

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Jerry W. :
Montgomery, Notice of :
Apparent Violation and : Case No. 15-1177-TR-CVF
Intent to Assess :
Forfeiture. :

- - -

PROCEEDINGS

before Mr. Bryce McKenney, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10 a.m.
on Wednesday, October 21, 2015.

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1 APPEARANCES:

2 Mike DeWine, Ohio Attorney General
3 By Mr. William L. Wright,
4 Section Chief
5 Public Utilities Section
6 Mr. Thomas G. Lindgren,
7 Assistant Attorney General
8 180 East Broad Street, 6th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the PUCO.

11 Mr. Jerry W. Montgomery

12 On his own behalf.

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Staff Exhibit	Identified	Admitted
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- - -

1 Wednesday Morning Session,
2 October 21, 2015.

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4 EXAMINER MCKENNEY: Let's go on the
5 record.

6 The Public Utilities Commission of Ohio
7 has called for hearing at this time and place Case
8 No. 15-1177-TR-CVF, being in the Matter of Jerry W.
9 Montgomery, Notice of Apparent Violation and Intent
10 to Assess Forfeiture.

11 My name is Bryce McKenney, and I am the
12 Attorney Examiner assigned by the Commission to hear
13 this case. At this time I would like to take the
14 appearance of the parties. I will begin with staff.

15 MR. LINDGREN: On behalf of the
16 Commission staff, Ohio Attorney General Mike DeWine
17 by Thomas G. Lindgren, Assistant Attorney General,
18 180 East Broad Street, 6th Floor, Columbus, Ohio
19 43215.

20 EXAMINER MCKENNEY: Thank you,
21 Mr. Lindgren.

22 Mr. Montgomery, I am going to ask you to
23 stand up and state your name and address for the
24 record.

25 MR. MONTGOMERY: My address? Jerry W.

1 Montgomery, 1150 South 22nd Street, Columbus, Ohio
2 43206.

3 EXAMINER McKENNEY: Thank you,
4 Mr. Montgomery.

5 Before we proceed are there any matters
6 we need to discuss, Mr. Lindgren?

7 MR. LINDGREN: No, your Honor.

8 EXAMINER McKENNEY: All right. Are you
9 prepared to call your first witness?

10 MR. LINDGREN: Thank you. The staff
11 calls L.A. Darden to the stand.

12 - - -

13 LEE A. DARDEN
14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Lindgren:

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. Would you please state your name.

21 A. Lee A. Darden.

22 Q. Thank you. And what is your business
23 address?

24 A. It's Dublin-Granville Road, Columbus,
25 Ohio.

1 Q. That's fine. Thank you. And where are
2 you employed?

3 A. The Ohio State Highway Patrol.

4 Q. And what is your position there?

5 A. I am a Commercial Vehicle
6 Inspector/Trooper for the Patrol.

7 Q. How long have you been a Commercial Motor
8 Vehicle Inspector?

9 A. Just a little over three years.

10 Q. Thank you. And what are your duties in
11 that position?

12 A. My duties are I look for traffic
13 violations for commercial vehicles, I look for
14 vehicle defects, and also I stop them and do
15 inspections on the vehicles, safety inspections as
16 well.

17 Q. Thank you. And what sort of training
18 have you received for your position?

19 A. We received training through the -- our
20 academy, took the A -- part A and B of the
21 Transportation Department's training for commercial
22 vehicles. Also I have Hazmat training as well.

23 Q. Thank you. And do you hold any
24 certifications?

25 A. I am certified in part A and part B of

1 the transportation inspection of commercial vehicles
2 and also certified in inspecting Hazmat vehicles as
3 well.

4 Q. Thank you. Do you recall inspecting a
5 motor vehicle driven by the Respondent Jerry
6 Montgomery on March 16 of this year?

