

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of :  
James A. Jones for Notice : Case No.  
of Apparent Violation and : 16-838-TR-CVF  
Intent to Assess Forfeiture.:

- - -

PROCEEDINGS

Before Kerry Sheets, Attorney Examiner, held at  
the offices of the Public Utilities Commission  
of Ohio, 180 East Broad Street, Hearing Room  
11-C, Columbus, Ohio, on Thursday, July 14,  
2016, at 10:00 A.M.

- - -

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- - -

1 APPEARANCES:

2 Mr. Robert Eubanks  
3 Assistant Attorney General  
4 30 East Broad Street  
5 16th Floor  
6 Columbus, Ohio 43215

7 On behalf of the Staff of  
8 the Public Utilities  
9 Commission of Ohio.

10 Mr. James A. Jones  
11 1084 Lamberton Road  
12 Pennboro, West Virginia 26415

13 Appearing Pro se.

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Thursday Morning,  
July 14, 2016.  
- - -

ATTORNEY EXAMINER: I will go ahead and call the hearing. The Public Utilities Commission of Ohio has set for hearing at this time and place Case No. 16-838-TR-CVF in the matter of James A. Jones.

My name is Kerry Sheets, I am an Attorney Examiner with the Commission and I have been assigned to hear this case.

May I now have appearances of the parties, please, starting with the Staff.

MR. EUBANKS: Robert Eubanks on behalf of the Public Utilities Commission. I would like to call to the stand Jonathan Frye.

ATTORNEY EXAMINER: Thank you Now the Respondent. Mr. Jones, give your name and address, please.

MR. JONES: James A. Jones, 1084 Lamberton Road, Pennboro, West Virginia 26415.

ATTORNEY EXAMINER: Okay. Do we have any preliminary matters to take care this morning?

MR. EUBANKS: I do not.

1                   ATTORNEY EXAMINER: Do you have any  
2 witnesses to call?

3                   MR. EUBANKS: I do. I would like to  
4 call Jonathan Frye to the stand

5                   (WITNESS SWORN)

6                   - - -

7                   JONATHAN FRYE  
8 called as a witness on behalf of the Staff,  
9 being first duly sworn, testified as follows:

10                  DIRECT EXAMINATION

11 By Mr. Eubanks:

12                  Q. Can you state your name for the  
13 record?

14                  A. Jonathan Frye.

15                  Q. And could you state your position  
16 with the Public Utilities Commission?

17                  A. I am the Chief of the Compliance  
18 Division.

19                  Q. And what are your duties?

20                  A. To review the assessments that are  
21 assessed against respondents to ensure that the  
22 fines are the correct amount.

23                  Q. And did you, in the current case  
24 involving James A. Jones, did you conduct such a  
25 review?

1 A. Yes.

2 Q. And are you also assigned with  
3 sending out the Notices of Preliminary  
4 Determination?

5 A. That's correct, yes.

6 Q. Did you do that in this case?

7 A. Yes.

8 (EXHIBIT MARKED FOR PURPOSES OF  
9 IDENTIFICATION)

10 MR. EUBANKS: I would like to have  
11 this exhibit eventually marked as Staff Exhibit  
12 1.

13 Q. Could you take a look at that  
14 document, please?

15 A. Yes.

16 Q. Could you identify it?

17 A. It is the Notice of Preliminary  
18 Determination letter. It's the letter that is  
19 sent to a respondent after we have conducted a  
20 telephone conference or an in person conference.  
21 When we are unable to reach a resolution of  
22 the case we will issue this notice advising the  
23 respondent that they can either pay the  
24 forfeiture or they make a request for  
25 administrative hearing to contest the violation

1 and the fine through administrative hearing  
2 process.

3 Q. Okay. Did you actually send that?

4 A. Yes. This notice was sent on March  
5 23rd, 2016.

6 Q. Okay. Are you trained in your  
7 current position?

8 A. Yes.

9 Q. And how so?

10 A. I have taken the North America Out  
11 of Service Training, hazmat vehicle inspection  
12 training, management, supervisory management  
13 training as well.

