

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Pa Alieu :
Njie, Notice of Apparent :
Violation and Intent to : Case No. 15-651-TR-CVF
Assess Forfeiture. :
- - -

PROCEEDINGS

before Ms. Megan Addison and Mr. Scott E. Farkas,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 10 a.m. on Tuesday, June 9,
2015.

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1 APPEARANCES:

2 Mike DeWine, Ohio Attorney General
3 By Mr. William L. Wright, Section Chief
4 Public Utilities Section
5 Ms. Natalia Messenger
6 and Mr. Steven Beeler,
7 Assistant Attorneys General
8 180 East Broad Street, 6th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the PUCO.

11 Mr. Pa Alieu Njie

12 On his own behalf.

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INDEX

- - -

Witness	Page
Willie E. Richardson	
Direct Examination by Ms. Messenger	5
Cross-Examination by Mr. Njie	18
Direct Examination (Rebuttal) by Ms. Messenger	38
Jonathan Frye	
Direct Examination by Ms. Messenger	21
Pa Alieu Njie	
Direct Examination	24
Cross-Examination by Ms. Messenger	32

- - -

Staff Exhibit	Identified	Admitted
1 Ohio Driver/Vehicle Examination Report	8	24
2 Notice of Preliminary Determination	22	24
3 Illinois Driver/Vehicle Examination Report	41	44

- - -

Complainant Exhibit	Identified	Admitted
1 Illinois Police Written Warning	29	37

- - -

Tuesday Morning Session,

June 9, 2015.

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EXAMINER ADDISON: Let's go ahead and go
on the record.

Good morning. The Public Utilities
Commission of Ohio calls for hearing at this time and
place Case No. 15-651-TR-CVF being in the Matter of
Pa Alieu Njie, Notice of Apparent Violation and
Intent to Assess Forfeiture.

My name is Megan Addison and with me is
Scott Farkas and we are the attorney examiners
assigned by the Commission to hear this case. At
this time I would like to take appearances of the
parties. On behalf of the staff.

MS. MESSENGER: Thank you, your Honor.
On behalf of the staff of the Public Utilities
Commission of Ohio, Ohio Attorney General Mike
DeWine, by Natalia Messenger and Steven Beeler, 180
East Broad Street, Columbus, Ohio.

EXAMINER ADDISON: Thank you.

Mr. Njie, if you would just like to state
your name for the record.

MR. NJIE: Yeah. My name is Pa Alieu
Njie.

1 EXAMINER ADDISON: Can you pronounce that
2 one more time?

3 MR. NJIE: Njie, the N is silent.

4 EXAMINER ADDISON: Thank you.

5 Ms. Messenger, are you ready to proceed?

6 MS. MESSENGER: Sure. I would like to
7 call Inspector Richardson to the stand, please.

8 - - -

9 WILLIE E. RICHARDSON

10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Messenger:

14 Q. Can you please state your name.

15 A. Willie E. Richardson.

16 Q. What is your business address?

17 A. 3201 North Main Street.

18 Q. Who is your employer?

19 A. The Ohio State Highway Patrol.

20 Q. What is your position with the Ohio --
21 with the state highway patrol?

22 A. I am a commercial motor vehicle
23 inspector/state trooper.

24 Q. And what are your duties?

25 A. My duty is to enforce the federal rules

1 and regulations as with the Federal Motor Carrier
2 Safety Administration, also traffic and safety
3 violations.

4 Q. Oh, going back to your business address,
5 can you tell me the -- can you specify the city?

6 A. Yeah. It's Findlay, Ohio.

7 Q. And how long have you been with the
8 highway patrol?

9 A. 25 years.

10 Q. As an inspector?

11 A. I have been an inspector for 13 years.

12 Q. Okay. What did you did before you became
13 an inspector?

14 A. I was a regular road trooper.

15 Q. Okay. Do you have any certifications or
16 training?

17 A. I am currently certified by the Federal
18 Motor Carrier Safety Administration to conduct level
19 I -- North American Standards Inspection Level I
20 through Level V.

21 Q. Were you -- what is your jurisdiction?

22 A. My -- I am assigned to the Findlay
23 District Headquarters which is in northwest, Ohio,
24 and we are responsible for 12 counties.

25 Q. And the state highway patrol, what is the

1 jurisdiction of the patrol in general?

2 A. To enforce the federal rules and
3 regulations of both trucking on behalf of the PUCO
4 and Federal Motor Carrier Safety Administration; and
5 also, again, with the dual duties I am also enforcing
6 traffic rules and laws and crash investigations.

7 Q. And that's in the state of Ohio --

8 A. Yes.

9 Q. -- correct? Were you on duty on
10 January 13, 2015?

11 A. I was.

12 Q. What was your jurisdiction that day?

13 A. I was assigned to Wood County to do
14 inspections. Interstate 75 is a high crash road, and
15 so we have specific areas we have to patrol.

16 Q. Were you in uniform that day?

17 A. Yes.

18 Q. And you were in a marked vehicle?

19 A. I was.

20 Q. Did you inspect a vehicle that Mr. Njie
21 was driving?

22 A. I did.

23 Q. Did you generate a report during that
24 inspection?

25 A. I did.

1 Q. And today do you have an independent
2 recollection of that inspection?

3 A. I do.

4 Q. Can you specify any reason why you
5 specifically recall this investigation?

6 A. I was sitting facing the southbound
7 traffic on Interstate 75 near where Interstate 75 and
8 Interstate 80, or the Ohio Turnpike, come together.
9 That's the area that we were at. I was facing
10 southbound traffic perpendicular to the roadway
11 watching traffic coming southbound.

12 Q. Okay.

13 MS. MESSENGER: Your Honor, may I
14 approach?

15 EXAMINER ADDISON: Yes, you may.

16 MS. MESSENGER: I would like to mark this
17 document as Exhibit 1. It's the Driver/Vehicle
18 Examination Report.

19 EXAMINER ADDISON: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Inspector Richardson, do you recognize
22 this document?

