

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of David G. :  
Zeigler, Notice of Apparent :Case No.  
Violation and Intent to :16-2170-TR-CVF  
Assess Forfeiture. :

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PROCEEDINGS

Before Jim Lynn, Attorney Examiner, held at the  
offices of the Public Utilities Commission of  
Ohio, 180 East Broad Street, Hearing Room 11-D,  
Columbus, Ohio, on Thursday, September 28, 2017,  
at 10:00 A.M.

- - -

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1 APPEARANCES:

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

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

10 Mr. David G. Zeigler  
11 4394 East Township Road 58  
12 Bloomville, Ohio 44818

13 Appearing Pro se.

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Thursday Morning,  
September 28, 2017.  
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ATTORNEY EXAMINER: The Public  
Utilities Commission of Ohio has assigned for  
hearing at this time and place Case No.  
16-2170-TR-CVF In the Matter of David Zeigler  
Notice of Apparent Violation and Intent to  
Access Forfeiture.

I am Jim Lynn, the Attorney Examiner  
assigned to hear this case. And at this time we  
will have the appearances of the parties. We  
will start with the Ohio Attorney General's  
office.

MR. BEELEER: Thank you, your Honor.  
On behalf of the Staff of the Public Utilities  
Commission of Ohio, Ohio Attorney General Mike  
DeWine. I am Steve Beeler, Assistant Attorney  
General, 30 East Broad Street, Columbus, Ohio  
43215.

ATTORNEY EXAMINER: Thank you. And  
Mr. Zeigler, your name and address, please.

MR. ZEIGLER: Yes. David Zeigler.  
My address is 4394 East Township Road 58,  
Bloomville, Ohio 44818.

1                   ATTORNEY EXAMINER: Thank you. We  
2 will get on with our proceeding. Mr. Beeler, I  
3 assume you have one or more witnesses.

4                   MR. BEELEER: Yes, Your Honor. Thank  
5 you. At this time the Staff would call  
6 Inspector Byrne to the stand.

7                   ATTORNEY EXAMINER: Inspector Byrne,  
8 come up here, please. Thank you.

9                   (WITNESS SWORN)

10                  ATTORNEY EXAMINER: Please have a  
11 seat. Mr. Beeler, go ahead.

12                  MR. BEELEER: Thank you.

13                                 - - -

14                                 MICHAEL J. BYRNE  
15 called as a witness, being first duly sworn,  
16 testified as follows:

17                                 DIRECT EXAMINATION

18 By Mr. Beeler:

19                   Q. Good morning.

20                   A. Good morning.

21                   Q. Just start here, please state your  
22 full name for the record.

23                   A. Inspector Mike Byrne, Michael J.  
24 Byrne.

25                   Q. Where are you employed?

1           A.     With the Ohio State Highway Patrol.

2           Q.     What is your position within  
3 the Patrol?

4           A.     Motor Carrier Enforcement Inspector.

5           Q.     Okay. How long have you been with  
6 the Patrol?

7           A.     Since 2000.

8           Q.     And what are your duties in your  
9 capacity as a Motor Carrier Inspector just  
10 generally?

11          A.     Generally the inspection of  
12 commercial motor vehicles, in addition to  
13 inspection of drivers, which includes specials  
14 of hazardous material property carrying  
15 vehicles.

16          Q.     Okay. What sort of training do you  
17 have in the area of motor carrier inspections?

18          A.     Well, the initial training is the  
19 North American Standard Level 1. In addition to  
20 that is your basic hazardous material, which  
21 includes bulk, cargo tank.

22                 And then additional training every  
23 year at the Patrol Academy, which includes  
24 hazardous materials. Monthly training at roll  
25 call meetings covering different sections of

1 law, if need be updates of hazardous materials  
2 as well.

3 Q. So you have initial training then  
4 you have yearly kind of refresher continuing  
5 courses?

6 A. We have to maintain certification  
7 with some of the inspections.

8 Q. Just generally would you say that  
9 motor carrier inspections that you conduct are  
10 to protect Ohio's traveling public?

11 A. Yes, sir.

12 Q. How many inspections do you think  
13 you do in a year, approximately?

14 A. Up to a thousand.

15 Q. Somewhere between 500 --

16 A. Ball park 950.

17 MR. BEELEER: May I approach  
18 the witness, your Honor?

19 ATTORNEY EXAMINER: Yes. Yes, you  
20 may.

21 (EXHIBIT HEREBY MARKED FOR  
22 IDENTIFICATION PURPOSES)

23 MR. BEELEER: I have what has been  
24 previously marked as Staff Exhibit 1. This is  
25 the Driver/Examination Report with inspection



1 date of 8-19-2016.

2 ATTORNEY EXAMINER: Thank you.

3 Q. Take a quick second to look at that.  
4 Do you recognize this document?

5 A. Yes, sir.

6 Q. Is this document a Patrol record?

7 A. Yes, sir

8 Q. Is it kept in the ordinary business  
9 of the Patrol?

10 A. Yes, sir.

11 Q. And it's the practice of the Patrol  
12 to make this report; correct?

13 A. That is correct.

14 Q. And you report on matters observed  
15 pursuant to a duty imposed by law to which there  
16 is a duty by you to report; correct?

17 A. Yes, sir.

18 Q. Is this document in the same,  
19 substantially the same condition as when you  
20 prepared it?

21 A. Correct.

22 Q. It's in a little bit different  
23 format, but it has the similar information in  
24 there; correct?

25 A. Yes.

1           Q.    Was the reason for you producing  
2 this report to report an inspection of Central  
3 Ohio Farmers Co-Op, Inc?

