do a sit-down.
21 Basically they'll go through and make sure that
22 you're a sane, competent person and they're
23 giving you a license to handle explosives.

24 Q. And you need to learn about
25 explosives?

1 A. Yes.

2 Q. And what exactly do you study or learn
3 in that process?

4 A. The classifications of how the weight is
5 determined by the product so you know what
6 products you're using when you're at a show.

7 The classification on insurance
8 requirements. You can't use consumer-grade
9 products when you're actually putting on a show
10 for public display. They're not classified as
11 safe fireworks. It has to be a 1.3 firework.

12 Q. So 1.3 is commercial.

13 What was the other word you used?

14 A. A 1.4.

15 Q. An what is 1.4?

16 A. That is a commercial -- or a consumer
17 grade.

18 Q. Consumer grade.

19 And 1.4 is the grade of fireworks that
20 we're talking about in your case, correct?

21 A. Correct.

22 Q. And you can't mix even in shipping 1.3
23 and 1.4?

24 A. No, no.

25 Q. That's correct?

1 A. Yes.

2 Q. Tell me, what does that mean, 1.3 versus
3 1.4?

4 You referenced 500 grams. What does
5 that mean?

6 A. 500 grams is the max that a 1.4 gram
7 firework can contain in a case. So a case of
8 fireworks can only contain 500 grams of explosive
9 powder in a case to be considered a
10 consumer-grade product.

11 Q. So if you look at the exhibits in front
12 of you, Staff Exhibit 2E in the photographs, that
13 was a picture of the fireworks that were in the
14 back of the U-Haul truck that was pulled over,
15 correct?

16 A. Correct.

17 Q. And that says "1.4G" on the side,
18 correct?

19 A. Uh-huh.

20 Q. So that would be -- a 1.4 would be a
21 consumer-grade firework?

22 A. Correct.

23 Q. Which means you had no 1.3 grade
24 fireworks in this truck, correct?

25 A. No.

1 Q. Tell me now, 1.4G means there cannot be
2 more than 500 grams of explosives per unit or per
3 box?

4 A. Per box.

5 Q. So that entire box cannot be more than
6 500 grams?

7 A. No, no.

8 The stamping on the box indicates the
9 kilograms of the total package. The net weight
10 is the net weight of the actual product.

11 The base -- they -- actually, when they
12 build them over in China or whoever's doing the
13 manufacturing, there's a tip factor on the
14 calculation for the firework.

15 Depending upon the thrust to put the
16 firework up in the air, they have to have the
17 base weigh 10 times what the actual tubes that
18 are in the cake weigh.

19 So if there's 25 tubes, then the thrust
20 is a pound, they would have to have 10 pounds in
21 that cake to hold that cake steady upright to be
22 certified by the CPSC, which is the Consumer
23 Product Safety Council.

24 Q. And all this information you have is
25 your own personal knowledge that you've learned

1 in handling these fireworks, correct?

2 A. Yes.

3 Q. And, in fact, if you didn't know what
4 you were doing, you would be putting yourself in
5 great personal harm this way, correct?

6 A. Yes.

7 Q. And the same would be true with your
8 professional race car driving?

9 A. Yes.

10 Q. You have specialized training for
11 that?

12 A. Yes.

13 Q. And is it safe to say that safety is a
14 priority to you?

15 A. Yes.

16 Q. When you got the ATF license for
17 purchasing these explosives -- or I should say --
18 oh, I'm sorry. I'm sorry.

19 When you got the license for acquiring
20 and being able to do these displays, you said you
21 also got the permit for transporting these?

22 A. Yeah, that comes along with it.

23 Q. So you are familiar with the rules that
24 govern --

25 A. The DOT, the Federal DOT.

1 Q. -- the Federal DOT and the
2 transportation of these fireworks?

3 A. Correct.

4 Q. You have the permit to buy 1.3, but you
5 don't need a permit for 1.4; is that correct?

6 A. Correct.

7 Q. So I could go in without the license and
8 I could buy this much in fireworks?

9 A. Correct.

10 Q. You heard the officer earlier testify
11 that the requirement for getting a HazMat permit
12 is when there is more than a 1,000 pounds being
13 carried of fireworks, you heard that, correct?

14 A. Correct.

15 Q. Is that a correct statement?

16 A. The 1,000 pounds is correct, yes.

17 Q. The 1,000 pounds is correct, but explain
18 what that means with 1,000 pounds.

19 A. That is classified as the explosive
20 content powder that the load is being carried,
21 not the total net weight of the shipping.

22 So if you have a product -- say you have
23 a firework that is the size of this book and it
24 weighs 35 pounds, it can only have 500 grams of
25 explosive powder in it to be a 1.4 product. It

1 cannot have any more than 500 grams of explosive
2 powder in it or it will not be classified as
3 1.4.

4 Q. But that's actually per case, is it not?

5 A. Per case, yes.

6 Q. So each case that was in the back of
7 this truck had no more than 500 grams of
8 explosive material?

9 A. Correct.

10 Q. Do you happen to know how many grams
11 there are in a pound?

12 A. Not off the top of my head.

13 MR. LUXENBURG: So I would like to
14 represent to the court it's about 455 grams per
15 pound, so that means there is less than one
16 pound --

17 MR. JONES: I'm going to object to
18 counsel testifying, Your Honor, for the record.

19 MR. LUXENBURG: Really, John?

20 MR. JONES: Yeah, I do.

21 ATTORNEY EXAMINER PARROT: Let's just
22 work under the assumption that that is...

23 MR. LUXENBURG: Thank you, Your Honor.

24 ATTORNEY EXAMINER PARROT: Proceed,
25 please.

1 BY MR. LUXENBURG:

2 Q. So if it's about a pound of explosive
3 per box, how many boxes would you need before you
4 would have to pull the HazMat placard?

5 A. You'd need almost a 40-foot container.

6 Q. You'd need, I'm sorry, what?

7 A. A 40-foot container, shipping container.

8 Q. Okay. And I take it that is not the
9 size box --

10 A. No. That was a 24-foot box truck.

11 Q. Do you know about how many boxes you had
12 in this unit?

13 A. I don't. There's about 27 boxes, 25, 27
14 boxes on the end face on Exhibit 2D.

15 You can take calculation off the case,
16 which is about two foot by three foot by two
17 foot, so you could get five to six rows of 27
18 boxes in that container.

19 Q. So maybe 125 or 150 boxes?

20 A. Yes.

21 Q. At about a pound of explosives per, that
22 would be about 125 to 150 per box -- for the
23 entire shipment of explosives?

24 A. Correct.

25 Q. So you don't believe that under any

1 circumstance a HazMat placard would be required
2 for this shipping?

3 A. No, it was not.

4 Q. Let's talk a little bit about this
5 actual shipment and how it came to be.

6 You stated that you've never put on
7 firework displays professionally; is that
8 correct?

9 A. Correct.

10 Q. And, in fact, you could not put on a
11 professional fireworks display with the grade of
12 product that you purchased?

13 A. No.

14 Q. That's correct?

15 A. Correct.

16 Q. Where did you order these fireworks
17 from?

18 A. They came from Waynes World.

19 Q. In?

20 A. Indiana.

21 Q. And I want you to walk me through how
22 this relationship with Mr. Fox developed starting
23 with where you were when you received a call that
24 the product was ready to be picked up.