7 A. Could I take a look at that report before
8 I say that?

9 EXAMINER MCKENNEY: You can approach.

10 MR. LINDGREN: Thank you. Let the record
11 reflect that I am handing the witness what has been
12 marked as Staff Exhibit No. 1.

13 EXAMINER MCKENNEY: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 A. Yes, I do, I recall.

16 Q. Thank you. And what -- what prompted you
17 to conduct this inspection?

18 A. I was working my regular patrol on U.S.
19 33, U.S. 33, and I was sitting in a crossover,
20 crossover at about mile marker 26, and I noticed his
21 vehicle approaching me as I was sitting in that
22 crossover.

23 As he was approaching me, his vehicle --
24 I seen his left hand with what appeared to be a phone
25 up against his ear as he passed me by. I pulled out

1 of the crossover and initiated a traffic stop and
2 stopped him at milepost 27 which is in Franklin
3 County.

4 Q. Thank you. As his vehicle was passing
5 by, did you have a clear line of sight into his --
6 his cab?

7 A. Yes, I did.

8 Q. Thank you. And were there any
9 obstructions?

10 A. None, none at all.

11 Q. What was the weather like that day? Do
12 you recall?

13 A. It was clear enough to see inside his
14 vehicle. I am not sure whether it was -- what the
15 other things were. I didn't have any notations
16 saying that there was anything that was obstructing
17 my view.

18 Q. Thank you. Do you recognize the document
19 that I had marked as Staff Exhibit No. 1?

20 A. I recognize it as being the PUCO version
21 of it, yes.

22 Q. Did you -- did you prepare this document?

23 A. Yes, I did.

24 Q. Thank you. And is this -- can you
25 explain what it is?

1 A. It is an inspection in Aspen that you
2 complete once you stop a vehicle and initiate an
3 inspection report that you tender information into an
4 Aspen program, and it documents and translates all
5 the information that you entered into the system.

6 Q. And is this a type of report that you
7 regularly use in the course of your business?

8 A. Yes, it is.

9 Q. Thank you. Does this document appear to
10 have been altered at all since you entered the
11 information?

12 A. The only change that was made on this
13 report was the state operating authority violation
14 which was changed by our motor -- motor vehicle
15 manager in the office.

16 Q. Thank you. And did you prepare this at
17 or shortly after the time of the inspection of
18 Mr. Montgomery's vehicle?

19 A. Yes. I prepared it at the time that I
20 was inspecting his vehicle.

21 Q. Thank you. Did you have any conversation
22 with Mr. -- with Mr. Montgomery during the course of
23 your inspection?

24 A. Well, just like on most inspections, I go
25 up, I ask for the driver's license, medical card. If

1 logbook is needed, I ask for that as well. And then
 2 I tell them the reason why I stopped them while they
 3 are being stopped and then advise them they are going
 4 to be -- an inspection is going to be conducted. I
 5 advised -- I advised him that I stopped him for
 6 not -- for using a phone in his commercial vehicle.

7 Q. Did he make any statements to you
 8 regarding using a phone?

9 A. Well, he said -- he tried to say -- well,
 10 he did say that it was really not a phone. It was
 11 their communication device in the vehicle, but it was
 12 up against his ear, and I took it to be a phone.

13 Q. Thank you. Do you recall anything else
 14 about this inspection that you feel is important to
 15 note for the record?

16 A. The only other thing, you know, not
 17 pertaining to the phone but the PUCO number was
 18 suspended at the time, and so we -- you know, we made
 19 a violation on that as well.

20 Q. Thank you. So are both of the violations
 21 you observed noted on this report?

22 A. Yes, they are.

23 Q. And could you explain them?

24 A. The using the handheld mobile telephone
 25 while operating a CMV is when you are using a

1 cellular phone or phone device which has to be
2 handsfree. You can't use it in a commercial vehicle.
3 And at that particular time when I noticed him, he
4 was using a phone or a handheld vehicle -- in his
5 vehicle with his left hand.