4           A.    It was an observation I had seen  
5 while following a commercial motor vehicle.

6           Q.    Do you remember this inspection?

7           A.    Yes, sir.

8           Q.    Is the driver listed on the report?

9           A.    Mr. David Zeigler of Bloomville.

10          Q.    Is Mr. Zeigler here today?

11          A.    Yes, sir.

12          Q.    Thank you. Does the driver get a  
13 copy of the report at the stop?

14          A.    Yes, he does.

15          Q.    And you gave Mr. Zeigler a copy?

16          A.    Yes, I did.

17          Q.    Okay. Are there violations noted on  
18 the report?

19          A.    Yes.

20          Q.    I notice there are six violations  
21 noted. However, the understanding that the  
22 forfeitures today only involve the failure to  
23 stop at a railroad crossing and the using a  
24 hand-held mobile telephone while operating a  
25 commercial motor vehicle; is that correct?

1           A.    That is correct.

2           Q.    Okay.  Let's start with the failure  
3 to stop at a railroad crossing.  That is 49 CFR  
4 329.10 (a)  You observed Mr. Zeigler failing to  
5 stop at a railroad crossing; correct?

6           A.    That's correct.

7           Q.    Just generally in a narrative form  
8 tell me how you observed that.

9           A.    At the time I was on my way to  
10 Findlay at our office.  We were to have a  
11 meeting at 9:00 o'clock.  As you can see the  
12 start time was at 7:34.

13                   I was going to get there a little  
14 early to do some maintenance on the car, wash  
15 it, whatnot.  So I had a little bit of time.

16                   Simply put, I wanted to see if the  
17 vehicle was going to stop for the railroad  
18 tracks.  I knew of the area very well, I knew of  
19 the railroad tracks.  And observing the  
20 vehicle -- well, first of all he was placarded  
21 so talking about hazardous material.  It was  
22 noticeable with the placard with ID numbers and  
23 Class 3 flammable.

24           Q.    And it was properly placarded;  
25 correct?

1           A.    Yes.  Which is why I wanted to see.  
2   We have a placarded vehicle, I want to see if it  
3   was going to stop for the tracks.  So I watched  
4   it.  Specifically I watched of the left steering  
5   wheel, the well nut covers, I wanted to use that  
6   as a reference, so I used that.

7                   And I watched the rotation of the  
8   wheel nut covers.  Now, the commercial slowed  
9   down but it never stopped.  Crossed the tracks.

10           Q.    Okay.

11           A.    Then there --

12           Q.    And tell me a little bit more about  
13   your observation point.  You said you were --  
14   just go ahead and just point it out a little  
15   further.

16           A.    All right.  Explain a little  
17   further.  The commercial did not stop.  Did slow  
18   down, but did not come to a complete stop.  Just  
19   continued over the tracks.

20                   After seeing that I looked up to see  
21   what the driver was doing.  He was visible, he  
22   was visible in his left rear view mirror.

23           Q.    Before you get there, I want to ask  
24   you about -- and you might have said this, but I  
25   want you to do it in a little more detail.

1                   Where were you in relation to the  
2 truck when you observed the rolling across the  
3 tracks?

4           A.    I was behind, there was one car  
5 separating us, so I would have been one, two  
6 cars behind the commercial vehicle.

7           Q.    One car in between you?

8           A.    One car in between.

9           Q.    Was it just a regular car, was it a  
10 truck or an SUV?

11          A.    Just a regular car. It was not  
12 something that prohibited my vision of the --

13          Q.    Okay. And do you recall if you  
14 pulled over to the side a little bit to get a  
15 better vision, or anything like that or --

16          A.    If I observed the driver in the  
17 vehicle I could very well have moved to the left  
18 to see the violation.

19          Q.    Okay. All right. So, turning to  
20 the report, in the area marked Violations are  
21 the six violations listed. I want to draw your  
22 attention to the two that are at issue here  
23 today.

24                   You have in the violation  
25 description, can you read for the two

1 violations, just the violation description?

2 A. Okay. All right. The railroad  
3 crossing, this is the general violation that the  
4 report has. And then explain further.

5 It says, "Failure to stop at  
6 railroad crossing - CMV requiring display of  
7 hazardous material placards."

8 Then I go on to say "Visibly saw the  
9 wheel nut covers of the left steer axle wheel  
10 continue to turn as the CMV failed to stop at  
11 the railroad crossing on U.S. 224 west of U.S.  
12 23, Alvada, Ohio."

13 Going to the next violation, this is  
14 again the generic violation that the program  
15 has.

16 "Using a hand-held mobile telephone  
17 telephone while operating a CMV."

18 Then I go to explain "Visibly saw  
19 the driver in his left rearview mirror, after  
20 failing to stop at the railroad tracks, with a  
21 cell phone to his head. Driver stated he was  
22 talking to a customer."

23 Q. Now to go back to a couple of the  
24 statements that you said about general violation  
25 that the computer program brings up.

1                   So, everything before the colon  
2 would be just when you put a violation and that  
3 information shows up, then after the colon --

4           A.     That is my description.

5           Q.     Your description on the day of the  
6 inspection?

7           A.     Yes, sir.

8           Q.     And the driver, when you give him  
9 the report would be able to see that  
10 description; correct?

11          A.     Yes, sir.

12          Q.     Okay. Can you turn to the second  
13 page of the report? Draw your to your  
14 inspection notes.

15                 So, these notes are notes that you  
16 prepare kind of when you get back to your car  
17 right after the inspection, same day, you go  
18 back to your car to prepare these notes?