14 MR. EUBANKS: I have no further  
15 questions.

16 ATTORNEY EXAMINER: No further  
17 questions? Mr. Jones, do you have any questions  
18 for this witness?

19 MR. JONES: No.

20 ATTORNEY EXAMINER: None? You are  
21 excused. Do you have any other witnesses?

22 MR. EUBANKS: Yes. I would like to  
23 call Officer Richard Bell to the stand.

24 (WITNESS SWORN)

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OFFICER RICHARD BELL

called as a witness on behalf of the Staff,  
being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eubanks:

Q. Could you state your name for the  
record?

A. Richard Bell.

Q. And what is your position?

A. Federal Motor Carrier Enforcement,  
Ohio State Patrol, State of Ohio.

Q. Are you trained for your current  
position?

A. Correct. I am.

Q. How so?

A. I have taken the North American  
hazmat, school bus, tankers, other public safety  
classes to ensure my ability to safely operate  
and control, administer the public federal rules  
and regulations

Q. Are you current in your training?

A. I am sorry?

Q. Are you current in your training?

A. Yes.

Q. I would like to hand you what I hope

1 to eventually be marked as Staff Exhibit 2.

2 (EXHIBIT HEREBY MARKED FOR  
3 IDENTIFICATION PURPOSES)

4 Q. Can you take a look at that document  
5 and identify it if you can?

6 A. Yes. This is a PUCO examination  
7 report that we provide. After we pull over a  
8 truck we send the information down to the PUCO  
9 all we will print this out and it will have unit  
10 number and my name and stuff on it.

11 Q. Could you compare that with the  
12 report that you wrote at the time of the  
13 violation and make sure that it's correct?

14 A. Sure. Same report number, Ohio  
15 State Patrol OH3267010375. Date is correct,  
16 2-9-2016.

17 Q. Same violation?

18 A. Same violation. Same 329.82 A1.

19 Q. Same vehicle identification?

20 A. Correct. Freightliner 2016 trailer.

21 Q. Okay. So, according to this  
22 document you cited James Jones with 392.82 A 1;  
23 is that correct?

24 A. That's correct.

25 Q. Could you describe or explain why

1     you cited that violation?

2             A.     I cited 392.82-1, use of a hand-held  
3     mobile telephone device while operating or  
4     driving a commercial motor vehicle.

5             The reason I cited him for, I was on  
6     the entrance ramp parked sideways, and park  
7     sideways so I can get a view of the trucks  
8     coming down the highway. I observed the driver  
9     coming down the highway using a hand-held  
10    communication device in his hand.

11            After he went by me I approached the  
12    vehicle, pulled alongside of the vehicle so I  
13    could confirm that he had actually had a  
14    communication device in his hand. Upon that,  
15    slowed down, pulled behind him, and pulled this  
16    vehicle over.

17            I slowed down and pulled him over  
18    and approached him and asked various questions  
19    like we do. First of all you haven't done  
20    anything wrong. This is an inspection, I am  
21    doing the inspection.

22            And I asked him about the using a  
23    hand-held communication device. I also put in  
24    my notes the conversation we had. And if I  
25    could read them to you.

1 "Driver was using a hand-held  
2 communication device while operating (driving) a  
3 commercial motor vehicle. Observed from  
4 stationary and driving beside the vehicle.  
5 After stopping the driver he stated he was just  
6 reading the e-mail his company sent him. And  
7 that is how they communicate to the dispatch."  
8 That is what he shared with me.

9 My notes confirm he was actually  
10 using a hand-held communication device while  
11 operating a commercial motor vehicle.

12 Q. Did you see the device?

13 A. Yes.

14 Q. He showed it to you?

15 A. In his hand, yes. I asked him like  
16 I ask them all. I used to take pictures of  
17 them, but I no longer take pictures of them with  
18 the numbers, unfortunately.

19 Q. So if I can summarize correctly, you  
20 saw him as he was approaching you and you were  
21 sitting on the entrance ramp watching, and then  
22 you would have saw him still on the device when  
23 he passed you?

24 A. Yes.

25 Q. And then as you approached him and

1 you stopped the vehicle and you opened the door  
2 you then saw the same device again?

3 A. I asked him, yes, I communicated to  
4 him the reason. I tell them all since it's not  
5 a consensual stop, the reason I stopped you for,  
6 you haven't done anything wrong.