6 In running his DOT number and PUCO number
7 through the PUCO site and the DOT site, the PUCO site
8 stated that their PUCO number had been suspended,
9 their authority has been suspended. And so,
10 therefore, they were cited for that violation as
11 well.

12 MR. LINDGREN: Thank you. I have no
13 further -- further questions, and the witness is
14 available for cross-examination.

15 EXAMINER McKENNEY: Mr. Montgomery, at
16 this time I am going to ask you if you have questions
17 for the Trooper. If you have questions, you are
18 welcome to ask them. However, I may rephrase them in
19 the form of a question or a new manner just to get at
20 the information you are trying to get at.

21 Did you have questions you wanted to ask
22 the Trooper?

23 MR. MONTGOMERY: Yes, I do.

24 EXAMINER McKENNEY: Okay.

25 - - -

CROSS-EXAMINATION

By Mr. Montgomery:

Q. Now, when you come up to the truck after you turned on your lights -- well, before that actually, I come down off of 33, I was in the slow lane, the lane I was supposed to be, correct?

A. The slow lane, you mean right lane?

Q. The curb lane.

A. Okay. I don't recall if you were in the right lane or not. If you say you were. Are you asking me were you in the left lane?

Q. Did you see me as I was approaching you?

A. I did. I seen you as you were approaching me.

Q. So which lane was I in?

A. I don't recall what lane. I didn't write it down.

Q. Now, so you didn't see me hop in the fast lane, the left-hand lane?

A. No, sir.

Q. All right. Now, did you -- when I was coming up approaching you, did you see me flip my cigarette out the window because my window was down? I didn't roll --

A. No, because if you had done that, I

1 probably would have wrote you for littering, so I
2 know I didn't see that.

3 Q. On ashes?

4 A. On a cigarette butt.

5 Q. I didn't throw my cigarette, but I
6 flipped my ashes.

7 A. I didn't see that, no, sir.

8 Q. That was with my left hand by the way.
9 Now, on down when you finally got behind me and we
10 pulled over, did you approach the car -- or the truck
11 on the passenger side, correct?

12 A. Yes, sir.

13 Q. When you started up the ladder -- or the
14 steps, I told you to watch your head because of the
15 mirror.

16 A. Okay.

17 Q. The side mirror. Do you remember that?
18 And then you come around on the passenger side
19 because we were over far enough?

20 A. The driver's side.

21 Q. Or the driver's side. You asked me for
22 my driver's license and my weight ticket. I don't
23 remember no logbook or anything.

24 A. No. When I was answering that question,
25 what I normally ask for is your license, medical

1 card, if you have an Ohio license, all your medical
2 information is supposed to be in the system so,
3 therefore, I don't really ask for that unless it's
4 not in the system, and then I come back and ask you
5 to verify whether you have a medical card. You are a
6 local driver. You are Jones Topsoil. You know, you
7 are local most of the time, and so logbooks are not
8 required by you guys, I know that.

9 Q. Okay. And then you asked me if I was on
10 the phone, correct?

11 A. No. I told you that the reason why I
12 stopped you was because you were on the phone. I
13 told you that.

14 Q. No, sir.

15 A. That's what I told you.

16 MR. LINDGREN: Objection. He was
17 testifying.

18 EXAMINER MCKENNEY: I understand. We
19 have to keep it to questions.

20 MR. MONTGOMERY: Right, okay.

21 Q. How many times did you ask me if I was on
22 the phone?

23 A. I don't remember.

24 EXAMINER MCKENNEY: I am going to object
25 there. He didn't ask you if you were on the phone.

1 He told you he saw you were on the phone, so you are
2 assuming facts that are not in evidence.

3 MR. MONTGOMERY: I was there and he asked
4 me.

5 EXAMINER McKENNEY: Well, you can explain
6 that when you have an opportunity to testify. Right
7 now, we just need to ask questions of the Trooper.