23 A. This is similar to the inspection that I
24 generated. It's a little different because of the --
25 the heading, but it is -- has the same information.

1 Q. Okay. Was this report prepared by you?

2 A. Yes.

3 Q. How did you prepare this report?

4 A. Initiated the traffic stop and entered
5 the company's DOT number in the computer in the Aspen
6 program which generates a new inspection --

7 Q. Okay.

8 A. -- and subsequently started the
9 inspection of -- of Mr. Njie's truck and trailer and
10 the driver, and this time I only did a driver-only
11 inspection. I did not inspect the truck other than
12 doing an overall once over as I am walking up to see
13 if I see any obvious violations, and I did not see
14 any obvious violations which then my attempt when I
15 stopped him when I viewed the obvious violation was
16 the reason why I pulled him over.

17 But if there was any other things that
18 were obvious violations with the vehicle, then I
19 would have bumped it up to a level II violation --
20 level II inspection instead of a level III. As such,
21 I didn't view any obvious violations, so I went ahead
22 with the level III only.

23 Q. Okay. Is it in the practice of the
24 highway patrol to make this report?

25 A. It's mandatory.

1 Q. And was this report prepared in the
2 ordinary course of your duties?

3 A. Yes, it was.

4 Q. It was prepared at the time of the
5 inspection?

6 A. Yes, ma'am.

7 Q. And is this an accurate representation of
8 the report that you created at the time of Mr. Njie's
9 inspection?

10 A. Yes, it is.

11 Q. Where do you send this report after the
12 traffic stop?

13 A. It is uploaded to the PUCO which then is
14 processed. And after that, I really -- there is
15 several, compliance review board and issues like
16 that. I am not sure once it gets past that point
17 where it goes.

18 Q. Okay. Can you take a look at the report
19 number at the top.

20 A. Yes, ma'am.

21 Q. Can you tell me what this number
22 represents?

23 A. The report number represents -- obviously
24 the first two characters, OH, represents Ohio report,
25 Ohio-generated report. The next four letters are --

1 is actually my unit number or some people it is known
2 as badge number. And then the last four is the
3 actual number of inspections I have completed up to
4 this point.

5 Q. Okay. What time did the inspection of
6 Mr. Njie take place?

7 A. I started -- I viewed the violation at
8 12:01. And that's when I first viewed the violation
9 and completed it, you know, a half hour later.

10 Q. Okay. Who is the driver identified on
11 this report?

12 A. Pa A. Njie or Njie.

13 Q. How did you identify the driver?

14 A. Once I made contact with him I asked the
15 driver for his driver's license, registration,
16 logbook, and bill of lading. And the information on
17 the driver's license matched the individual that I
18 was speaking to.

19 Q. Okay. What is the license number on the
20 report?

21 A. It's Tom Young 779923.

22 Q. Okay. Inspector Richardson, why did you
23 pull this vehicle over?

24 A. Checking traffic and, again, I was facing
25 southbound, southbound lanes, and, you know, I was

1 just looking at traffic as it goes by. And when I
2 noticed the white -- the Swift truck go by and I saw
3 the driver with his left hand up to his ear with a
4 cell phone with the white cord leading -- you know,
5 attached to the phone. And that's why it brought my
6 attention, and so I immediately pulled out on him to
7 stop him. And basically I viewed him appear to be
8 talking on his cell phone.

9 Q. Can you look at the violation section of
10 the report?

11 A. Yes, ma'am.

12 Q. What information goes into the violation
13 description?

14 A. If -- the violation code and -- or
15 section, then we put down what violation we -- what
16 violation we feel is best appropriate for what we
17 saw. And in this one it was 392.82A, A1.

18 Q. What does 392.82A1, what does that
19 section provide?

20 A. That provides to describe the nature of
21 the violation that was observed by the inspector, by
22 myself.

23 Q. And what was that violation?

24 A. And that was -- the standard heading was
25 "using a hand-held mobile telephone while operating

1 a" -- "a CMV," or commercial motor vehicle. In
2 addition to, I then after that would indicate, you
3 know, what I observed. And I observed a mobile
4 telephone in the left hand against his left ear with
5 a white charge cord attached.

6 Q. Okay. In your experience with the
7 highway patrol, can you explain why this regulation
8 is important?

9 A. For crash reasons, driver inattention is
10 one of the biggest crash causing violations. A lot
11 of it is now with the -- with the invent or the wide
12 use of cell phones and other devices, a driver's
13 inattention is -- is a big factor. That's why when
14 this law was put into effect, it's to curb this type
15 of activity.

16 Q. And have you pulled over many vehicles
17 where the driver was on his cell phone and
18 inattentive?

19 A. No, because for a while we weren't -- we
20 did not adopt the rule, and subsequently since we
21 have adopted the rule I have only written -- it may
22 have been my third one --

23 Q. Okay.

24 A. -- since the rule has been adopted.
25 That's why it's significant to me because I have only

1 written it two or three times so that's why this one
2 stands out to me more than anything else.

3 Q. Okay. Where did you pull this vehicle
4 over?

5 A. I took the vehicle at the 197. That's
6 where Interstate 80 and Interstate 75 come together.
7 It's mile marker 197. I was in the 197 crossover and
8 that's where I viewed the violation, but I stopped
9 him a few miles later.

10 Q. Okay. And just to clarify on the
11 inspection report you listed the milepost as 187, but
12 it was actually 197?

13 A. It was 197, yes.

14 Q. Okay. Can you describe where you were
15 parked when you observed Mr. Njie on his mobile
16 phone?

17 A. Yes. I was facing, again, the southbound
18 lanes or I was facing west and Mr. Njie was
19 southbound on Interstate 75. And what made it really
20 easy for me to see the violation was because the
21 sun -- high noon the sun is directly -- you know,
22 shining directly on top of the truck, and it's
23 basically lighting up the inside of the vehicle and
24 in plain sight, plain view going down the road. I'm
25 trained over the years to watch traffic, so I am very

1 observant and very -- I can tell generally most of
2 the time a lot of things that a normal person may not
3 be able to observe. In this case it was plain as day
4 that the individual had a cell phone to his ear and
5 with the white cord attached to it when he went by
6 me.