7 Then I tell them the violation I saw  
8 and that's why I stopped him. And that is when  
9 he communicated to me that's the only way that  
10 they get dispatched, you know, that is how the  
11 dispatcher dispatched.

12 I thought if you need to see that  
13 you can pull over on the side of the road. Me  
14 personally and for him, that is dangerous while  
15 driving to operate a hand-held communication  
16 device.

17 Q. When he was driving down this road,  
18 how was the phone held? Was it held in front of  
19 his face?

20 A. Yes. I observed the phone in is  
21 hand (indicating). That is -- normally if they  
22 got it on the seat you can't tell unless you ask  
23 them to get out of traffic, pull beside him.

24 But if it's in their hand you can  
25 clearly see. It's very simple. Where we sit we

1 are just angled more. We actually come on the  
2 entrance ramp and turn sideways so actually look  
3 and get a good view, frontal view. Like with  
4 the seat belts you can clearly see.

5 MR. EUBANKS: I have no further  
6 questions for the witness.

7 ATTORNEY EXAMINER: Mr. Jones, do  
8 you have any questions for this witness?

9 MR. JONES: Yes, I do. Sir, I have  
10 the phone that they are referring to right --

11 ATTORNEY EXAMINER: Please come up  
12 here if you --

13 MR. JONES: It has no e-mail, no  
14 texting. And here is a paper from Penske.

15 ATTORNEY EXAMINER: You have to ask  
16 some questions of him now. And speak up so we  
17 can all hear.

18 CROSS-EXAMINATION

19 By Mr. Jones:

20 Q. Did you see me with this phone by my  
21 ear?

22 A. You told me you had a phone. It was  
23 like this (indicating).

24 Q. And I explained to you that day this  
25 is my logbook; right?

1           A.    You said you was reading e-mail that  
2   your company sent to you.

3           Q.    This --

4           A.    A hand-held communication device.

5           Q.    This phone has two programs on it.  
6   And you did go through it that day; right?  
7   Check for calls and I told you the last call I  
8   made was two days prior to that in Canada;  
9   correct?

10          A.    I am not sure if you shared that  
11   information.

12          Q.    Right.  But you searched through  
13   the phone that day in that parking lot in your  
14   car; correct?

15          A.    I looked through what you showed me,  
16   but --

17          Q.    This phone has two programs on it.  
18   It has a Cellcom, which that's the address that  
19   they send us --

20                ATTORNEY EXAMINER:  You have to ask  
21   questions now.  You can't testify.  You will get  
22   you chance to do that.

23          Q.    Sorry.  Whenever I was in my truck I  
24   had my arm on my arm rest like that; right?

25          A.    When you went by your hand was on

1 the steering wheel and the other hand you had a  
2 hand-held device. So you could read it while  
3 you were driving. The reason I pulled you over  
4 was because of the violation.

5 MR. JONES: Well, I don't know what  
6 questions to ask because I don't know, but I do  
7 have a paper right here that states that there  
8 is no e-mail, no texting or anything on it.  
9 That is why I brought it with me.

10 And this is just electronic log is  
11 all that is. So I guess no further questions  
12 then. Thank you.

13 ATTORNEY EXAMINER: Does staff  
14 have anything on redirect?

15 MR. EUBANKS: Is that going to be an  
16 exhibit or --

17 MR. JONES: Yes.

18 MR. EUBANKS: Okay. I have no  
19 further questions.

20 ATTORNEY EXAMINER: You are  
21 excused. Now, Mr. Jones, do you want to  
22 present testimony?

23 MR. JONES: I do.

24 ATTORNEY EXAMINER: I am sorry.  
25 Was Staff finished?



1                   MR. EUBANKS: I would like to have  
2 the exhibits admitted into evidence and marked  
3 as requested. Otherwise, yes.

4                   ATTORNEY EXAMINER: I will admit  
5 your exhibits into evidence.

6                   (EXHIBITS HEREBY ADMITTED INTO  
7 EVIDENCE)

8                   ATTORNEY EXAMINER: And Mr. Jones  
9 now.

10                   (WITNESS SWORN)

11                   - - -

12                   JAMES A. JONES  
13 called as a witness, being first duly sworn,  
14 testified as follows:

15                   ATTORNEY EXAMINER: Now, I want  
16 you to present your testimony in a narrative  
17 style. Try to be short and concise.