25 So, tell me, where were you at the time

1 that you were notified by Waynes World.

2 A. I was in Missouri in Reynolds County
3 with my wife. We were visiting property that I
4 had bought there.

5 Wayne had called and said that the
6 product was in. I said, "Well, we're in
7 Missouri." I said, "We'll stop by on the way
8 through."

9 Q. So you know Wayne?

10 A. Yes.

11 Q. You've purchased from him before?

12 A. Yes.

13 Q. So you leave Missouri and drive up to
14 Waynes World in Indiana?

15 A. Uh-huh.

16 Q. That was a yes?

17 A. Right, yes.

18 Q. And what happens when you get to Waynes
19 World in Indiana?

20 A. There's anywhere from 15 to 20 people
21 there. His facility has a house on it and they
22 entertain there. They have ponds where people
23 camp. They have four rental lodges that people
24 can camp and rent. They make big bonfires.

25 I actually knew Stephen before that, but

1 that was over a phone conversation just talking.
2 That's when I personally had met him, when we got
3 up there.

4 Q. Well, let's backtrack. You said you had
5 made his acquaintance before. What do you mean
6 by that?

7 A. Just talking to him on the phone.

8 Q. How did those conversations come
9 about?

10 A. Just fireworks. He was wanting to know
11 about doing displays and wanted to know if I
12 would want to help.

13 I said that I would travel and if we
14 were out -- Pennsylvania is a long distance, but
15 with the Racing Series we actually travel all
16 over the country.

17 He said, "If you're ever out that way
18 and would want to do a show..."

19 That's how we initially got connected,
20 because I have a license to do shows.

21 Q. And he learned about you from Waynes
22 World?

23 A. Uh-huh, correct.

24 Q. But you never did any of those shows?

25 A. No.

1 Q. So you get to Waynes World and Wayne is
2 entertaining and Stephen Fox happens to be one of
3 the people there that he's entertaining?

4 A. Uh-huh, yep.

5 Q. And that was the first time you
6 personally face-to-face had met him?

7 A. Yes.

8 Q. Were you camping out there as well or
9 were you just passing through?

10 A. No, we were just passing through. We
11 had to get home.

12 We had -- on the way through from
13 Reynolds County, we stopped at Terre Haute,
14 Indiana and rented the U-Haul truck to go to
15 Waynes.

16 My wife was going to drive our vehicle
17 back. I was going to drive the U-Haul trailer.
18 That was our plan.

19 We got there. We loaded the fireworks
20 up. We sat around the campfire with everybody
21 and just started talking.

22 Everybody started talking about the
23 racing, because Wayne let it out of the bag.
24 Everybody started asking me questions about it,
25 where I race and what I do.

1 Q. Hold on a second. Let's go a little bit
2 slower.

3 By this point, you had already loaded up
4 the truck?

5 A. Yes.

6 Q. So it was loaded, you're at Waynes,
7 you're around the bonfire with your wife and
8 these other people?

9 A. Uh-huh.

10 Q. The truck's already ready to go?

11 A. Correct.

12 Q. And people find out that you're a NASCAR
13 driver?

14 A. Correct. Well, ARCA RE/MAX Series.

15 Q. I'm sorry?

16 A. ARCA RE/MAX Series.

17 Q. Okay. They find out you're a driver,
18 this interests them, they all start talking about
19 that, correct?

20 A. Yes, correct.

21 Q. And Stephen was in on that
22 conversation?

23 A. Yes.

24 Q. Okay. So what happened, then, with
25 relationship to that conversation?

1 A. Well, he was with his nannie. His
2 nannie was going into college. She was up with
3 them visiting Waynes.

4 They had said about going up and doing
5 that before -- she wanted to see the country, and
6 that's why her parents had allowed her to go with
7 Stephen before she started college.

8 They had called, verified everything,
9 and then they had said that they would like to
10 come up to the Pocono Raceway and do the drive
11 program.

12 I said that, because I've taught there,
13 I said I could try to if I could get a space
14 opened up for them; not for free but to get them
15 in because they bookout in advance almost a year
16 ahead.

17 If there's open space, I said more than
18 likely you would be able to do the ride program.
19 I couldn't guarantee a drive.

20 Q. So Stephen had interest in going from
21 Indiana up to the Poconos because he was
22 interested in the race car?

23 A. Correct.

24 Q. And you possibly had a connection that
25 you could have helped him maybe get in but he

1 would have had to pay for it?

2 A. Yes.

3 Q. And so you offered for him to come up --

4 A. Yes.

5 Q. -- to Pennsylvania where you live?

6 A. Yes.

7 Q. And then what happened?

8 A. Then we decided that he was going to
9 drive the truck. We went and left, me and my
10 wife.

11 Q. Why did you have him drive the truck as
12 opposed to what your original plan was?

13 A. Because he had a ve- -- he needed to
14 come up. He was going to come up. His truck was
15 broke down. He drove his truck. He had to get
16 his truck repaired. It was going to take a week.
17 He drove the truck up. Then I had to drive him
18 back down to get his truck.

19 Q. You're jumping ahead a bit now.

20 A. Okay.

21 Q. So he wanted to come up there. He
22 didn't have a vehicle. He was going to take the
23 U-Haul and then you and your wife could continue
24 driving on?

25 A. Correct.

1 Q. So that night you and your wife left or
2 you ended up staying?

3 A. No, we left.

4 Q. And he followed you?

5 A. No, no. He said that he had some other
6 things to take care of. He had to get the truck
7 squared away. Then whenever he was done with
8 that, he was going to leave and come up.

9 Q. And what was the arrangement in terms of
10 him driving? Were you paying him?

11 A. All I did was give him \$200 cash to pay
12 for the gas to come up.

13 Q. So all you were doing was covering the
14 expense of the gas?

15 A. Yes.

16 Q. And if not, then you were just going to
17 drive the truck back?

18 A. Correct.

19 Q. And, again, based upon your knowledge
20 and understanding of your training, there was
21 nothing that you needed to do legally that would
22 permit you to drive the truck?

23 A. No. It wasn't a 1.3 load. It was a 1.4
24 load. It was under the explosive content weight.

25 He had the license and everything in

1 place to be, you know, a responsible person.

2 Q. So you move on and then he leaves a
3 couple days after you?

4 A. Yes.

5 Q. And then you get a phone call?

6 A. I got a phone call at 5:00 in the
7 morning.

8 Q. And who was that phone call from?

9 A. The officer.

10 Q. And what was the nature of that
11 conversation?

12 A. I was sleeping, obviously, at 5:00 in
13 the morning.

14 The way the phone call started was, "We
15 are seizing your truck. Stephen spilled the
16 beans. We know you're in business and in
17 commerce."

18 I said, "What are you talking about?"

19 I said, "I'm not in business."

20 I said, "That's a consumer retail
21 purchase."

22 I said, "Those were retail purchased
23 fireworks."

24 And that was where the conversation was.
25 He disagreed with me and was arguing with me on

1 the phone.