8 Q. (By Mr. Montgomery) You say I was holding
9 a device up to my ear?

10 A. Up to your ear.

11 Q. Did you look at the device?

12 A. I did not. I know you advised me it was
13 your company radio.

14 Q. And I would be holding this up to my ear?

15 A. That was the reason I stopped you. That
16 was the reason why I stopped you, and my thought was
17 when you told me that, why would you be holding it to
18 your ear.

19 Q. Now, the violation on the PUCO, that has
20 nothing to do with me, correct?

21 A. That's basically your company, yes, sir.

22 Q. The carrier?

23 A. Yes, sir.

24 MR. MONTGOMERY: All right. I guess
25 that's all the questions I have.

1 EXAMINER McKENNEY: Thank you,
2 Mr. Montgomery.

3 Did you want an opportunity to redirect,
4 Mr. Lindgren?

5 MR. LINDGREN: No, thank you, your Honor.

6 - - -

7 EXAMINATION

8 By Examiner McKenney:

9 Q. When you pulled over Mr. Montgomery, what
10 type of vehicle were you in?

11 A. I was in my silver SUV marked State
12 Highway Patrol vehicle.

13 Q. When you were pulling him over, do you
14 remember the stop?

15 A. Do I remember? Yes, I remember the stop.

16 Q. Do you remember what time the stop was?

17 A. 2:04, 2:04 p.m.

18 Q. Do you remember the type of vehicle it
19 was?

20 A. It's a -- it's a Jones Topsoil straight
21 truck.

22 MR. MONTGOMERY: Oh, I do have one other
23 question, if I may.

24 EXAMINER McKENNEY: All right. Mr.
25 Montgomery, I heard you say just now you might have

1 another question. I will let you ask me what that
2 question is. What's that question?

3 MR. MONTGOMERY: If he remembered when he
4 came up and came around to the driver's door, I told
5 him to -- excuse me, I was going to extinguish my
6 cigarette.

7 EXAMINER McKENNEY: Okay. I'll ask the
8 question.

9 Q. (By Examiner McKenney) Do you remember
10 the driver asking you if he could extinguish his
11 cigarette?

12 A. No, sir.

13 EXAMINER McKENNEY: I have no further
14 questions. Thank you. You may step down.

15 Mr. Lindgren?

16 MR. LINDGREN: Thank you, your Honor.
17 The staff next calls Jerry Montgomery -- I mean
18 Jonathan Frye. I'm sorry.

19 (Witness sworn.)

20 EXAMINER McKENNEY: You may be seated.

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JONATHAN FRYE

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

DIRECT EXAMINATION

By Mr. Lindgren:

Q. Good morning, Mr. Frye.

A. Good morning.

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

A. Yes. Jonathan Frye, F-R-Y-E.

Q. And what is your business address?

A. 180 East Broad Street, Columbus, Ohio.

Q. And where are you employed?

A. Public Utilities Commission of Ohio
Transportation Department.

Q. And what is your current position?

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

Q. How long have you been in that position?

A. Approximately 15 years.

Q. Thank you. What are your duties as Chief
of the Compliance Division?

A. Review the assessments of the compliance
officers to make sure that the fines are assessed
uniformly.

Q. And how do you go about assessing fines?

1 A. The violations are uploaded into our
2 system, and the fines are broken up into various
3 groups based upon the types of violations and the
4 severity of the violations, and we assign a dollar
5 amount to the particular violations.

6 Q. Thank you. Do you use any sort of
7 guidelines in these calculations?

8 A. We -- we base -- we utilize the Uniform
9 Commercial Motor Vehicle Safety Alliance Uniform --
10 or recommended fine schedule.

11 Q. Thank you. Are you familiar with the --
12 the forfeiture assessed against the Respondent Jerry
13 Montgomery in this case?

