

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Kenneth :  
Wylie, Notice of Apparent : Case No. 15-2029-TR-CVF  
Violation and Intent to :  
Assess Forfeiture. :

- - -

PROCEEDINGS

before Bryce McKenney, Attorney Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-D, Columbus, Ohio, called at 10:15  
a.m. on Thursday, April 21, 2016.

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1 APPEARANCES:

2 Michael DeWine, Ohio Attorney General  
3 By Werner L. Margard, III, Esq.  
4 Assistant Attorney General  
5 180 East Broad Street, 6th Floor  
6 Columbus, Ohio 43215

7 On behalf of the Staff of the  
8 PUCO.

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INDEX

- - -

WITNESSES:	PAGE
INSPECTOR ROBERT K. RICHARDS	
Direct Examination by Mr. Margard	5
Examination by the Attorney Examiner	9
INSPECTOR MATTHEW LEITE	
Direct Examination by Mr. Margard	10
Examination by the Attorney Examiner	12
THOMAS PERSINGER	
Direct Examination by Mr. Margard	13

- - -

STAFF EXHIBITS	ID'D	REC'D
1 - Driver/Vehicle Examination Report, 8/5/15	7	16
2 - Notice of Preliminary Determination	14	16

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Thursday Morning Session,  
April 21, 2016.

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ATTORNEY EXAMINER MCKENNEY: Let's go on the record. Good morning. The Public Utilities Commission of Ohio calls for hearing at this time and place Case No. 15-2029-TR-CVF, being In the Matter of Kenneth Wylie, Notice of Apparent Violation and Intent to Assess Forfeiture. My name is Bryce McKenney, and I'm the Attorney Examiner assigned by the Commission to hear this case.

At this time I'd like to take the appearances of the parties. On behalf of Staff.

MR. MARGARD: Thank you, your Honor. On behalf of the Transportation Staff of the Public Utilities Commission of Ohio, Mike DeWine, Ohio Attorney General, William L. Wright, Section Chief, Public Utilities Section, by Assistant Attorney General Werner L. Margard, 180 East Broad Street, 6th Floor, Columbus, Ohio.

ATTORNEY EXAMINER MCKENNEY: Thank you, Mr. Margard.

At this time I'd like to note for the record the Respondent has not arrived for hearing in this matter. It is now 10:15.

1 Mr. Margard.

2 MR. MARGARD: Thank you, your Honor. I  
3 would like to proceed by calling the inspectors, if I  
4 may, just for completeness of the record. I would  
5 first call Inspector Richards to the stand.

6 ATTORNEY EXAMINER McKENNEY: Okay.  
7 Inspector Richards, please raise your right hand.

8 (Inspector Richards was sworn.)

9 ATTORNEY EXAMINER McKENNEY: You may be  
10 seated.

11 - - -

12 INSPECTOR ROBERT K. RICHARDS,  
13 being first duly sworn, as prescribed by law, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MARGARD:

17 Q. Please state your name.

18 A. Robert Keith Richards.

19 Q. And by whom are you employed and in what  
20 capacity?

21 A. The State of Ohio, and the State Highway  
22 Patrol.

23 Q. Were you on duty on August 5th, 2015?

24 A. Yes, sir.

25 Q. And in the course of your duties on that

1 date did you have the opportunity to conduct an  
2 inspection of a vehicle being driven by the  
3 Respondent in this case, Kenneth Wylie?

4 A. Yes, sir.

5 Q. Can you please explain the circumstances  
6 that resulted in that inspection?

7 A. Me and my co-inspector were heading to a  
8 location of an enforcement blitz. As we were coming  
9 up to the back of the trailer of said person, we  
10 heard the rumble strips of the tires. We both looked  
11 over and saw that the truck was almost completely  
12 over the white line onto the rumble strips. At that  
13 point we were catching up to him, and he was slowing  
14 down. My co-inspector noticed that he was on his  
15 phone. I then looked over, noticed that he was on  
16 his phone as well. I backed off, got behind him. We  
17 followed him for a mile or two and made the traffic  
18 stop.

19 Q. When you say that he was on his phone,  
20 you were able to physically see the phone in his  
21 hand?

22 A. Yes. We both saw him and the phone not  
23 in his face but above the steering wheel looking at  
24 the phone.

25 Q. Okay. And did you, as a result of your

1 inspection, generate a report?