7 Q. So it was a clear, sunny day --

8 A. Yes.

9 Q. -- that day?

10 A. Yes, ma'am.

11 Q. So did you observe him from the front of
12 the vehicle or from the side as he --

13 A. From the side as he passed me.

14 Q. As he drove by you.

15 A. Yes.

16 Q. Can you describe what you observed as you
17 approached the vehicle after you pulled him over.

18 A. After I pulled him over, I walked
19 along -- I made a right-side approach as required by
20 the FMCSA, and I approached the driver's passenger
21 door. I knocked on the door and had the individual
22 open the door. I asked him for his license,
23 registration, logbook, bills, and medical card,
24 standard procedure.

25 And at that time I'm looking for the

1 evidence -- as a police officer looking for evidence
2 of, No. 1, why I pulled him over. So I'm looking
3 for -- the first thing I am looking for is the phone
4 and which, you know, I saw him -- I saw him holding
5 in his hand. And when I observed that, then I
6 confirmed what I saw when he was driving down the
7 road that the same phone was in -- that was in his
8 hand with the white cord attached to it was the one
9 that was sitting in the ashtray or the center console
10 or the cup holder with it still with the charger
11 attached to it. I didn't -- I made no mention of it
12 at the time until I told him why I pulled him over.

13 Q. So the same white cord that you saw as he
14 was driving by attached to the phone was the cord
15 that you saw attached --

16 A. Yes, ma'am.

17 Q. -- in that vehicle? And the cord was
18 plugged into the phone still?

19 A. Yes, ma'am.

20 Q. Can you read the inspection reports -- or
21 the inspection notes on the report, please?

22 A. Yes, ma'am. I stated -- if I may
23 clarify?

24 Q. Uh-huh.

25 A. During my inspection we go back through

1 and do what's called a query central to look for any
 2 previous inspections and always the driver when is
 3 the last time he has been inspected because that way
 4 I know there may be another report that's recent,
 5 within the last year. And when I pulled up the query
 6 central, I realized and brought to my attention that
 7 he was cited in Illinois for using a cell phone while
 8 operating a commercial vehicle back in September --
 9 excuse me, back October 23, 2014, in the state of
 10 Illinois.

11 Q. After the inspection, you completed the
 12 report, did you sign the report?

13 A. I did.

14 Q. Did the driver sign the report?

15 A. He -- I am not sure if he did or did not.
 16 There's been an argument but he received -- he
 17 received the violation and I believe he did.

18 Q. Okay. And he received -- Mr. Njie
 19 received a copy of the report?

20 A. Yes.

21 Q. And did you submit that report to the
 22 Commission?

23 A. I did.

24 Q. Is there nothing else you feel is
 25 important for the Commission to know about this

1 inspection?

2 A. Not this inspection but going back to the
3 reason why the -- this violation is important, in my
4 time as an inspector I have handled a couple of
5 crashes where drivers admitted talking on the cell
6 phone and during the crash so for this -- this is
7 pretty significant because it is important. Driver
8 inattention and cell phone use, you know, that's
9 why -- I think that's why this violation is very
10 significant.

11 MS. MESSENGER: Thank you. We have
12 nothing further for this witness.

13 EXAMINER ADDISON: Thank you.

14 Mr. Njie, do you have any questions for
15 Mr. Richardson right now?

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Njie:

19 Q. Yeah. You said when you came in my
20 truck, I was holding the phone in my hand?

21 A. No, sir, no.

22 Q. First, the charger wasn't long enough to
23 reach from down here to my left ear, and while the
24 officer was standing, I have this white watch still,
25 I was fixing my bluetooth. I have three bluetooths

1 that I use. When one dies, I use the other one so
2 there is no way it reached from down here to --

3 MS. MESSENGER: Objection, your Honor.
4 Mr. Njie will get a chance to testify later. I am
5 just objecting to the statement at this time.

6 EXAMINER ADDISON: Sustained. I will ask
7 you just to ask questions as to what Mr. Richardson
8 said right now. We will give you a chance to give
9 your perspective later.

10 MR. NJIE: Okay. That was the only
11 question I had, that when he came in the truck, the
12 phone was in my hand or not.

13 EXAMINER ADDISON: Okay.

14 THE WITNESS: May I answer?

15 MS. MESSENGER: You may answer his
16 question.

17 THE WITNESS: Sir, when you opened the
18 door, the first thing I looked at was for the phone
19 that you had in your hand at the time you were
20 driving by me. And it was in the cup holder at the
21 time on the center console. That's why I made the
22 mental note of the white cord was still attached to
23 it. It was not in your hand when you opened the
24 door, sir. It was in the center console in the cup
25 holder. That's where I observed the white cord.

1 Q. What I am saying it wasn't long enough to
2 reach from there to my left hand up there.

3 MS. MESSENGER: Objection, your Honor.
4 He is testifying again.

5 EXAMINER ADDISON: Again sustained. We
6 will go ahead and note your answer, Mr. Richardson.
7 Thank you for answering that.