2 He said that Stephen had told him that
3 it was for my business. I said, "I don't have a
4 business for fireworks."

5 Q. Did you have any plans of displaying
6 fireworks at a church?

7 A. We have -- the church was down there and
8 they had an outing going on, but it's with the
9 whole community. It's a real small church. It's
10 not a big church. It's basically our little town
11 is all that it is.

12 In fact, the church is out of business
13 now, so it's now closed.

14 Q. But this was fireworks that you were
15 going to do not for profit and not for hire?

16 A. No. This was actually at my house.

17 Q. At your house?

18 A. Yes.

19 Q. Okay. So --

20 A. Because when we actually display the
21 fireworks, everybody comes out and sits around
22 their house and makes fires and they watch the
23 fireworks.

24 Q. So -- but, again, it's not your
25 business?

1 A. No.

2 Q. And so you -- what was the conclusion of
3 the conversation with the officer?

4 A. He said, "We'll see about that."

5 And then I had got a phone call back
6 from Stephen explaining about the load and that
7 he had been parked. He couldn't move the load.

8 But I was told I could come out and get
9 the load because it were mine. If I would have
10 been driving it, everything would have been fine.

11 Q. Who told you that?

12 A. I don't recollect exactly the person who
13 told me that.

14 Q. And so what did you end up doing?

15 A. I drove out -- I left -- actually, when
16 I got the first phone call from the officer, I
17 had got in the truck and was already on my way
18 out.

19 Q. And when you arrived at the truck, was
20 it marked off or anything?

21 A. No. The truck was just sitting there.
22 There was nobody around it, no officers.

23 And by DOT regulations, when they pull a
24 HazMat vehicle over, they actually have to
25 sequester it and somebody has to stay with that

1 vehicle, and there was nobody around it.

2 Q. And so at that point, you guys just left
3 with the truck?

4 A. Yes. I drove the truck back. Stephen
5 drove my personal vehicle back.

6 Q. And then when you got to Pennsylvania,
7 you unloaded the product?

8 A. No, we actually didn't. We just sat
9 around and was like, "What just happened?"

10 We were talking about what we were going
11 to do for the following day, whether or not we
12 were going to go out to the Poconos.

13 The babysitter, the parents were
14 extremely upset with the phone call that they got
15 from the officer and they wanted her to come home
16 right away, so they did not go to the Pocono
17 track.

18 We loaded my truck back up with their
19 belongings and drove them back down to Indiana.

20 Q. So you came to Ohio to get the truck,
21 went back home, and then turned around and went
22 right back to Indiana?

23 A. The next day after we went to sleep and
24 woke up that morning.

25 Q. Did you pay Mr. Fox any compensation for

1 driving this product?

2 A. No, I did not.

3 Q. The truck that you got, you said that
4 was a U-Haul?

5 A. That was a U-Haul rental one-way. We
6 were given four days to have it back.

7 Q. Did you rent or lease that?

8 A. Rent.

9 Q. At no time you registered the U-Haul in
10 your name?

11 A. I had rented it under my --

12 Q. You rented it, but you didn't register
13 the vehicle in your name?

14 A. No.

15 Q. You didn't get any plates under your
16 name for the vehicle?

17 A. No.

18 Q. And it was just a four-day rental?

19 A. Yeah, four-day rental to get it back to
20 Pennsylvania, one-way rental.

21 Q. When the officer called you, did he ask
22 you any questions about what you intended to do
23 or what your business was?

24 A. He was trying to make me say that I had
25 a business.

1 I constantly told him over the phone
2 that I have no business. I said, "It was a
3 retail purchase."

4 I said, "They were not in commerce."

5 I said, "It doesn't fall under the
6 stipulations for commerce."

7 He argued with me on that fact. I mean,
8 that's part of his job.

9 That's why I got in my truck and drove
10 out, because I couldn't do anything over the
11 phone other than be there. When I got there,
12 there was nobody there.

13 Q. And you didn't resell these fireworks?

14 A. No.

15 Q. Have you ever resold fireworks?

16 A. No.

17 Q. Did the officer ask you any questions
18 about the content of the truck or the grade of
19 fireworks or anything like that?

20 A. He just asked me what the load was. I
21 told him it was fireworks. That was basically
22 it.

23 Q. And, again, at no point in time did you
24 pay Mr. Fox?

25 A. No.

1 I had bought -- I had rented the truck
2 with the intent of driving it back myself.

3 Then at the fire we decided that Steve
4 was going to drive up with his babysitter and
5 they were going to go up and do the Pocono race
6 school.

7 I said, "Well, I'll give you the \$200 to
8 go up and pay for gas in the truck," because it's
9 not his business to pay for that.

10 Q. And so as far as you know, you don't
11 regularly transport fireworks?

12 A. No.

13 Q. And as far as you know, Stephen doesn't
14 regularly transport fireworks?

15 A. I don't know. I know he does shows down
16 in New Mexico.

17 Q. And do you possess a commercial driver's
18 license?

19 A. No, I do not.

20 Q. Have you ever?

21 A. No.

22 When I got my license, we were educated
23 by the Federal DOT and they had told us that as
24 long as we operate under the guidelines of the
25 explosive content, we did not have to have a

1 HazMat endorsement, but if we were to go over
2 that or be in commerce, as the officer stated,
3 then we would need that.

4 Q. And you were not in commerce?

5 A. No.

6 Q. And you were not over the amount?

7 A. No.

8 Q. And you didn't hire Stephen?

9 A. No.

10 Q. He doesn't work for you?

11 A. No.

12 Q. You've had no really relationship with
13 him since?

14 A. No.

15 Q. From your experience and training, would
16 you call yourself a carrier?

17 A. No.

18 I have friends that are carriers and
19 that didn't -- as the officer stated, to lease
20 the truck for commercial purposes, you have to
21 have a commercial license, you have to have
22 commercial insurance, or the leasing company will
23 not rent you the truck with their DOT number for
24 commercial purposes.

25 Q. And none of those things happened

1 here?

2 A. No.

3 MR. LUXENBURG: Nothing further at this
4 time.

5 ATTORNEY EXAMINER PARROT: Mr. Jones?

6 MR. JONES: Yeah. Thank you, Your
7 Honor.

8 CROSS-EXAMINATION

9 BY MR. JONES:

10 Q. Let's see. Mr. Kaltreider, when did you
11 get your ATF permit for Class 1.3?

12 A. That would have been about three years
13 ago.

14 Q. Why did you decide to get them, the
15 permit?

16 A. It's one of those things that you need
17 to have to be classified and be more legal in
18 what you're doing. You have to go through
19 training courses for safety. It's just the smart
20 thing to do.

21 Q. So what were you doing that you wanted
22 to do this?

23 A. Just to be able to be legal shooting the
24 fireworks.

25 There's thousands of people that have

1 the 1.3 Federal ATF license that do not shoot and
2 just shoot for fun. Clubs are all over the
3 country.

4 Q. So how long's the permit good for you?

5 A. You can get three types of permits. You
6 can get it by coupon, which allows you a one-time
7 use. That's normally once and done per year.