2 A. Yes, sir.

3 MR. MARGARD: May I approach, your  
4 Honor?

5 ATTORNEY EXAMINER McKENNEY: You may.

6 MR. MARGARD: Your Honor, I have marked  
7 for purposes of identification as Staff Exhibit  
8 No. 1.

9 ATTORNEY EXAMINER McKENNEY: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 BY MR. MARGARD:

12 Q. Inspector Richards, do you have before  
13 you Staff Exhibit 1?

14 A. Yes, sir.

15 Q. Is this a copy of the report that you  
16 generated?

17 A. Yes, sir.

18 Q. And what was the violation that you  
19 determined?

20 A. That the driver was using a hand-held  
21 device and it caused him to go off the right side of  
22 the road.

23 Q. Did you have a conversation with the  
24 driver?

25 A. Yes, sir.

1 Q. Did he offer an explanation?

2 A. He offered several.

3 Q. Can you share some of those with us?

4 A. Co-Inspector Leite was the one that made  
5 the initial approach. I stood back as backup because  
6 it was my stop, and I believe he said --

7 ATTORNEY EXAMINER McKENNEY: Inspector  
8 Richards, did you hear him say this yourself?

9 THE WITNESS: Some of it. I didn't hear  
10 all of it.

11 ATTORNEY EXAMINER McKENNEY: Just tell  
12 us what you heard.

13 A. That -- Matt asked him if he was texting  
14 on the phone. He said no. He said he was getting  
15 directions. Matt said okay, but you still can't use  
16 a phone in that nature.

17 Q. So he acknowledge in your presence  
18 anyway that he was using his phone at the time of the  
19 stop?

20 A. I heard him say he was using it to get  
21 directions.

22 Q. Okay. To the best of your knowledge, is  
23 this report accurate?

24 A. Yes, sir.

25 MR. MARGARD: Your Honor, I have no



1 further questions for Inspector Richards.

2 ATTORNEY EXAMINER McKENNEY: Thank you.

3 - - -

4 EXAMINATION

5 BY ATTORNEY EXAMINER McKENNEY:

6 Q. Inspector Richards, I have a few  
7 questions. What type of vehicle were you in when you  
8 approached?

9 A. My vehicle, sir?

10 Q. Yes.

11 A. It's a 2012 Chevy pursuit-rated Tahoe.

12 Q. Is that vehicle marked?

13 A. Yes, sir.

14 Q. Were you in uniform?

15 A. Yes, sir. Not in this uniform, but our  
16 other.

17 Q. Thank you. Can you describe the vehicle  
18 you approached?

19 A. I cannot tell you the color, but I know  
20 it was a 2014 Kenworth and a 2011 utility trailer.  
21 It was marked with not -- Navajo Express,  
22 Incorporated.

23 Q. Do you know approximately what time of  
24 day it was?

25 A. The report says it was 7:58.

1           Q.    Do you know what the weather was like on  
2 that day?

3           A.    No, I do not, sir.

4           Q.    Do you remember what mile marker you  
5 were at?

6           A.    The report says 133.

7           ATTORNEY EXAMINER McKENNEY:   Thank you.  
8 I have no further questions.

9                   (Witness excused.)

10           ATTORNEY EXAMINER McKENNEY:   Mr.  
11 Margard.

12           MR. MARGARD:   Thank you, your Honor.   I  
13 would call Inspector Leite.

14           ATTORNEY EXAMINER McKENNEY:   Inspector,  
15 would you please raise your right hand?

16                   (Instructor Leite was sworn.)

17           ATTORNEY EXAMINER McKENNEY:   Thank you.  
18 You may be seated.

19                               - - -

20                   INSPECTOR MATTHEW LEITE,  
21 being first duly sworn, as prescribed by law, was  
22 examined and testified as follows:

23                               DIRECT EXAMINATION

24           BY MR. MARGARD:

25           Q.    Will you please state your name.

1 A. Matthew Leite.

2 Q. Inspector; is that correct?

3 A. Yes, correct.

4 Q. Inspector Leite, by whom are you  
5 employed and in what capacity?

6 A. Ohio State Highway Patrol as a Motor  
7 Carrier Enforcement Inspector.

8 Q. You've been present during the hearing  
9 thus far; is that correct?

10 A. Correct, sir.

11 Q. And you heard the testimony from  
12 Inspector Richards; right?

13 A. Yes, sir.

14 Q. Do you have anything to add in terms of  
15 your observations or your discussions with the  
16 driver?

17 A. I -- we both observed the driver going  
18 completely past the rumble strips off the right side  
19 of the road. We were in the turning lane portion of  
20 the Ohio Turnpike. We were in Lane No. 2, the middle  
21 lane, already in the process of passing him on the  
22 way to the enforcement blitz. Once we observed him  
23 past the right side of the road, the white line and  
24 the rumble strips, we pulled beside him.

25 I observed the driver holding a phone in

1 his hand. At that point, Inspector Richards slowed  
2 down to get behind the vehicle and initiate the stop.  
3 I made a passenger-side approach on the vehicle at  
4 that time to initiate the inspection. I asked the  
5 driver what he was doing when he went off the side of  
6 the road. At that time he told me he was attempting  
7 to get a drink of coffee. I then said sir, I  
8 observed a phone in your hand, what were you doing,  
9 and he said he was using it to get directions.