8 Mr. Njie, I will just say again you can
9 give your perspective certainly when you are
10 testifying on the Bench.

11 MR. NJIE: Okay. Sorry about that.

12 EXAMINER ADDISON: Don't be sorry.

13 MS. MESSENGER: Your Honor, I would also
14 like to reserve Officer Richardson for rebuttal
15 testimony --

16 EXAMINER ADDISON: Okay.

17 MS. MESSENGER: -- if needed.

18 EXAMINER ADDISON: All right. Is there
19 anything further?

20 MR. NJIE: No.

21 EXAMINER ADDISON: Mr. Richardson, you
22 may take your seat.

23 THE WITNESS: Thank you, ma'am.

24 MS. MESSENGER: Staff would like to call
25 Jonathan Frye to the stand.

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JONATHAN FRYE

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

DIRECT EXAMINATION

By Ms. Messenger:

Q. Can you please state your name.

A. Jonathan Frye, last name F-R-Y-E.

Q. And your business address, please?

A. 180 East Broad Street, Columbus, Ohio.

Q. And who is your employer?

A. Public Utilities Commission of Ohio
Transportation Department.

Q. And what is your position with the Public
Utilities Commission?

A. I'm the chief of the Compliance Division.

Q. How long have you been in that position?

A. Approximately 10 years.

Q. And what are your duties?

A. To review the assessments that are
assessed against carriers, shippers, and drivers
related to violations.

Q. Are you familiar with the facts of this
case?

A. Yes.

MS. MESSENGER: Your Honor, may I

1 approach?

2 EXAMINER ADDISON: Yes, you may.

3 MS. MESSENGER: I would like to mark the
4 following document as Staff Exhibit 2. It is the
5 Notice of Preliminary Determination.

6 EXAMINER ADDISON: Thank you.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Mr. Frye, do you recognize this document?

9 A. Yes.

10 Q. What is it?

11 A. It's the Notice of Preliminary
12 Determination letter. It's a letter that's sent
13 to -- it's the letter that was sent to the driver at
14 the conclusion of a telephone conference to notify
15 the driver that he now has the -- the authority to
16 either pay the fine or to make a request for an
17 administrative hearing to pursue the case further.

18 Q. What is the amount of the forfeiture
19 shown on this notice?

20 A. \$250.

21 Q. Can you explain how -- can you explain
22 how this amount is calculated?

23 A. Yes. We -- the division has a fine chart
24 that's broken up into four groups, group 1, 2, 3, and
25 4. And based upon the severity of the violation and

1 based upon the Commercial Vehicle Safety Alliance
2 recommended fine schedule, the fine is -- is based
3 upon that particular grouping.

4 Q. Is this amount \$250 consistent with the
5 guidelines issued by the Commercial Vehicle Safety
6 Alliance?

7 A. Yes.

8 Q. Do you recommend that the Commission
9 order respondent to pay this amount as a forfeiture?

10 A. Yes.

11 MS. MESSENGER: Nothing further, your
12 Honor.

13 EXAMINER ADDISON: Mr. Njie, do you have
14 any questions?

15 MR. NJIE: No.

16 EXAMINER ADDISON: You may go ahead and
17 step down, Mr. Frye. Thank you.

18 MS. MESSENGER: Your Honor, at this time
19 I would move to admit Exhibit -- Staff Exhibits 1 and
20 2 into the record.

21 EXAMINER ADDISON: Do you have any
22 objections?

23 MR. NJIE: No.

24 EXAMINER ADDISON: Okay. Please note
25 that Complainant has said no objections to the

1 admitting. Those exhibits are admitted into the
2 record.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 EXAMINER ADDISON: All right. Mr. Njie,
5 I presume you would like to testify at this time?

6 MR. NJIE: Yes.

7 EXAMINER ADDISON: I would ask you to
8 just come up here and I'll swear you in.

9 - - -

10 PA ALIEU NJIE

11 being first duly sworn, as prescribed by law, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 EXAMINER ADDISON: I ask that you just
15 speak up so the court reporter can hear you.

16 THE WITNESS: Okay.

17 EXAMINER ADDISON: Would you please state
18 your name for the record.

19 THE WITNESS: Pa Alieu Njie.

20 EXAMINER ADDISON: And what is your
21 address?

22 THE WITNESS: It's 6920 Ardelle Drive,
23 Reynoldsburg, Ohio 43068.

24 EXAMINER ADDISON: Thank you. And are
25 you the complainant in this case?

1 THE WITNESS: Yes.

2 EXAMINER ADDISON: Okay. Mr. Njie, would
3 you just give us your perspective on the alleged
4 violation.

5 THE WITNESS: Yes.

6 EXAMINER ADDISON: Thank you.

7 THE WITNESS: Yeah. On January 13, I was
8 driving on Interstate I-75 South coming back from
9 Michigan. An officer was across the road on my left
10 side, and I was driving coming -- I was fixing my
11 bluetooth. I have this white watch. My phone is
12 connected to my white charger which was laying on the
13 cup holder down.

14 So the officer pulled me over. When he
15 pulled me over, I thought maybe he pulled me over for
16 speeding, but then I was on cruise control, so I am
17 like that is not speeding. So I pulled over and he
18 came so I opened the passenger side door. So he
19 looked, he saw that my phone is plugged in the
20 charger sitting on the cup holder.

21 So that's when he asked me, he said do
22 you know why I pulled you over. I said no. He said
23 I pulled you over because you were on your cell
24 phone. I was surprised. I said, no, I was not on my
25 phone. He was like from where I was standing I saw

1 the white cord connected which he already seen
2 connected. He said I saw the white cord connected,
3 and you were talking on your phone which was not long
4 enough from down here to come to my left hand. So I
5 told him, no, I was not on my phone, so back and
6 forth. Well, I am still going to write you a
7 violation. I say, yeah, I will fight it.

8 Then he told me he had a video of me on
9 the phone. I told him I would like to see the video
10 in court at that date. He said yes which I was not
11 on my phone.

12 And he brings up the previous one I have
13 in Illinois. That one I have my earpiece. Here is
14 the warning. So I never used that phone with the
15 earpiece. The phone comes with you have to dial to
16 call -- make a call so I pick up my phone to dial.
17 That's when the officer saw me that I was holding the
18 phone to dial to make that phone call. With that one
19 I understand I shouldn't be holding the phone when
20 the officer told me. So I was a new driver back
21 then.