14 A. Yes.

15 Q. Thank you.

16 MR. LINDGREN: May I approach the
17 witness?

18 EXAMINER McKENNEY: You may.

19 MR. LINDGREN: Let the record reflect
20 that I am handing the witness what I have marked as
21 Staff Exhibit 2.

22 EXAMINER McKENNEY: This is the NPD?

23 MR. LINDGREN: Yes.

24 EXAMINER McKENNEY: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. LINDGREN: Thank you.

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

3 A. Yes.

4 Q. And can you explain what it is?

5 A. After a conference is held with the
6 compliance officer, in the event that we are unable
7 to reach a resolution in regards to the violation
8 and/or the fine, we will issue this letter which is a
9 Notice of Preliminary Determination. And what this
10 letter does is provide the respondent with
11 information on how to pay the fine as well as how to
12 go about contesting the fine at the next level in our
13 administrative process.

14 Q. Thank you. What -- what is the
15 forfeiture amount recommended here for violation of
16 Section 392.82(a)(1)?

17 A. \$250.

18 Q. Is that amount consistent with the
19 guidelines your division uses?

20 A. Yes. It's -- it's consistent with the
21 guidelines, yes.

22 Q. Thank you. And would this amount be --
23 be typical for a violation you would assess against
24 another driver for the same violation?

25 A. Absolutely, yes.

1 Q. And is this the amount you would
2 recommend the Commission assess as a forfeiture if
3 they determine that the respondent committed the
4 violation?

5 A. Yes.

6 Q. Thank you. And just to be clear, there
7 was no forfeiture assessed against the respondent
8 driver for the -- for the other violation noted on
9 the inspection report, was there?

10 A. You are correct. The only violation is
11 the \$250 for using a handheld mobile telephone device
12 while operating a commercial motor vehicle.

13 MR. LINDGREN: Thank you. I have no
14 further questions for this witness.

15 EXAMINER McKENNEY: Mr. Montgomery, would
16 you have any questions for this witness?

17 MR. MONTGOMERY: No.

18 EXAMINER McKENNEY: Okay.

19 - - -

20 EXAMINATION

21 By Examiner McKenney:

22 Q. Mr. Frye, I do have a couple of
23 questions. If you look at the Notice of Preliminary
24 Determination which is marked as Staff Exhibit 2, in
25 the first it says the date of March 16, 2015, which

1 is consistent with the inspection date on the
2 Driver/Vehicle Examination Report; is that correct?

3 A. That's correct.

4 Q. The next sentence says "a vehicle
5 operated by THE JONES FUEL COMPANY." However, that
6 is not the same name as the shipper on the
7 Driver/Vehicle Examination Report; is that right? Do
8 you have a copy of the Vehicle Examination Report?

9 A. I do not have a copy.

10 Q. When staff prepares the Preliminary
11 Determination, how does it determine the operator of
12 the company?

13 A. Based upon the inspection report that's
14 submitted to the division by the inspector and it's
15 my understanding that the inspector gets that
16 information based upon a USDOT number or an Ohio
17 motor carrier number. But, again, that information
18 is provided off of the inspection report or the
19 Vehicle Examination Report that's written by the
20 inspector.

21 Q. So Jones Topsoil & Mulch noted on the
22 Vehicle Examination Report would be the same company
23 as the Jones Fuel Company on the Notice of
24 Preliminary Determination?

25 A. I would have to take a look -- I don't

1 have a copy of the inspection report.

2 Q. I'll hand you one. There you are.

3 A. The Driver/Vehicle Examination Report has
4 Jones Fuel Company listed, and based upon what the
5 officer wrote in the report, the violation was
6 assessed against Jones Fuel Company which is
7 identified in the Notice of Preliminary Determination
8 that was the carrier. We didn't make an assessment
9 against the shipper Jones Topsoil & Mulch, so I can't
10 speak to that particular issue because we didn't make
11 an assessment against Jones Topsoil & Mulch as a
12 shipper.