19          A.     Correct.

20          Q.     So it's basically done  
21 contemporaneously with the stop, just right  
22 after?

23          A.     It's an addendum to the report.

24          Q.     Okay. Could you read these notes  
25 for the record, please?

1           A.     Sure. While following the CMV I  
2 watched it approach the railroad tracks  
3 westbound on US 224 just west of the U.S. 23  
4 intersection, Alvada, Ohio. The CMV never  
5 stopped before the railroad tracks. Instead it  
6 slowed and crossed the railroad tracks slowly.  
7 This was noticeable by watching the rotation of  
8 the left steering axle wheel nut covers. After  
9 CMV crossed the tracks I looked at the driver in  
10 his left rearview mirror. He had a cell phone  
11 in his left hand and appeared to be having a  
12 conversation.

13                 Mr. Zeigler stated he was in a hurry  
14 that morning because he was late getting to his  
15 customer, DM Base in Findlay, Ohio. He admitted  
16 to using his cell phone at the time he failed to  
17 stop at the railroad tracks, which he also  
18 admitted to.

19                 He mentioned he took the CMV home  
20 yesterday. When I asked for the shipping papers  
21 he stated he left them at Bloomville, Ohio. Mr.  
22 Zeigler was given a blank hazardous shipping  
23 paper to fill out so the shipping violation  
24 could be corrected.

25                 After going over the report with



1 the driver I recommended he use a hands-free  
2 device, such as a Bluetooth, if he wants to use  
3 his Samsung Galaxy smartphone. The driver was  
4 unsure of the model. Then Mr. Zeigler shook his  
5 head briefly and pointed to his Bluetooth  
6 headset hanging from the passenger side sun  
7 visor.

8 The GVWR on the truck could not be  
9 located. According to the National Institute  
10 for Safety Research commercial motor vehicle VIN  
11 decoder, the GVWR of the truck was between  
12 16,001 and 33,000 pounds."

13 Q. Okay. And again you completed these  
14 notes contemporaneously with the vehicle stop;  
15 correct?

16 A. Correct.

17 Q. Have you made any changes since  
18 then?

19 A. No.

20 Q. So these are on the day of  
21 the inspection. I think you stated this  
22 already, but the stop was at 7:34 in the  
23 morning; correct?

24 A. Correct.

25 Q. It was light outside at that time?

1 A. Oh, yes. It was sunny.

2 Q. Sunny day?

3 A. Sunny and clear.

4 Q. So nothing weather-wise would have  
5 impeded your vision; correct?

6 A. No.

7 Q. And your vision is okay?

8 A. Yes.

9 Q. Regular check-ups?

10 A. Yes.

11 Q. Okay. So, and we are still on,  
12 although I would have to read the entire notes,  
13 we are still on the railroad crossing violation.

14 So, as a result of your  
15 observations, your preparation of this report,  
16 you cited the driver for this violation;  
17 correct?

18 A. That is correct.

19 Q. So it's your testimony here today  
20 that Mr. Zeigler violated the CFR regulation by  
21 failing to stop at a railroad crossing; correct?

22 A. Yes.

23 ATTORNEY EXAMINER: Mr. Beeler, I  
24 assume you are going to move on to the next  
25 violation.

1 MR. BEELER: Yes.

2 ATTORNEY EXAMINER: Before you do  
3 that I have a few questions for the officer.

4 EXAMINATION

5 By the Attorney Examiner:

6 Q. Officer Byrne, is US 224 were you  
7 observed this alleged violation, is that a  
8 two-lane or a four-lane road?

9 A. That is a two-lane road.

10 Q. One in each direction. Okay. So at  
11 that point where you were following, do you  
12 recall was the road straight?

13 A. Yes.

14 Q. It was straight. In that case, yet  
15 you are saying that you may have moved your  
16 vehicle over somewhat, I assume to the left, to  
17 better observe the wheels turning on the cab of  
18 that commercial motor vehicle; right?

19 A. It's a possibility that I could have  
20 done that, but otherwise it would have been very  
21 well seen. There was an incline, there was an  
22 incline to the approach of the railroad tracks.  
23 So whether or not I would have moved to the  
24 left, it's really irrelevant because even with  
25 the car in front of me whether I would have

1 moved to the left or not, the wheel hub covers  
2 were still visible.

3 Q. As you are indicating you were  
4 actually behind the truck an behind another  
5 vehicle.

6 A. No. I was behind a car. You have  
7 the truck --

8 Q. Sorry. You have a car between you  
9 and the truck?

10 A. Right.

11 Q. And the road is straight there?

12 A. Yes.

13 Q. You are saying what helped you was  
14 this incline, it helped you see the vehicle?

15 A. It could of very well helped, but I  
16 do recall seeing the wheel nut covers.

17 ATTORNEY EXAMINER: Okay. No more  
18 questions at this time. Please go ahead.

19 FURTHER DIRECT EXAMINATION

20 By Mr. Beeler:

21 Q. A follow-up at that point. Your  
22 vehicle is an SUV; correct?

23 A. Yes.

24 Q. You sit up a little higher?

25 A. Oh, yes.

1           Q.    So you would be able to clearly see  
2 over a sedan?

3           A.    There is no obstruction.

4           ATTORNEY EXAMINER:   What kind of a  
5 vehicle is that, Officer?

6           THE WITNESS:   It is a Chevy Tahoe.

7           ATTORNEY EXAMINER:   Thank you.

8           Q.    Okay.   Turning to the cell phone  
9 violation.   That is CFR 392.82 (a)(1).  
10           I know you read your notes, but you  
11 also observed Mr. Zeigler using a hand-held  
12 communication device; correct?

13          A.    Yes.

14          MR. ZEIGLER:   May I interrupt?

15          ATTORNEY EXAMINER:   Actually after  
16 Mr. Beeler is finishing his questions you will  
17 have the opportunity.

18          MR. ZIEGLER:   Okay.   I am sorry.  
19 I have no -- I was on my cell phone.   I am  
20 guilty of that.

21          ATTORNEY EXAMINER:   Well, after Mr.  
22 Beeler is finished with his questions you can  
23 have the opportunity to ask questions of the  
24 witness, then we will put you on the witness  
25 stand as well.   Thank you.   I apologize.   I

1 should have explained that at the beginning.