22 But then he gave me a warning of having
23 both of the earpieces. He said when you are driving,
24 you should have only one so that you could hear
25 what's going on outside, but you cannot have both of

1 them in. I never hold my phone while I am driving
2 talking on the phone.

3 MS. MESSENGER: Your Honors, if I could
4 view the document that he is pointing out.

5 THE WITNESS: Yeah, it's right here.
6 It's a warning that I have both the earpieces in my
7 ear which I was supposed to have only one.

8 EXAMINER ADDISON: I am going to go ahead
9 and make a copy of that.

10 THE WITNESS: That's when he told me the
11 court date. I told him I would like to see the video
12 you said you have of me on my phone while I am
13 driving. And while the officer was standing there
14 there is no way even if I have a cell phone he would
15 see me. I have my white watch which he must have
16 seen the white watch, and when he come in the truck,
17 he saw the phone connected to the white charger which
18 was not long enough to reach to my left.

19 Since after that warning when I have that
20 ticket from Illinois, I bought three bluetooths which
21 was this one and I have the other three in my book
22 bag, so I don't use the earpiece no more. With these
23 ones I don't even need to touch the phone.
24 Everything you just press here and you answer
25 everything.

1 EXAMINER ADDISON: Mr. Njie, when you are
2 driving your truck, you always have your bluetooth?

3 THE WITNESS: Always.

4 EXAMINER ADDISON: Just to clarify.

5 THE WITNESS: I have three. I could
6 bring the other two. I always have them all charged.
7 When one dies, I use the other one.

8 EXAMINER ADDISON: And you indicated you
9 bought those after your --

10 THE WITNESS: Yes.

11 EXAMINER ADDISON: -- warning in
12 Illinois?

13 THE WITNESS: The warning in Illinois,
14 yeah, because I used to use the earpiece that the
15 phone comes with when you buy a phone so that's when
16 he -- when he give me. I said, okay, I am going to
17 buy a bluetooth. With this one you don't even touch
18 the phone. You could answer, ignore, and you could
19 call a name, and it dials just to stay away from the
20 phone since I had that warning because I know that's
21 serious. That's my life, you know, so I have to make
22 sure I take care of it.

23 EXAMINER ADDISON: Did you want to go
24 ahead and mark this as an exhibit so we can have it
25 on the record?

1 THE WITNESS: Yes.

2 EXAMINER ADDISON: That way the
3 Commission can view it. Certainly. I will mark the
4 Illinois State Police written warning as Complainant
5 Exhibit 1.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 ATTORNEY EXAMIENR FARKAS: Mr. Njie.

8 THE WITNESS: The N is silent, yes.

9 ATTORNEY EXAMIENR FARKAS: What color is
10 your bluetooth? What color is the device?

11 THE WITNESS: The bluetooth black.

12 ATTORNEY EXAMIENR FARKAS: Those are
13 black and your cell phone?

14 THE WITNESS: My cell phone is black.
15 This is the white watch that I always have on.

16 ATTORNEY EXAMIENR FARKAS: That's a white
17 watch.

18 THE WITNESS: Yeah. This is what I had
19 on.

20 ATTORNEY EXAMIENR FARKAS: Okay. And
21 your cell phone you are saying is black?

22 THE WITNESS: Black, the cell phone is
23 black.

24 ATTORNEY EXAMIENR FARKAS: Do you have it
25 with you?

1 THE WITNESS: This is my cell phone.

2 ATTORNEY EXAMIENR FARKAS: Okay. And
3 what color is the cord that charges --

4 THE WITNESS: It was a white one.

5 ATTORNEY EXAMIENR FARKAS: Okay. And
6 both bluetooth devices are black you are saying?

7 THE WITNESS: Yes.

8 ATTORNEY EXAMIENR FARKAS: Do you have
9 those with you?

10 THE WITNESS: Yeah. I have one here.
11 It's in my book bag. Do you want me to get it?

12 ATTORNEY EXAMIENR FARKAS: No. Just
13 asking. Do you have it, the charge cord, with you?

14 THE WITNESS: Let me check.

15 ATTORNEY EXAMIENR FARKAS: If you
16 don't --

17 THE WITNESS: No.

18 ATTORNEY EXAMIENR FARKAS: Okay.

19 EXAMINER ADDISON: Mr. Njie, you
20 indicated that you doubted whether the charge cord
21 would be able to reach from your left ear to where it
22 was plugged in. How long would you estimate that
23 charge cord to be?

24 THE WITNESS: Not that long. I don't
25 know exactly what number to give it, but it's not

1 that long to reach from where I plugged it to charge
2 to my left ear.

3 EXAMINER ADDISON: And how much of a --
4 how much distance is between where you sit in the
5 driver's seat and where you would plug your phone in?
6 Can you reach to it easily or is it -- would you have
7 to get out of your seat in order to actually plug
8 something in?

9 THE WITNESS: No, no, no. I would
10 probably just reach down to plug it in.

11 EXAMINER ADDISON: Okay.

12 ATTORNEY EXAMIENR FARKAS: I have another
13 question for you. This citation is for wearing a
14 headset while driving.

15 THE WITNESS: That Illinois one?

16 ATTORNEY EXAMIENR FARKAS: Yeah.

17 THE WITNESS: Yes. Give me the warning
18 because when you have the earpiece, he said I should
19 have only one on so that the other ear I could hear
20 what's going on outside if ambulance is passing or,
21 then I would be able to hear.

22 ATTORNEY EXAMIENR FARKAS: Okay. Okay.
23 Thank you.

24 EXAMINER ADDISON: Ms. Messenger, do you
25 have any additional questions?

1 MS. MESSENGER: Yes. Can I have just one
2 second?

3 EXAMINER ADDISON: Yes, of course.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Messenger:

7 Q. Mr. Njie, you said at the time Inspector
8 Richardson observed you driving by you were putting
9 the number in on your phone?