13 Q. The Preliminary Determination and the
14 Vehicle Examination Report are of the same violation
15 on the same day.

16 A. Yes. They are consistent with each other
17 because the -- it's showing that Jones Fuel was the
18 carrier, and the Notice of Preliminary Determination
19 identifies the vehicle being operated by Jones Fuel
20 Company which is the carrier that was written up by
21 the inspector.

22 EXAMINER McKENNEY: All right. Thank
23 you, Mr. Frye. I have no further questions. You may
24 step down. I will ask for my copy of the examination
25 report. Thank you.

1 Mr. Lindgren, anything further?

2 MR. LINDGREN: Your Honor, at this time I
3 would move for the admission of Staff Exhibits 1 and
4 2, and with that I rest my case.

5 EXAMINER MCKENNEY: Staff Exhibits 1 and
6 2 will be so admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER MCKENNEY: Mr. Montgomery, at
9 this time you have an opportunity to explain what
10 happened on that day as you see it. I will ask you
11 to come up to the stand.

12 - - -

13 JERRY W. MONTGOMERY
14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 EXAMINER MCKENNEY: You are now under
18 oath. You may have a seat. You may explain to me
19 what you believe happened on that day.

20 THE WITNESS: All righty. Well, I was
21 dispatched to pick up two loads -- well, I and
22 another truck driver was dispatched to pick up two
23 loads, actually No. 2 limestone at the 104 plant. So
24 I did. I got my ticket stamped going out -- or past
25 the scale 148. I then had to go around to the front

1 where I pull over beside the asphalt plant, but it's
2 on the curb, and I do my calculation because it's a
3 prepaid Visa. My calculator wasn't working, so I had
4 to do this by hand, and then I wrote it on my daily
5 log.

6 And at that time after that, I call in on
7 the company radio to tell them the price of -- my
8 truck number and price. And then I proceed out
9 104 -- or Jackson Pike to 104 and I get caught by the
10 light and there's two trucks and three cars. After
11 this, you know, you think back how the day was
12 progressing.

13 So I proceeded after the light changed
14 and the vehicles moved, made my right-hand turn going
15 out 104 eastbound, and the dispatcher calls and my
16 jabber, whatever it's called, jabber I guess it is
17 called, the handheld for the phone, and it's clamped
18 on my sun visor and I answered a question and I --
19 you know, while I am driving. So we get off -- she
20 hung up about Alum Creek, and I proceed on up the
21 road to turn on to the lane to go to Route 33.

22 And this is my third load out that road,
23 so I know there's two officers there working. The
24 first time they was in the middle. The second one
25 one of them had one on each side of the road of 33.

1 So this particular time, like the officer said, he
2 was in the middle, and when I was going by, I put my
3 cigarette and flipped my ashes and I glanced at him
4 real quick because I had just changed lanes and
5 proceeded down the road. Next thing I know he had
6 his lights on, so I tried to get over when -- because
7 traffic was, you know, a little bit clogged on the
8 slow lane, the right-hand lane.

9 So we didn't go very far, maybe a half a
10 mile. And he come up on the left-hand side of my
11 truck, and I told him to watch his head because of
12 the mirror. I was going to tell him to push it up if
13 he wanted to stand there, but he got down and walked
14 around to the driver's side and asked me if I was on
15 the phone. I said no, sir. And he asked me for my
16 license and the weight ticket. I give it to the
17 officer.

18 And he went back to his car and came
19 back. He says, well, you are legal, give me my stuff
20 back, and he told -- I said why did you stop me for?
21 He said, well, I seen your lips moving. I said what?
22 He said I seen your lips moving. And then he asked
23 me you was on the phone, wasn't you? I said, no,
24 sir, I was not. He asked me -- and then he asked me
25 again. He said are you sure you weren't on the

1 phone? I said, no, sir. I said I don't have to use
2 the phone. It's over in the middle of the truck and
3 my seat belt was still on and with the seat belt on I
4 couldn't reach the phone if I wanted to I told him.