2 Go ahead.

3 Q. Again, just one more time, how did  
4 you observe that violation?

5 A. With the cell phone?

6 Q. Yes.

7 A. It was immediately after the vehicle  
8 failed to stop at the railroad crossing. I  
9 looked up, wanted to see what the driver was  
10 doing and sure enough, cell phone to the head.

11 Q. And the driver admitted the  
12 violation at the scene; correct?

13 A. Yes, he did.

14 Q. Okay. And just commonly as part of  
15 your job with both railroad and cell phone  
16 violations you commonly look for these  
17 violations as far as your job; correct?

18 A. Oh, yes.

19 Q. Okay. So, as a result of your  
20 observation you cited the driver for a  
21 violation; correct?

22 A. Correct.

23 Q. And it's your testimony that he was  
24 talking on a cell phone while operating a  
25 commercial motor vehicle?

1           A.     Correct.

2           Q.     Okay.  Anything that you can think  
3     of that we have not discussed here that you  
4     think would be important for the Examiner to  
5     know or for the Commission to know about this  
6     stop?  Anything else you can think of that I may  
7     have missed?

8           A.     Just other than this all boils down  
9     to a couple of things.  This is distraction, and  
10    being in a hurry.  Okay?  Mr. Zeigler left his  
11    shipping papers at home.  As stated in the notes  
12    he had taken his vehicle home the day prior.  He  
13    was in a hurry.

14                   He contacted his recipient, the  
15    receiver of the cargo.  So we got the shipping  
16    papers left at home.  He was in a hurry, he was  
17    on his phone contacting the receiver of the  
18    cargo.

19                   And in doing so this more than  
20    likely distracted him, thus failing to stop at  
21    the railroad crossing, thus resulting in him  
22    visibly using his cell phone while driving.  This  
23    is the culmination of things that all boils down  
24    to distraction and running late.

25           Q.     Did the driver dispute this at all

1 at the scene? Do you remember?

2 A. No.

3 MR. BEELEER: No further questions,  
4 your Honor. At this time I would, subject to  
5 cross-examination, I would move Staff Exhibit 1  
6 into the record.

7 Again, I do this commonly, but I am  
8 going to reserve Mr. Byrne for rebuttal if  
9 needed.

10 ATTORNEY EXAMINER: Certainly.  
11 Let's see, before we admit it into evidence, Mr.  
12 Zeigler, do you have any questions for  
13 the witness? No statements right now, but how  
14 you feel about what you did. Any questions?  
15 Please go ahead.

16 MR. ZEIGLER: Yes, sir, I do.

17 ATTORNEY EXAMINER: Go ahead.

18 CROSS-EXAMINATION

19 By Mr. Zeigler:

20 Q. Mr. Byrne, do you know how wide the  
21 back end of my truck is?

22 A. It was not measured. No, I do not.

23 Q. Do you know how wide the so called  
24 wheel nut covers that you said you witnessed  
25 moving as I was stopped at the railroad tracks,



1 do you know how wide them are?

2 A. I could only guestimate --

3 Q. Were we on a two-lane highway --

4 MR. BEELER: Objection, your Honor.  
5 Can he finish his answer?

6 A. I can only guess. Wheel nut covers  
7 typically on a vehicle like that (indicating) it  
8 would be well over I would say about two inches  
9 or more.

10 Q. Overall width, Mr. Byrne, what is  
11 the overall width from side-to-side if you were  
12 behind the vehicle?

13 A. Overall width including the nut  
14 covers?

15 Q. Yes.

16 A. That wasn't measured, so I have no  
17 answer to that.

18 Q. There was one vehicle in between me  
19 and you; correct?

20 A. That is correct.

21 Q. You did not go left of center to  
22 witness the wheel nut covers move?

23 A. I do not recall if I went left of  
24 center.

25 Q. Do you recall, was there any

1 oncoming traffic?

2 A. I was not focused on oncoming  
3 traffic.

4 Q. So there very well could have been  
5 oncoming traffic?

6 A. There could, yes.

7 Q. Okay. And you feel that being  
8 roughly 20 feet behind my vehicle that you could  
9 see the wheel nut covers without going left of  
10 center; is that correct?

11 A. Yes.

12 Q. Do you think it's possible you could  
13 not see them wheel covers moving from behind  
14 there?

15 A. No, no. That was my focus is  
16 specifically looking for some kind of a  
17 reference to the vehicle to determine is this  
18 vehicle going to stop at the railroad tracks.  
19 So that was specifically what I used to observe.

20 Q. So how did you position yourself  
21 while sitting in your vehicle, not moving left  
22 of center, how did you see the wheel nut covers  
23 moving?

24 A. Simple. I was right behind you in  
25 the driver's seat. There was no obstruction.

1 The wheel nut covers were absolutely visible.

2 Q. Okay. The wheel nut covers are  
3 approximately one half inch wider than the rear  
4 end of the truck.

5 A. Say that again.

6 Q. From side-to-side they are  
7 approximately one half inch wider than the rear  
8 compartment which holds the fuel of the truck  
9 which you were 15 feet behind.

10 A. Okay.

11 Q. Setting in your truck, not left of  
12 center, the view you had, there is no way  
13 possible to see them wheel nut covers moving  
14 without you moving left of center. If you move  
15 left of center there is oncoming traffic.

16 ATTORNEY EXAMINER: Mr. Beeler.

17 MR. BEELEER: I just want to lodge an  
18 objection that I believe that question was asked  
19 and answered.

20 ATTORNEY EXAMINER: Mr. Zeigler,  
21 some of the comments about -- again, you can ask  
22 him questions, but what you think the true facts  
23 were we will wait until you are up on the  
24 witness stand giving testimony. Thank you.