18                   MR. JONES: Okay.

19                   ATTORNEY EXAMINER: Go ahead.

20                   MR. JONES: This phone here has two  
21 programs on it.

22                   ATTORNEY EXAMINER: You are  
23 holding up your cell phone.

24                   MR. JONES: Yes. This is a company,  
25 Penske Logistics, cell phone.

1                   ATTORNEY EXAMINER:   Talk to the  
2   court reporter.

3                   MR. JONES:   This is a Penske  
4   Logistics cell phone.   It has two programs.  
5   It has electronics logbook on it, and it has a  
6   Cellcom program.   They send you the address of  
7   the place you are picking up, or you are  
8   receiving.

9                   And the day that this happened they  
10   didn't have this fastened to the dash, but they  
11   do now.   I laid it up on the dash of the truck,  
12   it come down in the floor and I picked it up and  
13   to make sure I was still on the drive line but I  
14   was new to the electronic log.

15                  And the officer said that he knew I  
16   was on the phone because my lips was moving.  
17   Well, I sing to the radio or anything, but I was  
18   sitting in my truck with the arm rest and that  
19   phone was like that (indicating).   You know,  
20   this phone is nothing more than just a log book  
21   and gives us our address for where picking up or  
22   delivering things.

23                  So, that is the reason they give me  
24   the paper to explain that it don't have them  
25   programs on it.   It is all shut off.   There is

1 no texting, no e-mailing, no nothing on it.

2 ATTORNEY EXAMINER: Does that  
3 complete your testimony?

4 MR. JONES: It does.

5 ATTORNEY EXAMINER: Do you want to  
6 enter anything into evidence, the paper?

7 MR. JONES: I would like to have  
8 this.

9 ATTORNEY EXAMINER: You want to  
10 enter that as an exhibit?

11 MR. JONES: Yes.

12 ATTORNEY EXAMINER: That is the one  
13 that Staff has seen?

14 MR. EUBANKS: Yes.

15 ATTORNEY EXAMINER: Okay. Let's  
16 mark that as Respondent's Exhibit 1.

17 (EXHIBIT HEREBY MARKED FOR  
18 IDENTIFICATION PURPOSES)

19 ATTORNEY EXAMINER: And you have to  
20 give that to the reporter. Just put it up here.  
21 I will mark it.

22 Does Staff have any questions on  
23 cross-examination?

24 MR. EUBANKS: I do. If I could see  
25 that exhibit.

1 ATTORNEY EXAMINER: All right.

2 CROSS-EXAMINATION

3 By Mr. Eubanks:

4 Q. Have you read this?

5 A. I have.

6 Q. This document?

7 A. Yes.

8 Q. Were you -- at the time that you  
9 were coming down the highway and you had the  
10 phone in your hand were you using it to access  
11 the electronic logbook?

12 A. No. If that truck is moving that  
13 logbook does not work. You can't change  
14 anything, you can't do nothing when that truck  
15 is moving. Because see how this works? This  
16 connects to the XYX box that is connected to the  
17 ECM. So when that truck is in motion there is  
18 no access of anything on it.

19 Q. So what were you looking at?

20 A. Right here (indicating). I would be  
21 happy to show you. Do you see this is Cellcom.  
22 This gives me my address where I am picking up  
23 or where I am delivering to. And this thing  
24 here on the dash, it falls to the floor. I pick  
25 it up.

1                   And when you are going down  
2   the road, right here is what you are going to  
3   see, that's the screen you will see. That is  
4   the logbook. And I was making sure that this  
5   right here where it's off duty, it should be a  
6   D. Because I was all new to electronic log, I  
7   just started with them and when it fell on the  
8   floor I pick it up, I am sitting in the seat  
9   just like this. This hand on the steering  
10  wheel, and my arm is on the arm rest.