5 And then he went back to his car again
6 and come back with the tickets, and he said your PUCO
7 thing was expired or -- suspended or expired, one of
8 the two. And he gave me my ticket and told me I can
9 leave or, you know, get ahold of your company, but I
10 wasn't holding nothing up to the ear. I had a sore
11 behind my ear where my glasses were and that's what I
12 was doing. My hand was up there, but my cigarette
13 was there too so, I mean, you know, as I was going
14 by. And I just don't understand why I would be
15 holding one of them up to my ear because it clips on
16 my sun visor. That's all I have to say.

17 Oh, no, it isn't. And he said -- right
18 here is my phone report for 7 -- or 3-16 at that time
19 of day and I showed it to the ones that was at the
20 one hearing or conference to see if I should have to
21 come to court and they said yes. And I was off the
22 phone by 2:02.

23 Q. Thank you, Mr. Montgomery. If you are
24 willing to let the court have your copy of your cell
25 phone records or your records there, we can introduce

1 that into the record and we can mark it. First, you
2 will need to give it to Mr. Lindgren to allow him to
3 review it, see if he has any objection to it.

4 EXAMINER McKENNEY: I am going to mark
5 that as Respondent's Exhibit 1.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 EXAMINER McKENNEY: We will discuss the
8 admissibility of it. If you have cross-examination,
9 you can -- do you have cross-examination now? We can
10 address the admissibility of it after your
11 cross-examination and after anything further, but I
12 am going to mark it as Respondent's Exhibit 1 for
13 now.

14 MR. LINDGREN: Thank you.

15 EXAMINER McKENNEY: All right. Do you
16 have cross-examination for this witness,
17 Mr. Lindgren?

18 MR. LINDGREN: Yes, your Honor. Thank
19 you.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Lindgren:

23 Q. Mr. Montgomery, do you own a personal
24 cell phone as well as the company device that you
25 showed earlier?

1 A. No. Well, I do own one, but it was
2 turned off at the company that it is through,
3 T-Mobile.

4 Q. Do you normally carry that personal cell
5 phone with you when you drive?

6 A. No.

7 Q. You don't.

8 A. It's turned off. I quit paying for the
9 bill. It's done. It was done before this.

10 Q. So you were not -- you no longer had that
11 phone at the time of the stop?

12 A. No.

13 EXAMINER MCKENNEY: Mr. Montgomery, did
14 you testify you had the cell phone but it was out of
15 reach?

16 THE WITNESS: Yes. That one right there
17 was in the middle, the way the cabs are, and it was
18 all the way over in this like V, you know,
19 indentation like this.

20 EXAMINER MCKENNEY: It was but it was in
21 the cab.

22 THE WITNESS: Pardon me?

23 EXAMINER MCKENNEY: It was in the cab,
24 wasn't it?

25 THE WITNESS: Yes. I don't have to have

1 anything in my hand to answer the phone.

2 EXAMINER MCKENNEY: But you did have a
3 phone in the cab.

4 THE WITNESS: Yes, sir.

5 EXAMINER MCKENNEY: Mr. Lindgren.

6 Q. (By Mr. Lindgren) I believe you testified
7 that you did have a conversation with a device with
8 someone that morning prior to the stop?

9 A. Yes.

10 MR. LINDGREN: Thank you. I have no
11 further questions.

12 - - -

13 EXAMINATION

14 By Examiner McKenney:

15 Q. What kind of phone do you have,
16 Mr. Montgomery?

17 A. It's a company phone, owned phone.
18 That's the only one I have.

19 Q. What kind of phone is it? Do you know?

20 A. I can find out.

21 Q. That's okay. The company uses that phone
22 to contact you?

23 A. That -- both of them units there belong
24 to the company, the Garmin and the telephone.

25 Q. You have a telephone. You also mentioned

1 you have a jabber?