8 You can get a one-year permit or you can
9 get a three-year permit.

10 Q. And you got what?

11 A. I had a three-year permit.

12 Q. Do you still have your permit today?

13 A. Yes. It expires in May.

14 Q. And so have you ever set off fireworks
15 at the church in your community?

16 A. Not at the church, no.

17 Q. Never at the church?

18 A. Never at the church.

19 My property sits up on top of the hill
20 and then it rolls down and then the church sits
21 at the bottom and then it kind of gently rolls up
22 and goes up to -- all of the community is just a
23 little valley. There's a farm over here and a
24 farm over here. Then the community sits at the
25 intersection at the bottom where the little

1 church is. The church isn't any bigger than this
2 room here.

3 Q. So the church is adjacent to your
4 property?

5 A. No, it's not adjacent. It's separated
6 probably by 40 acres.

7 Q. Let me understand. Prior to meeting
8 Mr. Fox for the very first time in person on the
9 date that he drove these fireworks across a
10 couple states, you said you had talked to him a
11 few times?

12 A. Uh-huh.

13 Q. How many times would that be?

14 A. Maybe three to four.

15 Q. Three or four times?

16 A. Yeah, yes.

17 Q. And this was about fireworks?

18 A. Uh-huh.

19 Q. About shows?

20 A. Over at his place. He had asked if I
21 would ever -- every single conversation wasn't
22 about that. It started out that was how we got
23 introduced.

24 Nelson had said that I was a good guy
25 and I'm real responsible with what I do; I would

1 be a good guy if I ever get out that way and he's
2 doing a show, so he put us in contact with each
3 other.

4 The problem was is that Nelson was under
5 the impression that I'm traveling the full
6 circuit, which I don't because I don't have a
7 full sponsorship. I only get little bits of
8 sponsorship here and there and I'm only able to
9 do both Poconos.

10 In 2006, I actually did six races, but
11 we had Adobe Software out of California as a
12 sponsor.

13 Q. So you had talked to Mr. Fox
14 approximately three times prior to meeting him?

15 A. Uh-huh.

16 Q. Through someone else -- another one of
17 your friends introduced you or told you to make
18 contact with him because of product?

19 A. Yes.

20 Q. So he -- he -- this place that the
21 show -- there was a show going on in
22 Indianapolis?

23 A. At Nelson's they get together and they
24 shoot fireworks. It's like a club. You know,
25 they make model rockets and then they shoot the

1 rockets. They shoot the fireworks. They get
2 samples.

3 Nelson is a direct importer, so the
4 Chinese, when they come up with a new product,
5 they'll send him a bunch of samples.

6 He gets his friends and they come around
7 and then they shoot the samples and decide if
8 they want to order them for the following year.

9 Q. And you're coming from Missouri?

10 A. Uh-huh.

11 Q. Because you had a race in Missouri?

12 A. No. Me and my wife were visiting our
13 land in Missouri. I have two lots that are an
14 acre and a half apiece in Reynolds County.

15 Q. So -- okay.

16 And then when you stopped and met
17 Mr. Fox on your way back, how long were you there
18 in Indiana for that stop?

19 A. It was -- we got there in the morning.
20 It was about probably 11:30 when we left. We
21 were there almost 19 hours, 18, 19 hours, I would
22 say.

23 Q. So you got there in the morning and left
24 at night?

25 A. Uh-huh.

1 Q. And so there were a lot of people there
2 that were there to see the show?

3 A. Uh-huh.

4 There was also other people there that
5 pick up their orders and, you know, they kind of
6 combine all that stuff at one time.

7 Q. And when did you know you were going to
8 get an order there?

9 A. I don't remember the exact days he had
10 called when we were down in Missouri. We were
11 actually staying there for the weekend. I don't
12 know the exact day. I couldn't tell you.

13 He had called us and said that the order
14 was in. I said, "Well, we're down in Missouri,
15 so we can come up through that way."

16 Q. He said the order was coming into the
17 show?

18 A. No. It was in. He's an importer, so we
19 buy the fireworks from him. He's the importer,
20 so when they come in --

21 Q. Fox is the importer?

22 A. No, no. Waynes World.

23 Q. Waynes World?

24 A. Yes.

25 Q. Okay. So you get a call -- you're in

1 Missouri and you get the call from Waynes
2 World?

3 A. Correct.

4 Q. They say they got this order --

5 A. Uh-huh.

6 Q. -- that you had been interested in?

7 A. Well, I had purchased it. I had already
8 put my order in.

9 Q. Okay.

10 A. Normally it doesn't come in all at one
11 time. It comes -- it's hard to tell with the
12 shipping how the Chinese do it.

13 Whatever they have in their warehouse,
14 whatever they get done is what they put in the
15 container. You don't know until the container
16 arrives at port and he gets his bill-of-lading
17 what was on the container.

18 Then when he gets it back, he goes
19 through and he sorts out and processes his orders
20 and fills his orders as needed, but everything I
21 had ordered was there.

22 Q. So you were expecting this order to come
23 in while you were in Missouri?

24 A. No.

25 Q. You weren't expecting it?

1 A. No, not at all.

2 Q. And so you're in Missouri looking at
3 property?

4 A. No. I already -- it's my property.

5 Q. Oh, you have property in Missouri?

6 A. Right. We were visiting.

7 Q. Visiting there with your family?

8 A. Yes, me and my wife.

9 Q. You get a call from Waynes World who
10 says the order that you made is in?

11 A. Uh-huh. And I had told him that we were
12 in Missouri. I said that we can stop on the way
13 in.

14 Q. You told the guy at Waynes World you're
15 going to be stopping there and picking up?

16 A. Yes.

17 Q. And now when was the show supposed to
18 take place at Waynes World?

19 A. His show -- they just do -- they shoot
20 fireworks. I mean, that's a constant thing.
21 It's not like --

22 Q. So this is kind of a spontaneous --

23 A. No. It's -- the fireworks -- people
24 that like fireworks, they do it constantly. The
25 clubs are always shooting every week. That's why

1 it's such a huge business.

2 When I got my license, it was an
3 exciting thing, but then it wears off.

4 Some of the guys, they're just into it.
5 They could shoot them every single day.

6 It's like people wanting to play video
7 games. They get addicted to it. They like to
8 shoot the fireworks.

9 I don't -- I can't speak for them on
10 that part. Yes, he shoots fireworks there all
11 the time.

12 Q. Okay. And Mr. Fox just happened to be
13 there?

14 A. He had business with Nelson. That's why
15 he was up there. I don't know what his business
16 was.

17 Q. You didn't know he was going to be
18 there?

19 A. No.

20 Q. You didn't know he was going to be there
21 until you got there, right?

22 A. Yeah. I didn't know anybody was there.
23 He didn't say who was there or what. There was
24 about 15, 20 people there.

25 Q. But you -- before you got there, you

1 stopped and got a U-Haul?

2 A. At Terre Haute, Indiana.

3 Q. How far is that from --

4 A. About 45 minutes.

5 Q. -- the place where the fireworks are?

6 A. Yes. Missouri is here. Terre Haute,
7 Indiana is here. Bowling Green is here. My
8 house is here. So it's all in the path to go
9 home.

10 Q. And -- all right.

11 So you stop and you get the U-Haul. You
12 sign the contract. You get the rental agreement.
13 You're responsible for the truck, right, nobody
14 else, just you?