10 A. This officer, no, no, the Illinois
11 officer.

12 Q. The Illinois officer?

13 A. Yes, because I have the earpieces on.
14 With this earpiece you have to pick up the phone and
15 dial the number so that's what I was doing. That's
16 when the officer saw me. He told me in the state of
17 Illinois it's a handsfree. Once you are driving you
18 are supposed to hold both hands on the wheels. You
19 are not supposed to be holding a phone. So I told
20 him I was dialing my dispatcher to tell him I am
21 going to be running late to my next stop so that's
22 when he said I have both earpieces in. He told me
23 when you are driving, you have to have one in/one off
24 so you could hear what's going on outside.

25 Q. So here where Inspector Richardson pulled

1 you over, you are saying you were adjusting your
2 bluetooth?

3 A. Yeah, I was, my bluetooth.

4 Q. When you walked over to your bag, we
5 observed a white cord in there. Is that a different
6 white cord?

7 A. No, no. That's the one I use in my car.
8 I have two different ones, one I use in my car, one I
9 use in my truck.

10 Q. Okay.

11 A. Yeah.

12 Q. Is it the same -- does it charge the same
13 phone; you have one charger for your car, one for
14 your truck?

15 A. Yeah.

16 Q. But it charges the same phone.

17 A. Yeah. Same charger that I use, charge
18 the same phone but it's two different chargers. One
19 I leave in my car, one I leave in my truck.

20 Q. Okay. Are they different lengths, the
21 two chargers?

22 A. Yeah.

23 Q. The two chargers?

24 A. Yeah.

25 MS. MESSENGER: Nothing further, your

1 Honor.

2 EXAMINER ADDISON: Thank you.

3 Mr. Njie, is there any particular reason
4 you keep a different charger in your truck as opposed
5 to your personal vehicle?

6 THE WITNESS: Yeah, because that's the
7 truck I use. I don't want to be taking it out and
8 then maybe I go home, I forgot the charger to bring
9 it back, so I leave one in the truck and leave one in
10 my car. So when I am in my car, I have a charger.
11 When I am in my truck, I have a charger.

12 EXAMINER ADDISON: Okay.

13 THE WITNESS: Because if I take one, I
14 take it home, I might forget to bring it back; and
15 when I am driving, I would need my phone.

16 EXAMINER ADDISON: All right. Mr. Njie,
17 I believe you can go ahead and take your seat unless,
18 Ms. Messenger, do you have any remaining questions?

19 MS. MESSENGER: No, your Honor.

20 EXAMINER ADDISON: Okay. You are
21 excused, Mr. Njie.

22 THE WITNESS: And I wanted to say one
23 more.

24 EXAMINER ADDISON: Oh, of course.

25 THE WITNESS: My phone company is

1 prepaid, Net 10, so when I tell them that I am going
2 to need my phone records, they say I would need a
3 subpoena from the court for them to be able to send
4 it to me. If I could get that, I would like to get
5 that.

6 EXAMINER ADDISON: Mr. Njie, why do you
7 want the cell phone records?

8 THE WITNESS: Because I know the time the
9 officer pulled me over so I wanted to show that
10 timeframe I was not even on my phone at all. That's
11 why I needed the records, to show that I was not even
12 on the phone at all.

13 ATTORNEY EXAMIENR FARKAS: What type
14 of --

15 THE WITNESS: Net 10, it's called Net 10.

16 ATTORNEY EXAMIENR FARKAS: What would you
17 need to get Net 10 to release your records? What
18 would you need from the Commission?

19 THE WITNESS: I don't know. They just
20 told me that a subpoena, a paper to show it's for
21 court reason --

22 ATTORNEY EXAMIENR FARKAS: Okay.

23 THE WITNESS: -- for them to be able to
24 send it to me.

25 ATTORNEY EXAMIENR FARKAS: Okay. What

1 you are saying if you were requested to get the
2 records --

3 THE WITNESS: Records I am going to need.

4 ATTORNEY EXAMIENR FARKAS: -- you would
5 be happy to give those records up.

6 THE WITNESS: Yeah, happy to bring it to
7 show more of my -- that I was not even on my phone.

8 ATTORNEY EXAMIENR FARKAS: And that's
9 your position, the records will show you weren't on
10 your phone at the time of the inspection.

11 THE WITNESS: Yeah.

12 ATTORNEY EXAMIENR FARKAS: Or preceding
13 the inspection.

14 THE WITNESS: Yeah.

15 ATTORNEY EXAMIENR FARKAS: Okay. All
16 right. Does the staff want the cell phone records?

17 MR. BEELER: If the Commission decides to
18 subpoena the records, I mean --

19 ATTORNEY EXAMIENR FARKAS: But you are
20 not planning on subpoenaing the records.

21 MS. MESSENGER: No.

22 ATTORNEY EXAMIENR FARKAS: We will advise
23 you of that if we need them.

24 THE WITNESS: Okay.

25 ATTORNEY EXAMIENR FARKAS: Okay.

1 EXAMINER ADDISON: Thank you, Mr. Njie.
2 You can go back to your seat.

3 THE WITNESS: Thank you very much.

4 EXAMINER ADDISON: Does staff have any
5 objection to admitting Mr. Njie's Exhibit 1, the
6 state police written warning from Illinois?

7 MS. MESSENGER: No, your Honor, we don't.

8 EXAMINER ADDISON: Thank you. So
9 admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER ADDISON: Ms. Messenger, did you
12 indicate you would like to redirect Mr. Richardson?