10 Q. Do you have anything further to add with  
11 respect to this inspection?

12 A. Not at this time, no.

13 Q. The report is accurate and truthful, to  
14 the best of your knowledge?

15 A. Yes, sir.

16 Q. As was Inspector Richards' testimony?

17 A. Yes, sir.

18 MR. MARGARD: I have nothing further for  
19 Inspector Leite.

20 - - -

21 EXAMINATION

22 BY ATTORNEY EXAMINER McKENNEY:

23 Q. Inspector Leite, did you see a cup of  
24 coffee inspecting the cab?

25 A. There was one in the cup holder.

1                   ATTORNEY EXAMINER McKENNEY: No further  
2 questions. Thank you.

3                   (Witness excused.)

4                   ATTORNEY EXAMINER McKENNEY: Mr.  
5 Margard.

6                   MR. MARGARD: Thank you, your Honor. I  
7 would call Staff witness Tom Persinger.

8                   ATTORNEY EXAMINER McKENNEY: Please  
9 raise your right hand.

10                  (Mr. Persinger was sworn.)

11                  ATTORNEY EXAMINER McKENNEY: Thank you.  
12 You may be seated.

13                                 - - -

14                   THOMAS PERSINGER,  
15 being first duly sworn, as prescribed by law, was  
16 examined and testified as follows:

17                                 DIRECT EXAMINATION

18 BY MR. MARGARD:

19                 Q. State your name, please.

20                 A. My name is Tom Persinger.

21                 Q. And by whom are you employed and in what  
22 capacity?

23                 A. With the Public Utilities Commission as  
24 a Compliance Officer in the Transportation  
25 Department.

1           Q.    And did you have an opportunity to  
2   review the Commission's file with respect to this  
3   case prior to testifying today?

4           A.    Yes, sir.

5           Q.    And did you have an opportunity to  
6   ascertain whether the civil forfeiture in this case  
7   was properly determined?

8           A.    Yes, sir.

9           Q.    In your opinion, was it properly  
10   determined?

11          A.    Yes, sir.

12          Q.    And reasonable?

13          A.    Yes, sir.

14          Q.    Did you also have an opportunity to  
15   ascertain whether the Respondent was served with all  
16   of the required notices?

17          A.    Yes, sir.

18               MR. MARGARD:  Your Honor, may I  
19   approach?

20               ATTORNEY EXAMINER McKENNEY:  You may.  
21   Marked as Staff Exhibit 2?

22               MR. MARGARD:  Yes, your Honor.  Thank  
23   you.

24               (EXHIBIT MARKED FOR IDENTIFICATION.)  
25

1 BY MR. MARGARD:

2 Q. Mr. Persinger, do you have before you  
3 what has been marked as Staff Exhibit No. 2?

4 A. I do.

5 Q. Can you identify that document for me,  
6 please?

7 A. That is a Notice of Preliminary  
8 Determination letter.

9 Q. That was sent to the Respondent in this  
10 case; correct?

11 A. Yes, sir.

12 Q. Timely and properly served?

13 A. Yes, sir.

14 Q. And does it indicate what the forfeiture  
15 amount for this violation is?

16 A. Yes, it does.

17 Q. And what is that amount?

18 A. The amount is \$250.

19 MR. MARGARD: Thank you. Your Honor, I  
20 have no further questions of this witness.

21 ATTORNEY EXAMINER McKENNEY: I have no  
22 questions of Mr. Persinger.

23 (Witness excused.)

24 MR. MARGARD: That concludes the  
25 presentation of my case, your Honor.

1           ATTORNEY EXAMINER McKENNEY: Thank you.  
2       I would like to note that the time is now 10:25, and  
3       the Respondent has not arrived for the hearing.

4           Anything further from Staff?

5           MR. MARGARD: Nothing further, your  
6       Honor -- well, I will further, your Honor, to this  
7       extent, to indicate that as the Respondent has not  
8       appeared, that a default judgment in this case is  
9       appropriate, and we would move for a default  
10      judgment.

11           ATTORNEY EXAMINER McKENNEY: Thank you,  
12      Mr. Margard. Your motion for default judgment will  
13      be taken under advisement.

14           Hearing nothing further, we are  
15      adjourned. Thank you.

16           (EXHIBITS ADMITTED INTO EVIDENCE.)

17           (Thereupon, the hearing was concluded at  
18      10:26 a.m.)

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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 Thursday, April 21,  
2016, and carefully compared with my original  
stenographic notes.

\_\_\_\_\_  
Valerie J. Sloas, Registered  
Professional Reporter and  
Notary Public in and for  
the State of Ohio.

My commission expires June 8, 2016.  
(VJS-80777)

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 15-2029-TR-CVF**

Summary: Transcript In the matter of Kenneth Wylie, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on April 21, 2016 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Sloas, Valerie J. Mrs.