25 Q. One other question, Mr. Byrne, the

1 reason you pulled me over was for what?

2 A. For failing to stop at the railroad  
3 tracks.

4 Q. Okay. Do you have this you said was  
5 an addendum to the original?

6 A. Inspection notes.

7 Q. Where it states, where it starts  
8 with Mr. Zeigler stated he was in a hurry, will  
9 you read that again to us, please?

10 A. "Mr. Zeigler stated he was in a  
11 hurry this morning because he was late getting  
12 to his customer, CM Base, in Findlay, Ohio."

13 Q. Continue, please.

14 A. "He admitted to using his cell phone  
15 at the time he failed to stop at the railroad  
16 tracks, which he also admitted to.

17 Q. May I stop you, please. If you  
18 pulled me over for running the railroad tracks,  
19 why is that in parentheses after the fact of me  
20 admitting to using the phone?

21 A. Probably grammatical reasons. Just  
22 so it didn't appear confusing.

23 Q. Do you have a recording of me  
24 admitting that I run the railroad tracks?

25 Q. No, I do not.

1 MR. ZEIGLER: I have no further  
2 questions for him.

3 ATTORNEY EXAMINER: Mr. Beeler.

4 MR. BEELEER: May I have one second?  
5 No further questions, your Honor.

6 ATTORNEY EXAMINER: All right.  
7 Thank you. And I believe you had asked that  
8 Staff Exhibit 1 be admitted into evidence.

9 MR. BEELEER: Correct.

10 ATTORNEY EXAMINER: Mr. Zeigler, do  
11 you have any objections to that? Do you have  
12 any objections to Staff Exhibit 1? That is  
13 the inspection report being admitted into  
14 evidence?

15 MR. ZEIGLER: No, sir.

16 ATTORNEY EXAMINER: All right.  
17 Thank you. In that case we will admit Staff  
18 Exhibit 1 into evidence.

19 (EXHIBIT ADMITTED INTO EVIDENCE)

20 ATTORNEY EXAMINER: Mr. Beeler, I  
21 believe you may have an additional witness;  
22 correct?

23 MR. BEELEER: Yes.

24 ATTORNEY EXAMINER: Officer, you can  
25 take your seat and are under oath so there may

1 be more questions of you later. Thank you.

2 MR. BEELER: At this time Staff  
3 would call Rod Moser to the stand.

4 (WITNESS SWORN)

5 - - -

6 ROD MOSER

7 called as a witness, being first duly sworn,  
8 testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Beeler:

11 Q. Good morning.

12 A. Good morning.

13 Q. Please state your full name for the  
14 record.

15 A. My name is Rod Moser.

16 Q. Where are you employed?

17 A. I am employed with the  
18 transportation section of the Public Utilities  
19 Commission of Ohio.

20 Q. And what is your position?

21 A. I am the Chief of the compliance  
22 section.

23 Q. How long have you been in that  
24 position?

25 A. A little over six months.

1 Q. And your duties are what?

2 A. My duties would be to oversee the  
3 civil forfeiture process and the administrative  
4 hearing process for inspections conducted by CMV  
5 troopers and inspectors.

6 Q. What is your expert qualifications  
7 or training in this area?

8 A. I have experience of about almost 30  
9 years with the Highway Patrol, primarily focus  
10 on commercial enforcement. I was a supervisor  
11 for the District 6 commercial enforcement unit.  
12 I attended North American Standards Parts A and  
13 B.

14 Q. Explain just generally, not  
15 necessarily this case, but just generally how  
16 the Commission determines amounts of  
17 forfeitures.

18 A. The forfeitures are based upon  
19 guidelines established by the Commercial Vehicle  
20 Safety Alliance. There are five categories of  
21 offenses.

22 One category is zero, which is a  
23 violation that never has a fine. And then four  
24 other categories based upon the type of  
25 violation and the severity of the violation.

1           Q.    And the Commission applies this  
2 process uniformly to drivers, carriers and  
3 shippers; correct?

4           A.    Yes.  Regardless of who you are the  
5 fine is the same.

6           Q.    Sure.

7           MR. BEELEER:  May I approach, your  
8 Honor?

9           ATTORNEY EXAMINER:  Yes.

10          MR. BEELEER:  Thank you.

11          ATTORNEY EXAMINER:  Yes, you may.

12          MR. BEELEER:  I have what has been  
13 previously marked as Staff Exhibit 2.  This is  
14 the Notice of Preliminary Determination letter  
15 that was sent to Mr. Zeigler and it's dated  
16 October 5th, 2016.

17                   (EXHIBIT MARKED FOR PURPOSES OF  
18 IDENTIFICATION)

19          Q.    Do you recognize this document?

20          A.    I do.

21          Q.    What is it?

22          A.    It's a letter that we commonly call  
23 an NPD, Notice of Preliminary Determination.  
24 It's a letter that goes out to the Respondent  
25 following a conference with one of the



1 compliance officers.

2 In this case it was following a  
3 conference with Compliance Officer Michael  
4 Hines.

5 Q. Okay. And this document is sent to  
6 the Respondent; correct?

7 A. That's correct.

8 Q. And you reviewed this document in  
9 preparation for the hearing today; correct?

10 A. I did.

11 Q. Is this document a Commission  
12 record?

13 A. Yes, it is.

14 Q. Kept in the ordinary business of  
15 the Commission?

16 A. Yes, sir.

17 Q. Okay. Please explain how the  
18 forfeiture was derived in this case.

19 A. Well, these two violations are both  
20 Group 4 violations where all of Group 4 contain  
21 violations that are considered very hazardous.  
22 In the other groups the entire group would be  
23 the same amount. In this group they are  
24 separated depending on what the violation is.