15 A. Correct.

16 Q. You didn't put down you and Steve Fox or
17 anybody else, just you, right?

18 A. Yes.

19 Q. You're responsible for the fuel in the
20 truck, right?

21 A. Yes.

22 Q. Anything that happens to the truck,
23 you're responsible, right, not Mr. Fox or anybody
24 else?

25 A. Correct.

1 Q. And so then you pick up this truck, your
2 family follows you?

3 A. Well, my wife. She drives. We pick the
4 truck up. We drive to Waynes World. I'm in the
5 U-Haul and she's driving our personal vehicle.

6 Q. Okay. So you get to Waynes World and
7 you're there for 19 hours?

8 A. Uh-huh.

9 Q. All right. Did you sleep some of that
10 time?

11 A. I did not. And I can explain.

12 Q. You just drove in from Missouri --

13 MR. LUXENBURG: Objection, relevance.

14 A. Let me explain.

15 ATTORNEY EXAMINER PARROT: Objection is
16 overruled.

17 A. Right now I can relate to this hearing.

18 Q. I'm sorry?

19 A. I've been up for 36 hours. We just
20 started building a house. I had to get the deck
21 on the house because the people have goods
22 underneath that can't get this snowstorm. I've
23 been up for 36 hours.

24 I left my house in Pennsylvania at 12:00
25 last night and then got here. It was about 9:30,

1 10:00, I believe, I had called you and said I was
2 here. I still have not slept.

3 I don't know why I don't get tired. If
4 I do, I pull off at the rest stop and then I take
5 a little power nap and I can go back again.

6 I don't know how to explain it.

7 Another time we were going to race down
8 in Talladega. I was actually up for four hours
9 -- or four days. We drove down to Talladega.

10 At that point we tested and then we
11 qualified. I qualified 20th down there. That
12 was all in the span of not having slept for five
13 days once it was all said and done.

14 Is it healthy, no, but it's -- I've done
15 it before. I've done it a lot.

16 I personally like driving at night
17 because the roads are less crowded and it's less
18 stressful.

19 Q. The person who put you in contact with
20 Mr. Fox, and this is before you discovered that
21 he was there at Waynes World, was this Nelson
22 character you were referring to?

23 A. Yes, Wayne Nelson.

24 Q. Wayne Nelson?

25 A. Uh-huh.

1 Q. Wayne Nelson, he's the owner of the
2 fireworks?

3 A. He's the owner of Waynes World.

4 Q. Waynes World, okay.

5 And what -- he put you in contact with
6 him because you guys have a shared interest in
7 fireworks?

8 A. Yes, yep. They do that all throughout
9 the shows. PGI has national conventions.

10 It's like any kind of group
11 get-together. You kind of network.

12 I didn't even -- right when I got my
13 license, the guy, John Kemp, Kemp is from
14 Celebration Fireworks, he did some shows up at
15 the Mohican Sun up by the Pocono racetrack.

16 He taught me -- basically I went under
17 his license as a responsible person. I was
18 loading shells. He was teaching me how to do it.

19 Then when I went to go get my license
20 and go through my testing, I had the ground basis
21 and knowledge of how to load the shells, what
22 safety is, and basically how you do things to
23 keep everybody safe.

24 That was one of the things that that
25 gets passed on. When you're in that business,

1 you really take ahold.

2 Like any business, in my construction
3 business, it's very hard to find employees that
4 are responsible in any way, shape, or form.

5 It's like any business that people pass
6 names out and around and try to get good help.
7 If you can get a connection where you have a safe
8 person, especially in the explosive business, you
9 want to try to tie them together.

10 Q. So he thought you would be a good
11 associate?

12 A. Yeah.

13 But it's not really that feasible
14 because I don't travel the circuit. Even if I
15 did, we only go out west to Texas. We don't
16 travel the west coast. We don't race in Phoenix.
17 We don't race in California. It really didn't
18 fit that profile that he was thinking.

19 He's thinking NASCAR, which I'm not
20 NASCAR. I'm ARCA RE/MAX. I -- we run the same
21 cars as what NASCAR does.

22 When somebody sees that car, they just
23 stereotype it into "Oh, it's a NASCAR."

24 Q. So you guys weren't a fit, then,
25 correct?

1 A. No.

2 Q. Is that what you're describing?

3 A. Yeah. It became a nice conversation
4 piece to talk and, you know, conversate over the
5 phone about these kinds of things, new product,
6 new things that came out with them, new effects
7 and stuff like that, or the way you shoot the
8 cakes or the way you set them up to get the
9 effect up in the sky to have a couple
10 multi-layers when you shoot, that kind of
11 stuff.

12 Q. And so you're there -- the 19 hours
13 you're there at Waynes World, was Mr. Fox there
14 the whole time?

15 A. Uh-huh. I don't know when he had got
16 there. He was there when I arrived.

17 Q. And then someone points him out to you
18 as to, "That's Mr. Fox"?

19 A. Well, I was introduced to everybody.
20 We're all sitting around the campfire. Everybody
21 gets introduced. It's not like you're sitting
22 around a table and don't know everybody's name.
23 Everybody got introduced to each other.

24 Q. So, of course, he didn't know you were
25 going to show up there, right?

1 A. No.

2 Q. You didn't know he was going to be
3 there?

4 A. No.

5 Q. Your direction is heading back to
6 Pennsylvania, right?

7 A. Uh-huh.

8 Q. His is, what, back to New Mexico?

9 A. Yeah. They were out and about. Like I
10 said, he was showing his nannie the country
11 before she went to college. That was the reason
12 why her parents had let her go.

13 Q. Where was she going to go to college
14 at?

15 A. I don't know that.

16 Q. And so then you get your order, right?

17 A. Uh-huh.

18 Q. You load the U-Haul, pack the U-Haul,
19 right, all the way --

20 A. Yeah.

21 Q. -- with all the boxes?

22 A. Yeah, we did that as soon as we
23 arrived.

24 Q. And then this is when you asked Mr. Fox
25 about driving the U-Haul?

1 A. We didn't -- it wasn't a straight out,
2 "Do you want to drive it," just like that.

3 The conversation started around coming
4 up, talking about the race car.

5 I said about how I used to work at the
6 Pocono Raceway. The Stockcar Racing Experience,
7 I worked there for seven years.

8 He said, "Yeah, that would be really
9 cool to be able to drive one of them."

10 I said, "I can probably get you in."

11 I said, "I can't guarantee you'll be
12 able to drive, but I am pretty sure I can get you
13 in a ride," because they always have openings for
14 the rides.

15 He said, "You can do that?"

16 I said, "Yeah, I can try."

17 She called her parents. He called his
18 wife. Everything was okay and he said, "I'll
19 come up."

20 He didn't have his truck so he was going
21 to drive the U-Haul. Me and my wife left that
22 night.

23 He got his stuff taken care of with the
24 truck, whatever repairs. I don't know exactly
25 what the repairs were that he had to get done to

1 his truck. He got that arranged. Then two days
2 later, he was actually on his way up.

3 I had no basis -- there was no set time
4 for him to leave or be there. You know, there
5 was no guideline for him to be at my house at a
6 specific time or anything.