2 A. That's what it's called, handsfree
3 device.

4 Q. So two devices, one cell phone, one
5 jabber? And a company radio, so three devices?

6 A. Yes.

7 Q. The jabber connects to your --

8 A. Telephone.

9 Q. -- telephone. It goes on your visor.

10 A. Yes.

11 Q. You have your phone with you here today,
12 don't you?

13 A. Yes.

14 Q. I would like to see a copy of the phone
15 records, if I may.

16 According to this phone record from March
17 16, 2015, did you not receive an incoming call at
18 1:59 p.m. that lasted for 3 minutes which would take
19 you to 2:02 p.m. and the stop happened at 2:04 p.m.;
20 is that correct?

21 A. Well, it was later than that is what I am
22 saying. By the time I did my paperwork there at the
23 pit and drove the speed limit up -- well, I only run
24 55 down 104.

25 Q. I will rephrase my question. At

1 1:59 p.m. on March 16, 2015, did you get a call from
2 (614) 443-4611?

3 A. Yes, sir.

4 Q. Did that call last 3 minutes?

5 A. Well, close.

6 Q. That was an incoming call?

7 A. Yes, sir.

8 Q. This happened approximately 2 minutes
9 before you were pulled over by the Trooper?

10 A. It is possible. As you noticed earlier
11 when I got that one phone call, I hit my button on
12 the phone, and a little bit later the jabber said
13 disconnected, so it could have been shorter than
14 that.

15 Q. According to the phone record that you
16 have submitted to the court, the phone call lasted
17 approximately 3 minutes, didn't it?

18 A. Well, that's what they charged us for,
19 but like I was saying earlier, you noticed when we
20 was just sitting here, my phone rang and everything,
21 even though I just hit the speaker button on the
22 side, the phone and the jabber said the phone
23 disconnected a little bit after that so, yes, we did
24 get charged for 3 minutes, but I don't think I was on
25 there 3 minutes.

1 Q. And your phone number is (614) 205-4901?

2 A. Yes, sir.

3 EXAMINER McKENNEY: I have no further
4 questions. You may step down.

5 Any objection to the admission of
6 Respondent's Exhibit 1?

7 MR. LINDGREN: No objections.

8 EXAMINER McKENNEY: It will be so
9 admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER McKENNEY: Anything further for
12 the court, Mr. Lindgren?

13 MR. LINDGREN: Nothing, your Honor.

14 EXAMINER McKENNEY: Mr. Montgomery, do
15 you have anything else you would like to add to this
16 proceeding?

17 MR. MONTGOMERY: As far as paperwork, no.
18 But I would like to know why -- why they kept on
19 trying to get the 250 bucks off of me when I wasn't
20 on the phone. If I was guilty of it, I would have
21 paid it in payments or something or borrowed it from
22 my boss.

23 EXAMINER McKENNEY: Mr. Montgomery, that
24 was already established by Mr. Frye how they arrived
25 at the \$250 payment. We had no cross-examination for

1 him on that matter. And the violation itself was
2 demonstrated by the Trooper, at least the Trooper
3 testified during cross-examination. I am not sure
4 exactly what else your question pertains to, why they
5 charged for a violation?

6 MR. MONTGOMERY: Yes. Well, I mean, I
7 didn't receive anything on the matter as far as not
8 being able to talk, but the company got these things
9 three years ago and I don't -- never mind.

10 EXAMINER MCKENNEY: I am not sure what
11 your question is.

12 All right. Thank you, Mr. Montgomery.

13 Hearing that, if there is nothing further
14 for the court, at this time we are adjourned.

15 Let's go off the record.

16 (Thereupon, at 11:18 a.m., the hearing
17 was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, October 21,
2015, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6107)

- - -

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Summary: Transcript in the matter of Jerry W. Montgomery hearing held on 10/21/15 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.