13 MS. MESSENGER: Yes, your Honor, please.

14 EXAMINER ADDISON: You actually don't
15 have to be sworn in, but I will remind you you are
16 still under oath.

17 MR. RICHARDSON: Yes, ma'am.

18 EXAMINER ADDISON: Thank you. You may
19 proceed.

20 MS. MESSENGER: Your Honor, I would just
21 like to clarify we recalled Officer Richardson as a
22 rebuttal witness.

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WILLIE E. RICHARDSON

being previously duly sworn, as prescribed by law,
was examined and testified on rebuttal as follows:

DIRECT EXAMINATION

By Ms. Messenger:

Q. Did you explain the violation to Mr. Njie
when you pulled him over?

A. Yes.

Q. Did Mr. Njie dispute the violation at
that time?

A. Yes.

Q. When he disputed the violation, did he
show you his bluetooth in his ear?

A. He showed me -- he showed me a bluetooth
in his hand, not in his ear.

Q. It wasn't in his ear.

A. Correct.

Q. Was Mr. Njie wearing his white watch at
that time?

A. Yes, he was.

Q. Is it possible for you to have confused
the phone with the charge cord for -- or to have
confused his bluetooth or watch for the phone and the
charge cord at all?

A. No, ma'am.

1 Q. Can you describe the length of the cord.

2 A. Well, phone chargers come in different
3 lengths from the -- depending on the carrier or the
4 type of manufacturer. I have had cell phone cords of
5 1 foot long up to 2 foot to 4 foot. The standard is
6 2 foot at the most. You can get 4-foot long chargers
7 for a car or the actual wall plug. The standard
8 length is 4 feet.

9 Q. And can you describe the distance from
10 where it was charging to maybe Mr. Njie's ear, how
11 far of a distance that would be.

12 A. With the actual length of a vehicle being
13 only 8-foot wide, that would be 8 foot 6 inches wide,
14 looking inside -- inside the cab of the commercial
15 vehicle generally is anywhere from 6-1/2 to 7 feet in
16 width and the middle of it obviously being 3-1/2 to
17 3 -- 3-1/2 foot depending on the length inside of the
18 vehicle, how long the cord is, is it possible to be
19 able to have a 4-foot cord and still be able to talk
20 on the phone? Yes, ma'am, in my opinion it can be.

21 Q. Okay.

22 A. Again, the distance is -- could be up to
23 4 feet.

24 Q. Based on what you observed that day,
25 would the charge cord that Mr. Njie had be long

1 enough to reach his ear?

2 A. Yes, ma'am.

3 Q. Okay. Does it matter if Mr. Njie is
4 actually making a call for purposes of the violation?

5 A. It does not. It does not specify.

6 Q. The fact alone he has the phone to his
7 ear is enough to violate?

8 A. That is correct.

9 Q. Okay.

10 ATTORNEY EXAMIENR FARKAS: I have a
11 question for Officer Richardson. What was the color
12 of the phone you observed Mr. Njie with?

13 THE WITNESS: It was dark.

14 ATTORNEY EXAMIENR FARKAS: It was dark.

15 THE WITNESS: I couldn't tell. That's
16 what made it easy to see because the white cord
17 coming from it.

18 ATTORNEY EXAMIENR FARKAS: Right.

19 Q. (By Ms. Messenger) Inspector Richardson,
20 do you have the Ohio Inspection Report in front of
21 you?

22 A. I do not.

23 Q. Okay.

24 MS. MESSENGER: Your Honor, may I
25 approach?

1 EXAMINER ADDISON: You may.

2 Q. This is Staff Exhibit 1. Can you read
3 the inspection notes one more time, please.

4 A. "Driver cited in Illinois for using cell
5 phone while operating a commercial vehicle, Illinois
6 Inspection No. 4928001118, 10-23 of 2014."

7 MS. MESSENGER: Okay. Your Honor, may I
8 approach the witness?

9 EXAMINER ADDISON: You may.

10 MS. MESSENGER: We have the
11 Driver/Vehicle Examination Report from Illinois that
12 staff would like to mark as Exhibit 3.

13 EXAMINER ADDISON: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. MESSENGER: Your Honor, I am also
16 giving the witness Respondent's Exhibit 1, his
17 warning, his written warning from Illinois.

18 Q. Inspector Richardson, can you describe
19 the report, Staff Exhibit 3, that is in front of you.

20 A. Yes, ma'am. What I have in front of
21 me -- you said describe it? I'm sorry.

22 Q. What is this document?

23 A. This is the Driver/Vehicle Examination
24 Report that was generated by the Illinois State
25 Police on October 23, 2014.

1 Q. And is this the report that's referenced
2 in your inspection notes?

3 A. Yes, ma'am.

4 Q. Can you state the report number, please.

5 A. Illinois -- IL for the state that it
6 was -- the report was initiated, 4928 is the badge
7 number or unit number of the inspector, and the last
8 four indicates the number of inspections to that
9 point which the inspector has done and that would be
10 1,118 inspections.

11 Q. Okay. Can you look down in the Violation
12 Sections -- in the Violations Section and the first
13 violation code, can you tell me what that is?

14 A. That's a violation code 392.82A1.

15 Q. And that's the same violation that you
16 wrote Mr. Njie up for here?

17 A. That is correct, ma'am.

18 Q. And can you read the violation under
19 Violations Discovered for that code, please?

20 A. "Using a hand-held mobile telephone while
21 operating a CMV."

22 Q. Okay. Can you describe why that is
23 different from Respondent's Exhibit 1.

24 A. It is only a part -- it's different from
25 his report. The officer chose to give him a warning

1 for having headsets on which is also a violation
2 listed in the Violation Section. As you would note
3 on Exhibit -- Staff Exhibit 3, the citation number is
4 the same for that particular violation, 392.2MI or
5 M -- yeah, MI, wearing headset receiver while
6 driving. That matches the -- Mr. Njie's exhibit for
7 that violation and that violation only.

8 Also in addition to, as I am looking at
9 the report, it also shows a warning for speeding
10 which is listed in the same citation number which
11 matches the Exhibit No. 1 by Mr. Njie.