7 Q. So when you found Mr. Fox there at
8 Waynes World, his truck was already broke down?

9 A. Yeah.

10 Q. And it was in the shop?

11 A. Yeah.

12 Q. And he's stuck there because he's
13 waiting on his truck to be repaired, as far as
14 you know?

15 A. As far as I know, yeah.

16 Q. And then you have this conversation with
17 him, he's interested and, "Well, you know, I can
18 drive your way," and you got this conversation
19 about Poconos, the racetrack?

20 A. (Nods head in the affirmative.)

21 Q. So exactly what was the plan, then, with
22 Mr. Fox understanding about, "Well, okay, I'm
23 going to go drive the truck?"

24 What -- what exactly was the
25 arrangement?

1 I mean, obviously he would, then, what,
2 show up at your place with the truck at some
3 point in time?

4 A. Yeah. Once he got there with the truck,
5 once he got his business taken care of getting
6 his truck fixed, he was driving up with the
7 U-Haul trailer, and then we were going to go to
8 the Pocono school when he got there and see about
9 getting him in.

10 Q. Why did he have to wait to drive the
11 truck until his truck got fixed?

12 A. He had to make the arrangements. I
13 don't know. It wasn't my truck. It wasn't my
14 business. He was arranging something, getting a
15 part, shipping a part, getting a part from a
16 junkyard or something. I don't know. He had to
17 fix that and get that taken care of.

18 Rather than them just sitting around and
19 not having anything to do, he's like, "We'll come
20 up."

21 When we turned around and went back
22 down, his truck was still not fixed.

23 Q. So you left there, you left Waynes
24 World, with your wife and kids?

25 A. No. It was just me and my wife.

1 Q. And drove back home?

2 A. Uh-huh.

3 Q. And how many hours is that?

4 A. It's about 11, 12 hours.

5 Q. 11, 12 hours?

6 A. Yeah.

7 Q. What time did you leave there?

8 A. It was 11:00, 10:30, 11:00.

9 Q. At night?

10 A. Uh-huh.

11 MR. LUXENBURG: I'll give it one more
12 try. Objection, relevance. I mean, it's like...

13 MR. JONES: Your Honor, I'm just trying
14 to build in -- they're the ones putting on all
15 that evidence for this story, the questions for
16 cross-examination.

17 ATTORNEY EXAMINER PARROT: I'll give you
18 a little leeway.

19 MR. LUXENBURG: That's not even a
20 response. That's not even a response.

21 ATTORNEY EXAMINER PARROT: Make sure
22 we're not just being repetitive. I guess just
23 try to keep it moving, Mr. Jones.

24 MR. JONES: I'm trying to fill in the
25 holes.

1 ATTORNEY EXAMINER PARROT: I'm not sure
2 we're doing that, though.

3 BY MR. JONES:

4 Q. All right. So 11, 12 hours, you went
5 ahead and drove on?

6 A. Uh-huh.

7 Q. And then -- so what you left behind,
8 though, is you left behind the rental truck full
9 of fireworks that you purchased?

10 A. (Nods head in the affirmative.)

11 Q. You're responsible for the U-Haul?

12 A. Uh-huh.

13 Q. You signed the contract?

14 A. Yeah, yes.

15 Q. It's \$7,000 worth of fireworks, right?

16 A. Uh-huh, yes.

17 Q. You've never met this Mr. Fox before?

18 A. No.

19 I was out in Youngstown, Ohio and I blew
20 my motor in a race car. They're \$80,000. A guy
21 came up and gave me a motor on a shake of a hand.

22 I hold people at their word. What my
23 handshake is with somebody, I hold to it.

24 I was told by Nelson that he was an
25 upstanding person and I believed him.

1 Q. So you're willing to take that risk?

2 A. Yes.

3 Q. So you go on. Then you didn't know when
4 he was going to come, right?

5 A. He said within two or three days, is
6 what he told me.

7 Q. Okay. So you gave him \$200?

8 A. I gave him \$200 to pay for the gas in
9 the truck.

10 That's what the officer was told when he
11 called me at 5:00 in the morning. Then he tried
12 to twist the story and it was --

13 Q. Well, hold on. I don't have a question
14 pending there.

15 MR. LUXENBURG: Oh, sure you do.

16 MR. JONES: I didn't have a question
17 pending.

18 ATTORNEY EXAMINER PARROT: All right,
19 all right, all right.

20 MR. LUXENBURG: I mean, the double
21 standard is unbelievable.

22 ATTORNEY EXAMINER PARROT: All right.
23 Both of you, let's keep this moving.

24 MR. LUXENBURG: Unbelievable.

25 BY MR. JONES:

1 Q. Mr. Kaltreider, so are you saying that
2 Mr. Fox is being untruthful when he told the
3 officer that you paid for the fuel and \$200 cash
4 to him?

5 A. Stephen Fox did not tell him that.
6 Stephen Fox was in the background while the
7 officer was on the phone with me and he was --
8 Stephen is not a quiet person. He's very irate
9 and he's -- that's why he got on the phone and
10 called me.

11 He was on the phone while the officer
12 had him in the back of the car. He was making
13 all kinds of phone calls.

14 He's not a quiet person. Stephen said
15 over the phone, "I did not say that."

16 That was just the officer trying to
17 figure out the details, that was his job, but
18 there was nothing for him to figure out. We
19 weren't lying about nothing. It was what it
20 was.

21 Q. But you never disputed that with the
22 officer when you were talking to him, right?

23 A. No, no. I told him that I gave him \$200
24 for the fuel.

25 Q. And now the truck rental, how long were

1 you -- you had the truck for four days? You were
2 supposed to have it four days?

3 A. Four days we had to take it back. It
4 was a one-way rental.

5 Q. One-way rental meaning you had to return
6 it back to the place where you got it from?

7 A. Pennsylvania. When I got to
8 Pennsylvania, it went back to the U-Haul place in
9 Pennsylvania.

10 Q. And then -- so then after you got the
11 call that the truck had been stopped and it was
12 being inspected and what was going on, everything
13 was being described to you, right, of what was
14 going on at the scene of the inspection; is that
15 correct?

16 A. Yes.

17 Well, the first initial phone call, the
18 officer had called me and woke me up. And
19 through that conversation, I was getting my
20 clothes on and getting ready to go out.

21 Then while I was on my way out, I had
22 got the second phone call from Stephen. Then he
23 had said that they were parking it. They said he
24 couldn't drive it.

25 I know I had talked to somebody else. I

1 don't know if it was Stephen that had said about
2 telling me the details about what had happened
3 with the truck. I can't say for sure who that
4 person was.

5 Q. So you're not disputing, are you,
6 Mr. Kaltreider, that the gross vehicle weight, as
7 the inspection report reports, is 14,050 pounds?
8 You're not disputing that fact, are you?

9 A. I was not there.

10 Q. You have no reason --

11 A. I have no factual basis. I was
12 physically not present there. I didn't operate
13 the scales. I hold faith in the officer he knows
14 what he's doing.

15 Yes, I'm not disputing that, no.

16 Q. Okay. And with the cargo with the
17 scales, the whole weight, the gross weight, which
18 included not only the truck but the cargo with
19 the truck, being 16,000 pounds, you're not
20 disputing that? You don't have reason to dispute
21 that either, do you?