25 So the railroad crossing violation

1 is a \$500 fine, and the cell phone use is \$250.

2 Q. Okay. And is this forfeiture amount  
3 or penalty consistent with the recommended fine  
4 schedule and recommended civil penalty with the  
5 procedure adopted by the Commercial Motor  
6 Vehicle Alliance?

7 A. Yes, it is.

8 Q. And I think you have already said  
9 it, but what is the forfeiture amount?

10 A. \$750 total.

11 Q. Okay. Would you recommend this  
12 amount to the Commission?

13 A. Yes, I would.

14 Q. Anything else that we haven't talked  
15 about here that you think would be important?

16 A. No, sir.

17 MR. BEELEER: Okay. No further  
18 questions, your Honor.

19 ATTORNEY EXAMINER: Thank you.  
20 And, Mr. Zeigler, any questions of the witness?

21 MR. ZIEGLER: No, sir.

22 ATTORNEY EXAMINER: Thank you. Mr.  
23 Beeler, I will assume you want to admit this  
24 document into evidence.

25 MR. BEELEER: Staff would move for

1 admission of Staff Exhibit 2.

2 ATTORNEY EXAMINER: Mr. Zeigler, any  
3 objections?

4 MR. ZIEGLER: No, sir.

5 ATTORNEY EXAMINER: Thank you.

6 In that case we will admit Staff Exhibit 2 into  
7 evidence.

8 (EXHIBIT HEREBY ADMITTED INTO  
9 EVIDENCE)

10 ATTORNEY EXAMINER: No more  
11 witnesses, Mr. Beeler?

12 MR. BEELEER: No more witnesses, your  
13 Honor.

14 ATTORNEY EXAMINER: Mr. Zeigler, if  
15 you would like to come up to the witness stand,  
16 please. Thank you.

17 (WITNESS SWORN)

18 - - -

19 DAVID ZEIGLER

20 called as a witness, being first duly sworn,  
21 testified as follows:

22 ATTORNEY EXAMINER: Please have a  
23 seat. And at the beginning you made some  
24 comments earlier that I said were more  
25 appropriate for actually when you were on the

1 witness stand. So please go ahead with whatever  
2 remarks you want to make about either of the  
3 alleged violations.

4 MR. ZEIGLER: Yes, sir. I apologize  
5 about that.

6 ATTORNEY EXAMINER: That is okay.

7 MR. ZEIGLER: This is the first time  
8 I have ever done this.

9 ATTORNEY EXAMINER: Not a problem.  
10 I should have informed you of the procedures  
11 first. Please, go ahead.

12 MR. ZEIGLER: The first, start from  
13 the beginning. There are so many falsehoods  
14 involved in this report.

15 No. 1, I am going to tell the story  
16 as I told it to the Officer the day that he  
17 pulled me over. I was not in a hurry. The  
18 hurry comes the evening before. That's the  
19 reason I did not have my shipping papers and  
20 other items that I needed that day.

21 I had worked overtime the day  
22 before. It was approximately 5:00 o'clock in  
23 the evening, we usually are done at 4:00  
24 o'clock. My manager does not like us working  
25 overtime. That was the hurry.

1 I come back to the office, I had  
2 seen a fax had come through from Sun Base who  
3 was working over on I-75, which is west of  
4 Findlay, Ohio. We had been taking Sun Base fuel  
5 for approximately two months at that point.

6 It is a very, very dangerous  
7 situation getting into Sun Base's work zone and  
8 getting out with all the heavy traffic on 75.

9 So, the reason I was on the phone  
10 that morning was to find the best possible way,  
11 safest possible way to get there. I picked  
12 the phone up at the stop light, which happened  
13 to be a quarter of a mile maybe from  
14 the railroad tracks, to call them because I was  
15 stopped and I knew I would be stopping again,  
16 not fully understanding at that time that it was  
17 going to be a hefty fine if gotten caught while  
18 using my phone while in the truck.

19 The records that Mr. Byrne said that  
20 I left at home was not left at home. They were  
21 left in the office because of the fact I was in  
22 a hurry. I rushed out, loaded my truck for  
23 the morning for Sun Base, left the records in  
24 the office. Didn't even lock the office, which  
25 I got reprimanded for, went home, had things to

1 do at home.

2 Got up first thing in the morning,  
3 was not late, was not rushing to get to Sun  
4 Base. I was scheduled to be there at 8:00  
5 o'clock. I was pulled over at 7:34,  
6 approximately 15 to 20 minutes before I would  
7 have arrived at Findlay.

8 So, there was no hurry involved.  
9 And when I stopped, I do look at my mirrors  
10 every time I stop. I seen no vehicles behind me  
11 when I come to a complete stop at the railroad  
12 tracks at 224.

13 As I crossed the railroad tracks I  
14 glanced at my mirror because there was oncoming  
15 traffic. And usually when you cross railroad  
16 tracks the first thing somebody wants to do is  
17 pass you. And it happens every day. As soon as  
18 you pass a railroad track somebody is passing  
19 you. I am paying attention to oncoming traffic  
20 and traffic from behind me.

21 That is when I seen Mr. Byrne wheel  
22 out left of center with his flashers on. I am  
23 thinking to myself -- first of all I was  
24 thinking to myself I didn't understand it was  
25 Mr. Byrne. I thought it was a Highway Patrolman

1     wanting by.

2                     I kind of pulled over, he didn't go  
3     around me. It was not a good place to pull  
4     over. I went up to an area where I could  
5     finally pull over.

6                     When Mr. Byrne approached me at the  
7     door -- does anyone have a pen I could borrow,  
8     please? Thank you, sir.