12 MS. MESSENGER: Okay. Nothing further,
13 your Honor.

14 EXAMINER ADDISON: Mr. Njie, do you have
15 any other questions for Inspector Richardson?

16 MR. NJIE: No.

17 MS. MESSENGER: Your Honor, at this time
18 I move to admit Exhibit 3 into evidence.

19 EXAMINER ADDISON: So admitted.

20 I'm sorry, Mr. Njie, do you have any
21 objection to moving Staff Exhibit 3, the
22 Driver/Vehicle Examination Report?

23 MR. NJIE: From Illinois?

24 EXAMINER ADDISON: From Illinois.

25 MR. NJIE: No.

1 EXAMINER ADDISON: Thank you. So
2 admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER ADDISON: Inspector Richardson,
5 I have just one question. What knowledge do you have
6 of Illinois's reporting process?

7 THE WITNESS: How it works is when --
8 during every inspection during the inspection process
9 we have to check for credentials to make sure they
10 have operating authority, make sure that, you know,
11 they're fit -- make sure there is not an out of
12 service rule and what we do is the fastest realtime
13 area that we check is called query central. That is
14 from the date that we stop -- stop the individual
15 going back exactly one year. So any time they have
16 an inspection in between that time we are going to
17 pull up so when I -- how I came about this was when
18 we run a driver's license number or a registration of
19 a tractor or trailer, if it's been inspected within
20 the last year, that inspection is going to come up on
21 query central.

22 And that's when I saw that he was
23 inspected in October so when that happens, his name
24 comes up on the screen and his -- this driver has one
25 inspection within -- it shows how many, could have

1 three or four inspections. So I click on that
2 particular inspection and I open it up and then it
3 shows -- actually shows you what the plaintiff --
4 what his inspection report is. It would show the
5 exact inspection report that was generated by the
6 officers like -- different from this because this is
7 in-house from PUCO. This is the one that would come
8 in the -- on the computer that I see.

9 And that's when I noted the Illinois and
10 that's why I noted the actual inspection report and
11 all that. You know, that's what we use every single
12 day. It saves -- it also saves a lot of time of
13 typing everything in because if it's already in the
14 system, they have a way of we can download their
15 information already in there and upload it right to
16 our inspection report to save us from typing.

17 EXAMINER ADDISON: Thank you for that.
18 But in terms of the actual violations cited by
19 Illinois on October 23, 2014, would your -- would the
20 process that you utilize vary at all from what --
21 what is your personal knowledge of Illinois's
22 procedures regarding these?

23 THE WITNESS: Well, again, ma'am, Federal
24 Motor Carrier Safety officers, we are trained the
25 same way by North American Standards, so we are all

1 trained the exact same way. However, each officer is
2 different. Each officer observes things differently,
3 but as far as we are trained, the person using a cell
4 phone is a violation of the FMCSA rules and
5 regulations, and so albeit texting while driving or
6 using -- you will have the phone up to your ear, it's
7 pretty universal across Canada, United States, and
8 Mexico. It's standard.

9 So with the officer might observe
10 something different, the -- the fact of the matter is
11 he may not have put it specifically what he observed.
12 I did. So I'm not sure what the observer observed to
13 do that without me calling and finding out but, you
14 know, I just -- again, it's a rare violation. It
15 doesn't happen very much because drivers are pretty
16 aware of that and they know the rules and
17 unfortunately, you know, this time wrong place at the
18 wrong time. I hope -- ma'am, I'm sorry if I am
19 confusing, I didn't answer your question.

20 EXAMINER ADDISON: Oh, no, you did.

21 ATTORNEY EXAMIENR FARKAS: Just for
22 clarification, the violations that are cited in
23 Illinois are violations of the Federal Motor Carrier
24 Safety Regulations, correct?

25 THE WITNESS: That is correct.

1 ATTORNEY EXAMIENR FARKAS: Those are the
2 same regulations you have cited in this Mr. Njie for.

3 THE WITNESS: That is correct.

4 ATTORNEY EXAMIENR FARKAS: Okay. So both
5 states are enforcing Federal Motor Carrier Safety
6 Regulations.

7 THE WITNESS: That is correct.

8 ATTORNEY EXAMIENR FARKAS: Okay. And
9 your -- your finding him in violation of the use of a
10 cell phone is because he was holding the cell phone
11 next to his ear.

12 THE WITNESS: Yes, sir.

13 ATTORNEY EXAMIENR FARKAS: Okay. That's
14 considered a violation by --

15 THE WITNESS: Federal Motor Carrier
16 Safety Administration.

17 ATTORNEY EXAMIENR FARKAS: Okay. All
18 right. Thank you.

19 EXAMINER ADDISON: Inspector Richardson,
20 you can go ahead and take your seat. Thank you very
21 much.

22 Does staff have anything else?

23 MS. MESSENGER: We do not, your Honor.

24 EXAMINER ADDISON: Thank you. Mr. Njie,
25 at this time if you want to add any final thoughts

1 that we could have on the record for our
2 consideration, we would greatly appreciate it, if you
3 have anything. You don't have to necessarily say
4 anything.

5 MR. NJIE: I would just like to have that
6 letter to be able to get my court records.

7 ATTORNEY EXAMIENR FARKAS: If the
8 Commission deems it of importance, then we'll provide
9 that to you.

10 MR. NJIE: Okay. Thank you very much.

11 EXAMINER ADDISON: Thank you.

12 Anything further, Ms. Messenger?

13 MS. MESSENGER: Nothing, your Honor.

14 EXAMINER ADDISON: All right. All right.
15 If we don't have anything further to address, we'll
16 go ahead and close the record and adjourn for today.
17 Thank you all for your time.

18 (Thereupon, the hearing was concluded at
19 11:03 a.m.)

20 - - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, June 9, 2015,
and carefully compared with my original stenographic
notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6053)

- - -

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Case No(s). 15-0651-TR-CVF

Summary: Transcript in the matter of Pa Alieu Njie hearing held on 06/09/15 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.