22 A. No. Like I said, I was not there. I
23 did not see the scale weights or anything like
24 that.

25 Q. Okay. And you're not denying the fact

1 that this is -- you're going interstate here,
2 you're going from Indiana to Pennsylvania, you're
3 going through Ohio, you're going multi-state
4 trip, right?

5 A. Uh-huh, yes.

6 Q. And you heard the officer read from the
7 HazMat Regulations that the firework explosives
8 that was the cargo that you purchased, your
9 product in that cargo, is listed as a Class 1.4G,
10 a hazardous material that's a class that's listed
11 as a class that's to be regulated, right?

12 A. Correct, as a consumer-grade product.

13 Q. And you're not denying the fact that
14 there was no logbook, you didn't have a logbook
15 for the driver?

16 A. No. He wasn't a commercial driver, he
17 wasn't under that sanction, so he did not need to
18 have a logbook.

19 Q. And that you didn't have placards for
20 that truck for the driver?

21 A. No, because the explosive weight was
22 under the guidelines of DOT.

23 Q. And you've never got a registered -- had
24 it -- for transporting hazardous materials, it
25 wasn't registered for that purpose --

1 A. No.

2 Q. -- for that trip?

3 A. No.

4 Q. And is it your position that Mr. Fox was
5 being untruthful when he said the fireworks were
6 to be displayed at the church and that's why he
7 was --

8 A. Stephen had heard us talking about what
9 we were doing. Those fireworks, we had purchased
10 them for my birthday, our anniversary, which is
11 February 14th. We also get them for New Year's.
12 We do the Fourth of July. Then we show that --
13 we do them when the church has the spring
14 gathering.

15 Q. But that was Mr. Fox's understanding as
16 to what he told -- what he learned from you,
17 right?

18 A. Yeah. I mean, that's just sitting
19 around a campfire and the impartial talk that you
20 pick up and not knowing the whole details.

21 Like I said, like you had said, made the
22 statement, we had just met, so he doesn't know,
23 you know, how we shoot the fireworks and how much
24 we do there at the house.

25 I mean, Fourth of July, Memorial and

1 Labor Day, birthdays, we're setting them off.

2 It's -- we're not in a community that we
3 have to worry about it. We have hundreds of
4 acres of farmland that's open and tillable. The
5 neighbors like it.

6 Q. But the church and it being a nonprofit
7 really stuck out to him.

8 A. I don't know. I don't really understand
9 why that was a bell-ringer for him.

10 Q. Okay. Where are the fireworks now?

11 A. Most of them are consumed.

12 It's been, what, two years now?

13 Q. And what's left, where are they at?

14 A. In storage.

15 Q. Storage where?

16 A. Up at the house.

17 Q. How -- do you know how much the boxes
18 and the contents of the boxes weighed in total?

19 A. You can look on there and some of them
20 are 12 kilograms, some of them are 13 kilograms.
21 The net weight, gross weight, there's a lot you
22 have got to take into account. You have the
23 cardboard. You have the one-inch plywood base
24 that the tubes are put in. Then you also have
25 the clay plugs which are two-and-a-half inches at

1 the base of a three-inch tube.

2 Q. Did Mr. Fox give you a copy of the
3 inspection report?

4 A. Yes.

5 Q. Okay.

6 A. He didn't give me a copy. He showed me
7 the original.

8 Q. Do you know that HazMat is regulated by
9 gross weight?

10 A. No, I was not aware of that. That's not
11 what I was taught.

12 Q. Do you dispute that?

13 A. Yes. The bill-of-ladings that we were
14 given and we were taught by show the explosive
15 weight and the net weight of the product. They
16 regulate it under the explosive weight is what we
17 were told by DOT from the Federal. That's why
18 that has that separated out in the
19 bill-of-lading.

20 MR. JONES: If I could just have a
21 second, Your Honor.

22 (Discussion off the record.)

23 MR. JONES: Your Honor, may I approach
24 the witness?

25 ATTORNEY EXAMINER PARROT: You may.

1 MR. JONES: I'm going to show counsel
2 here first.

3 MR. LUXENBURG: For a change. Thank
4 you.

5 BY MR. JONES:

6 Q. Mr. Kaltreider, I'd like to refer your
7 attention here. If I could just have you read
8 out this section here, 172.504(c) and (1),
9 please.

10 A. "Exception for less than 454 kilograms,
11 1,001 pounds. Except for bulk packagings and
12 hazardous materials subject to 172.505, when
13 hazardous materials covered by Table 2 of this
14 section are transported by highway or rail,
15 placards are not required on, (1) a transport
16 vehicle or freight container which contains less
17 than 454 kilograms or 1,001 pounds aggregate
18 gross weight of hazardous materials covered by
19 Table 2 of Paragraph E of this section."

20 Q. Okay. So that's referring to aggregate.
21 And that's gross weight, correct?

22 A. No. Aggregate is the actual explosive
23 content. Aggregate is -- what you are carrying
24 is -- the radioactive or the hazardous material
25 is your aggregate.

1 Q. Would you read that definition for
2 "Gross Weight" in the same book?

3 A. Right here?

4 Q. And would you read from what section
5 that's in the book there?

6 A. It's 171.

7 Q. 171.8, and then to the definition of
8 "Gross Weight," yes, please.

9 A. "171.8, Definitions and Abbreviations.
10 Gross weight or gross mass means the weight of a
11 packaging plus the weight of its contents."

12 Q. Okay. Thank you.

13 Mr. Kaltreider, I'm sorry. I left one
14 piece out here.

15 You read from the first -- the first
16 thing you read out of the book here, out of this
17 172.504, here it continues for the charts that
18 was referred to what you read to.

19 Chart 2, I just want to refer you to
20 Chart 2. Do you see the 1.4 explosive there?

21 A. Uh-huh.

22 In Table 2?

23 Q. Yes.

24 A. The 1.4 explosive?

25 Q. Yes.

1 A. Uh-huh.

2 Q. So that's there in Chart 2; is that
3 correct?

4 A. Uh-huh.

5 Q. Okay. Thank you.

6 MR. JONES: That's all the questions I
7 have, Your Honor.

8 ATTORNEY EXAMINER PARROT: Any redirect?

9 MR. LUXENBURG: Briefly, if I could look
10 at that book for one more second.

11 REDIRECT EXAMINATION

12 BY MR. LUXENBURG:

13 Q. Brian, you said you saw the original
14 signed report that was given?

15 A. Yeah. Stephen had showed me that when
16 he got to the house.

17 Q. So you saw a copy of the original?

18 A. I saw the original that he had.

19 Q. And was that copy signed by the officer
20 or Mr. Fox?

21 A. Neither one.

22 Q. Neither one had signed?

23 A. That's what Stephen didn't understand.

24 Q. Similar to the copy you saw today, it
25 was unsigned?

1 A. Correct.

2 Q. I want to refer you back --

3 MR. LUXENBURG: May I approach, Your
4 Honor?

5 ATTORNEY EXAMINER PARROT: You may.

6 Q. -- back to the section. I believe that
7 you were asked to read Section 172.504,
8 Subsection C. I just want to confirm that was
9 the section.

10 A. Yes.

11 Q. Just go ahead and read that first...

12 A. "Exception for less than 454 kilograms,
13 1,001 pounds. Except for bulk packagings and
14 hazardous materials," --

15 Q. Keep going.

16 A. -- "subject to Section 172.505, when
17 hazardous materials covered by Table 2 of this
18 section are transported by highway or rail,
19 placards are not required."