9                     When Mr. Byrne approached me he  
10    opened up my passenger door. Do you mind if I  
11    stand up to show you this? He opened up my  
12    passenger door, standing in the ditch, and he  
13    asked me if I knew why he pulled me over. Asked  
14    me if I knew why he pulled me over.

15                    I responded no. He says because you  
16    didn't stop at the railroad tracks. And I  
17    looked at him like this (indicating). He goes I  
18    seen your lug nuts, they were doing this  
19    (indicating).

20                    And that is the way he described his  
21    witness of me not stopping at the railroad  
22    tracks, which he was behind me. A truck that is  
23    this wide (indicating) and a wheel base that is  
24    possibly another inch wide at the most. And  
25    measured by my measurements was one half an

1     inch.

2                   ATTORNEY EXAMINER:   Mr. Zeigler,  
3     just for the record, Mr. Zeigler was  
4     illustrating that -- if you could describe it in  
5     words what you were motioning about the --

6                   MR. ZEIGLER:   It was the speed of  
7     the lug nuts he said he was seeing.

8                   ATTORNEY EXAMINER:   So, you are  
9     indicating that it was apparently slow or --

10                  MR. ZEIGLER:   Somebody would have --  
11     I think you would have to have more than  
12     excellent vision to see lug nuts moving that  
13     slow.  If they were moving this slow or, you  
14     know, moving that fast you couldn't see them at  
15     all.

16                  But to see from that distance at  
17     that angle, which you can't even see the lug  
18     nuts from that angle, how can you tell that they  
19     were moving this slow.

20                  And then the only other thing I got  
21     to say is this:  I was on my phone, that's why I  
22     was trying to save some time with you folks.  I  
23     admit to that.  I was on my phone.

24                  I did stop at the railroad tracks.  
25     And for him to state that the first thing he



1 says, he admitted to using his cell phone at the  
2 time of the failed stop. And put in parentheses  
3 which he already admitted to, I did not admit to  
4 that. If I admitted to that, folks, I would not  
5 be here today. I would not have wasted two and  
6 a half hours of my day coming down through this  
7 traffic to set here. I did stop at the railroad  
8 tracks.

9 EXAMINATION

10 By the Attorney Examiner:

11 Q. So, Mr. Zeigler, just so I can  
12 understand, then you have no dispute over the  
13 violation that was written for use of the cell  
14 phone?

15 A. That's correct.

16 Q. You have no disagreement there.

17 A. Yes.

18 Q. You say you did stop at the railroad  
19 tracks. And tell me about the stop. Did you  
20 slow or did you stop?

21 A. I stopped.

22 Q. You stopped. Okay. And you made a  
23 comment earlier that when you come to a railroad  
24 track you look in your rearview mirror. Now,  
25 help me out on this. Did you say that you did

1 not see any vehicles behind you, or help me out  
2 on that comment again.

3 A. I could not describe the vehicle  
4 behind me. I could tell that there was a white  
5 vehicle back farther. I could not see the cars  
6 that was in between us.

7 Q. Well, let's go a little further than  
8 that. So you are saying -- do you feel -- how  
9 many -- do you have any memory how many vehicles  
10 were behind you, and where the officer's vehicle  
11 was in that line of traffic?

12 A. Sir, as I went by I seen him. I  
13 knew he was back there somewhere.

14 Q. As you went --

15 A. I crossed the intersection. So,  
16 when I looked back I could see the rear third of  
17 his vehicle.

18 Q. All right. And you don't really  
19 know for sure how many more vehicles were behind  
20 you and the officer?

21 A. No. And at the time also, as I  
22 stated earlier, I didn't know if it was a PUCO  
23 vehicle. I thought it was a State Highway  
24 Patrolman.

25 ATTORNEY EXAMINER: I have no more

1 questions right now. I may have later. Mr.  
2 Beeler.

3 MR. BEELEER: I need one minute.

4 ATTORNEY EXAMINER: Okay.

5 MR. BEELEER: No cross, your Honor.

6 ATTORNEY EXAMINER: All right. Mr.  
7 Zeigler, you can take your seat for the time  
8 being. I probably have a few more questions for  
9 Officer Byrne.

10 Thank you for coming up here. I  
11 think with the microphones it will work a little  
12 easier for our court reporter here.

13 - - -

14 MICHAEL BYRNE  
15 recalled as a witness, being previously duly  
16 sworn, testified further as follows:

17 FURTHER EXAMINATION

18 By the Attorney Examiner:

19 Q. So you indicated that US 224 is a  
20 straight road, at that point it was two-lane,  
21 and you don't recall for certain if you went  
22 left of center to observe the vehicle that Mr.  
23 Zeigler was driving. Am I right about that?

24 A. I do not recall, sir.

25 Q. For certain. Okay. And your memory

1 is that there was one vehicle, I guess a  
2 passenger car, between you, your vehicle and  
3 your Chevy Tahoe and the commercial motor  
4 vehicle that Mr. Zeigler was driving.

5 A. Correct.

6 Q. Okay. Coming up to the railroad  
7 tracks, you were stating that Mr. Zeigler did  
8 not stop, he slowed. Tell me about, if you can  
9 recall, the speed or progression of the CMV, the  
10 distance between you and he and then your  
11 vehicle itself. Did you see tail lights, did  
12 anyone stop completely, did everybody just keep  
13 rolling along? Do you remember any of that?

14 A. I wasn't looking at tail lights  
15 specifically. The speed was about I would say  
16 no more than 25 to 35 miles per hour.

17 Q. This is when everyone is still going  
18 over the tracks?

19 A. Right.

20 Q. Do you recall, is that crossing  
21 rough, smooth?

22 A. I would say smooth. It's typically  
23 not rough there.

24 Q. But you are thinking, and this is  
25 one that you drive over periodically?

1           A.    Oh, yes.

2           Q.    Okay.  So you are saying that  
3   the vehicles, really all of them, were running  
4   about 25 to 30 miles per hour?