11                   I pick it up just like this  
12  (indicating). Still on the drive line, going  
13  back up here.

14                Q.    So it does work then. You can look  
15  at the screen when you are moving?

16                A.    Yes. The screen is always on when  
17  it's moving.

18                Q.    Okay.

19                A.    The screen is always on when it's  
20  moving.

21                Q.    All right. And you were reading the  
22  screen?

23                A.    I was making sure that said D  
24  instead of off.

25                Q.    Okay. When the officer approached

1 you did you still have the phone in your hand?

2 A. Whenever he come up beside me -- I  
3 seen him setting on that ramp before I ever  
4 passed him. I seen him sitting on that ramp.

5 And when he come up beside me, yes,  
6 I seen him. I seen him coming up beside me, but  
7 as far as I was concerned I am not on the phone.  
8 I picked it up off the floor. This is my  
9 logbook and I would like to say, again, I was  
10 new to electronic log, make sure I was on drive  
11 line. I didn't know that I was doing anything  
12 wrong.

13 Q. But my question is did you have  
14 the phone in your hand at the time that  
15 the officer approached you?

16 A. When he pulled me over?

17 Q. Yes.

18 A. Yes.

19 Q. Okay. And do you agree with  
20 the officer's statement that you also had the  
21 phone in your hand as you were passing the  
22 officer?

23 A. I am not going to agree to that  
24 because, like I say, I don't know -- it was  
25 laying on the dash, it fell on the floor. And

1 I can't imagine taking me that long to pick it  
2 up and laying on the dash. But, no, I don't  
3 agree with that.

4 Q. So you only picked it up off the  
5 floor once the officer stopped you?

6 A. No, sir.

7 Q. When did you pick the phone off the  
8 floor?

9 A. I seen the officer setting up on the  
10 ramp. Well, if you ever drove across there that  
11 road is like a washboard. And this thing was  
12 laying on the dash. It falls down, I picked it  
13 up probably approximately at the time I am  
14 passing the ramp that he is setting on.

15 You know, but I can't tell you  
16 exactly the inch where I was at when I picked it  
17 up because I don't know.

18 Q. But you would have had the phone at  
19 some point when you were passing in your hand?

20 A. I had my logbook in my hand, yes,  
21 sir, whenever he was coming up beside me.

22 MR. EUBANKS: Okay. I have no  
23 further questions.

24 ATTORNEY EXAMINER: Do you have  
25 anything else to add in the way of conclusion of

1 this case, your part of the case?

2 MR. JONES: I don't. I just don't  
3 care about paying the money if that is what you  
4 want, but the points that I am going to get off  
5 of this is going to ruin my job for me, when I  
6 didn't do anything to, you know.

7 If they are talking about me having  
8 this phone in my hand, I will not sit and lie  
9 and tell you I didn't because I did pick it up  
10 off the floor. But I was not using this phone.  
11 It don't work when it is going down the road.  
12 All you can see is that screen right there.  
13 And it stays on all the time.

14 It will be white up here, says in  
15 motion, and it don't work when it goes down the  
16 road.

17 So there is nothing more that I can  
18 add.

19 ATTORNEY EXAMINER: Does that  
20 complete your testimony?

21 MR. JONES: It does, yes, sir.

22 ATTORNEY EXAMINER: Does Staff have  
23 anything further?

24 MR. EUBANKS: I have no further  
25 questions.



1                   ATTORNEY EXAMINER:    You are  
2   excused.

3                   MR. JONES:   Thank you.

4                   ATTORNEY EXAMINER:    Any other  
5   matters to take care of today?

6                   MR. EUBANKS:   I have none.

7                   ATTORNEY EXAMINER:    I will consider  
8   this matter submitted on the record.   Thank you  
9   all for coming.

10                   (At 10:30 A.M. the hearing was  
11   concluded)

12                                   - - -

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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 July  
14, 2016, and carefully compared with my  
original stenographic notes.

\_\_\_\_\_  
Michael O. Spencer,  
Registered Professional  
Reporter.

- - -

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

**Commission of Ohio Docketing Information System on**

**8/1/2016 4:17:45 PM**

**in**

**Case No(s). 16-0838-TR-CVF**

Summary: Transcript in the matter of the James A. Jones hearing held on 07/14/16.  
electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer,  
Michael O. Mr.