20 Q. Then it references here, "A transport
21 vehicle or freight container which contains less
22 than 454 kilograms, 1,001."

23 So this section refers only to
24 categories of under 1,001 pounds, correct?

25 A. Of aggregate explosives.

1 Q. And you heard the officer testify that
2 the aggregate weight was actually 2,000,
3 correct?

4 A. Correct, right.

5 MR. LUXENBURG: So, therefore, this
6 section would not apply.

7 Nothing further, Your Honor.

8 ATTORNEY EXAMINER PARROT: Recross?

9 MR. JONES: Your Honor, may I approach
10 one more time?

11 ATTORNEY EXAMINER PARROT: You may.

12 RECROSS-EXAMINATION

13 BY MR. JONES:

14 Q. Mr. Kaltreider, that provision that you
15 read for your counsel and for me as well, this
16 provision is saying that -- is it not saying
17 that -- or is it saying that for anything less
18 than 1,001 pounds, placards are not required,
19 meaning that anything over 1,001 pounds a placard
20 would be required?

21 MR. LUXENBURG: Objection. It's a
22 document that it can speak for itself.

23 MR. JONES: His understanding, Your
24 Honor.

25 ATTORNEY EXAMINER PARROT: Overruled.

1 You asked questions regarding it, so...

2 A. It's making a statement of the aggregate
3 explosive, whether or not it's 454 kilograms or
4 1,001 pounds, is what it's referring to.

5 Q. So if it's less than -- does it say that
6 if it's less than 1,001 pounds or 454 kilograms
7 that a placard would not be required?

8 A. Correct. That's the aggregate
9 explosive. That would be -- if we had one, the
10 shipping papers, it will have that and it
11 actually has the aggregate net explosive content
12 weight so that when the DOT officers have that
13 checked, they can have that right there and know
14 where they fall. It's already sectioned down for
15 them.

16 Q. As far as that regulation's requirement,
17 if you were to have over the 1,001 pounds,
18 placarding wouldn't be required?

19 A. Of aggregate explosives.

20 Q. Aggregate explosives, yes.

21 A. Yes.

22 Q. Okay. And further, Mr. Kaltreider, here
23 the gross weight difference as measured between
24 what was the measurement taken for the truck and
25 then taken with the truck and the load shows that

1 the gross weight of the load cargo was
2 approximately 2,000 pounds?

3 A. Correct.

4 Q. Okay.

5 A. If that's what you're determining.

6 Just to let you know, though, 2,000
7 pounds of explosive material would demolish this
8 building. It would be more than what they used
9 at the bombing out in the -- in -- with the --
10 with the fertilizer.

11 Q. But that would be including the weight
12 involved with the packaging, the contents, the
13 boxing?

14 A. That's the 2,000 pounds total.

15 Q. Makes it up total?

16 A. Yeah, yeah.

17 Q. Okay.

18 MR. JONES: That's all I have, Your
19 Honor.

20 ATTORNEY EXAMINER PARROT: I have just a
21 couple questions for Mr. Kaltreider.

22 With respect to the \$200 that you gave
23 to Mr. Fox, I just want to be sure I understand
24 your testimony. It's that you told him
25 specifically that that was for fuel, for cost of

1 fuel.

2 MR. KALTREIDER: Yep.

3 ATTORNEY EXAMINER PARROT: I think we
4 heard testimony from the sergeant, perhaps, that
5 Mr. Fox had told him that that was to cover
6 things like meals, et cetera?

7 MR. KALTREIDER: Correct. Both -- both
8 statements were made, that he was given \$200 for
9 the fuel.

10 That is the only fact that the officers
11 had to show that the load was in commerce, that
12 he was receiving payment.

13 We were just telling him exactly what we
14 did.

15 You know, if there's no money
16 transferring hands, there is no -- this doesn't
17 even exist because then commerce doesn't even
18 come into play.

19 The \$200 is the whole basis that this is
20 even an in commerce question. It was a straight
21 up, "Here's the \$200 for the fuel."

22 ATTORNEY EXAMINER PARROT: Well, that --
23 that'll will be an issue for the Commission to
24 decide in this case.

25 MR. KALTREIDER: Correct. Yes, ma'am.

1 ATTORNEY EXAMINER PARROT: So I guess
2 that's why I want to be sure that I'm clear on
3 what your testimony is with respect to the
4 purpose of the \$200.

5 MR. KALTREIDER: Yes.

6 ATTORNEY EXAMINER PARROT: It wasn't for
7 compensation, --

8 MR. KALTREIDER: No.

9 ATTORNEY EXAMINER PARROT: Whether that
10 be in the form of just a flat-out payment of cash
11 or --

12 MR. KALTREIDER: No.

13 ATTORNEY EXAMINER PARROT: -- whether it
14 be for meals --

15 MR. KALTREIDER: No.

16 ATTORNEY EXAMINER PARROT: -- or other
17 miscellaneous expenses on the road.

18 MR. KALTREIDER: No.

19 ATTORNEY EXAMINER PARROT: It was
20 specifically to be used for fuel?

21 MR. KALTREIDER: It was specifically for
22 fuel.

23 ATTORNEY EXAMINER PARROT: Was the tank
24 full in Indiana?

25 MR. KALTREIDER: The tank was full in

1 Indiana. When I took it back, I had to put -- it
2 was like three-quarters of a tank I had to put
3 into it.

4 ATTORNEY EXAMINER PARROT: Would a full
5 tank have made it out from Indiana to
6 Pennsylvania?

7 MR. KALTREIDER: No. That's why I gave
8 him \$200.

9 ATTORNEY EXAMINER PARROT: Thank you
10 very much.

11 MR. KALTREIDER: You're welcome.

12 ATTORNEY EXAMINER PARROT: I appreciate
13 your time. You're excused.

14 Any other witnesses, Mr. Luxenburg?

15 MR. LUXENBURG: No, Your Honor.

16 ATTORNEY EXAMINER PARROT: Okay. No
17 exhibits to move?

18 MR. LUXENBURG: No exhibits.

19 ATTORNEY EXAMINER PARROT: All right.
20 Okay.

21 MR. LUXENBURG: A briefing closing
22 statement.

23 ATTORNEY EXAMINER PARROT: Okay. Let's
24 go off the record.

25 (Discussion off the record.)

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C E R T I F I C A T E

STATE OF OHIO :
SS:
COUNTY OF LICKING :

I, Michelle K. Douridas, a Registered Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that this hearing was by me reduced to stenotype; that the foregoing is a true and correct transcript of the hearing; that the hearing was taken at the time and place in the caption specified and was completed without adjournment; and that I am in no way related to or employed by any attorney or party hereto, or financially interested in the action, and I am not, nor is ATTORNEY EXAMINER PARROT reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 18th day of March, 2013.

MICHELLE K. DOURIDAS, RPR
NOTARY PUBLIC-STATE OF OHIO

My Commission Expires: July 16th, 2013.

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Summary: Transcript in the matter of the Brian Kaltreider hearing scheduled on 03/05/13 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Mrs. Michelle Douridas