5           A.    Well, being that's 55 miles per hour  
6   I would say more like closer to 35 because we  
7   weren't going real fast that day.

8           Q.    All right.  Okay.  And using a  
9   hand-held mobile telephone, do you recall --  
10   disregard that question.

11                  So, you were focused basically on  
12   these wheel nut covers and it was on the cab of  
13   the vehicle, and this was on what I will call a  
14   tanker truck?

15           A.    That's correct.

16           Q.    And you are saying the thing that  
17   helped you out was apparently an incline going  
18   up to the tracks.

19           A.    You got the incline going up to the  
20   track.

21           Q.    Go ahead.

22           A.    You do have the short incline going  
23   up to the track.  Incline or not, from where I  
24   was sitting looking at the driver, I mean, you  
25   could see his left rearview mirror, you could

1 see, again the nut covers of the left steering  
2 axle from the angle that I am looking at with my  
3 vision.

4 Q. And your angle was -- really your  
5 only angle was the CMV was slight on an incline.  
6 You weren't off to the side of the CMV or  
7 something like that?

8 A. I don't remember if I was exactly  
9 off, but again it was visible, or else I would  
10 have never made the stop.

11 Q. Okay. Well, you actually stopped.  
12 Was your initial stop for the railroad crossing,  
13 or did it include at that time you were thinking  
14 telephone as well?

15 A. It was the railroad crossing.

16 ATTORNEY EXAMINER: Mr. Zeigler, any  
17 additional questions?

18 FURTHER CROSS-EXAMINATION

19 By Mr. Zeigler:

20 Q. If I was going 35 mile an hour  
21 across the railroad track would you have needed  
22 to look at my wheel nuts to tell that I did not  
23 stop?

24 A. Again, I was looking for some kind  
25 of reference.

1 Q. At 35 miles an hour?

2 A. Some kind of reference point. We  
3 weren't going real fast over those railroad  
4 tracks.

5 Q. Didn't you just say 35 miles an  
6 hour?

7 A. Yes. I wouldn't say that's really  
8 fast.

9 Q. But, so you are telling me that you  
10 are going to need a vehicle going, vehicle 35  
11 miles a hour you would still need to see  
12 the wheel nuts moving in order to tell if I was  
13 stopped or not?

14 A. Prior to and after the crossing,  
15 yes. I want to look at something.

16 MR. ZEIGLER: No further questions.

17 ATTORNEY EXAMINER: Anymore  
18 questions, Mr. Beeler?

19 MR. BEELER: Yes. Just a few to  
20 clarify.

21 ATTORNEY EXAMINER: Go ahead.

22 REDIRECT EXAMINATION

23 By Mr. Beeler:

24 Q. And this is just a follow-up on your  
25 discussion with Mr. Zeigler here. So, your

1 testimony is that he rolled over at a  
2 significant amount of speed. This wasn't a slow  
3 crawl across, this was a --

4 A. I remember him slowing down.

5 Q. Slowing down.

6 A. But never came to a complete stop.

7 Q. So, the wheel nut covers that you  
8 were looking at were probably moving --

9 A. Continuing to roll, and that is --  
10 I actually had that discussion with Mr. Zeigler.

11 Q. And so do you look, to find a  
12 reference point before and after, is that  
13 something you are trained to do, to look for to  
14 make sure you get --

15 A. It's attention to detail. So, we  
16 are trained for attention to detail, looking for  
17 those indicators.

18 Q. And then all three vehicles, truck,  
19 the car in between you and you all went through  
20 the crossing at the same time actually?

21 A. Yes.

22 Q. One right after another?

23 A. One right after another.

24 Q. And that was the reason you pulled  
25 Mr. Zeigler over; correct?



1           A.     Right.

2           Q.     And then the configuration of where  
3     you were on the track, the incline, you are  
4     saying your observation, there was no  
5     obstruction, you could see the wheel nut covers?

6           A.     That's correct.  If there was any  
7     question whatsoever I wouldn't have stopped him.

8           MR. BEELEER:  Thank you, your Honor.

9           ATTORNEY EXAMINER:  Officer, an  
10    additional question or two.

11                   FURTHER EXAMINATION

12    By the Attorney Examiner:

13           Q.     Were you on U.S. 23 and then you  
14    turned on to 224 or --

15           A.     On US 224 heading westbound.  We  
16    had passed the U.S. 23 intersection.

17           Q.     Okay.  I just -- so actually you had  
18    not been on 23, you were on 224 at the time?

19           A.     That is correct.

20           ATTORNEY EXAMINER:  Thank you.  I  
21    have no further questions.  Thank you.

22                   Mr. Beeler, is there anything else  
23    you want to ask or you need to admit into  
24    evidence.

25           MR. BEELEER:  I believe I have moved

1 into evidence Exhibit 1 and 2.

2 ATTORNEY EXAMINER: Yes.

3 MR. BEELEER: That is all, your  
4 Honor.

5 ATTORNEY EXAMINER: And you are not  
6 required to do a brief. Do you want to do a  
7 brief in this case?

8 MR. BEELEER: No, your Honor.

9 ATTORNEY EXAMINER: All right.  
10 Thank you. With that being said, we will wrap  
11 up the proceedings for today, and thank you all  
12 for attending.

13 MR. BEELEER: Thank you.

14 (At 10:45 A.M. the hearing was  
15 concluded)

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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  
September 28, 2017, and carefully compared with  
my original stenographic notes.

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

- - -

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

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**10/18/2017 2:08:40 PM**

**in**

**Case No(s). 16-2170-TR-CVF**

Summary: Transcript In the Matter of David G. Zeigler, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on September 28, 2017. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.