

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of Vasyl Bigun,:

Notice of Apparent : Case No.  
Violation and Intent to : 18-558-TR-CVF  
Assess Forfeiture. :

- - -

PROCEEDINGS

Before Anna Sanyal, Attorney Examiner, at the  
Public Utilities Commission of Ohio, 180 East  
Broad Street, Hearing Room 11-D, Columbus, Ohio,  
on Monday, August 27, 2018, at 10:00 A.M.

- - -

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- - -

1 APPEARANCES:

2 Mr. John Jones  
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. Vasyl Bigun  
11 10190 Pleasant Lake Boulevard  
12 G12  
13 Parma, Ohio 44130

14 Appearing Pro se.

15 ALSO PRESENT:  
16 Ms. Julia Kotova, Interpreter  
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Monday Morning,  
August 27, 2018.  
- - -

ATTORNEY EXAMINER: The Public  
Utilities Commission of Ohio has assigned for  
hearing at this time and place Case No.  
18-558-TR-CVF being In the Matter of Vasyl Bigun  
Notice of Apparent Violation and Intent to  
Assess Forfeiture.

My name is Anna Sanyal and I am the  
Attorney Examiner assigned by the Commission to  
hear this case. We will start with appearances  
first. Mr. Jones.

MR. JONES: Thank you, your Honor.  
On behalf the Staff of the Public Utilities  
Commission of Ohio, Ohio Attorney General Mike  
DeWine, Assistant Attorney General John Jones,  
30 East Broad Street, Columbus, Ohio 43215.

ATTORNEY EXAMINER: Thank you. And  
Mr. Bigun, just give his name and place of  
residence.

MR. BIGUN: I live in Cleveland,  
Parma, Ohio. Pleasant Lake Boulevard, G12,  
44130.

THE INTERPRETER: So this address

1 right here is current, the one for Pleasant Lake  
2 Boulevard.

3 ATTORNEY EXAMINER: Okay. Thank  
4 you. And, Mr. Jones, you may proceed, whenever  
5 you wish.

6 MR. JONES: Thank you, your Honor.  
7 Your Honor, the Staff would like to call Tom  
8 Persinger to the stand.

9 (WITNESS SWORN)

10 - - -

11 THOMAS PERSINGER  
12 called as a witness, being first duly sworn,  
13 testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Jones:

16 Q. Please state your name for the  
17 record, please.

18 A. My name is Tom Persinger.

19 Q. Where are you employed?

20 A. I am employed with the Public  
21 Utilities Commission of Ohio.

22 ATTORNEY EXAMINER: Actually, may I  
23 just briefly interject. I had intended to swear  
24 in our interpreter before the first witness.  
25 So let's go away for a quick second.

1                   Ms. Julia Kotova, I have to swear  
2                   you in because you are interpreting for him.  
3                   So I forgot to do that because I don't have a  
4                   lot of these cases.

5                   (INTERPRETER SWORN)

6                   INTERPRETER: Yes.

7                   ATTORNEY EXAMINER: Okay. Thank you  
8                   very much. Okay. We will now continue. I am  
9                   sorry for the interruption.

10                  MR. JONES: Thank you, your Honor.

11                  Q. Mr. Persinger, your job duties or  
12                  responsibilities?

13                  A. My responsibilities include  
14                  receiving inspection reports, and determining  
15                  any fines that result from violations on those  
16                  inspections.

17                  Q. And so what training have you had  
18                  for your position?

19                  A. Some of the training I have had  
20                  includes the North American Standard vehicle  
21                  inspections, Part A and Part B. A number of  
22                  hazardous materials courses, including other  
23                  bulk and cargo tank.

24                  And I am also a licensed attorney  
25                  with the State of Ohio.

1           Q.    And did you have occasion then -- I  
2   have before you what's marked as Staff Exhibits  
3   2 and 3.  Could you look at those and identify  
4   those for the record, please?

5           A.    They are Notice of Preliminary  
6   Determination letters.

7           Q.    And what case do these letters refer  
8   to?

9           A.    They refer to case OH3260013260D,  
10   which appears to be a driver case against Vasy  
11   Bigun.

12          Q.    And so what do these notices  
13   provide?

14          A.    The notices provide that there was  
15   initially a fine assessed on a violation that  
16   was determined through a roadside inspection.  
17   And then once the data was uploaded through our  
18   computer systems certain violations have fines.

19                And in this case a fine was  
20   initially sent out.  And then the Respondent  
21   requested a conference and had a conference.

22                And then at the conference there was  
23   still a disagreement on the validity of  
24   the violations.  And as a result since the  
25   matter was not settled we send out a Notice of



1 Preliminary Determination letter.

2 Q. So let's start with Staff Exhibit 2.

3 It's addressed to who?

4 A. Mr. Bigun.

5 Q. And what address would that be?

6 A. That would be 10190 Pleasant Lake  
7 Boulevard, G12, in Parma, Ohio.

8 Q. And the case number that is  
9 referenced there, where does that come from?

10 A. That is connected with the roadside  
11 inspection report that was given on the date of  
12 the inspection.

13 Q. And what violation appears for this  
14 notice?

15 A. Violation appears as under Code  
16 390.17, which is "Operating a CMV while using  
17 additional equipment that decreases the safety  
18 of the operation."

19 THE INTERPRETER: He wants to show  
20 something now or wait?

21 ATTORNEY EXAMINER: He needs to wait  
22 until he presents -- when he is on the stand.

23 Q. What does CMV stand for?

24 A. It stands for commercial motor  
25 vehicle.

1 Q. And how much is the forfeiture being  
2 recommended in this case?

3 A. Recommended amount in this case is  
4 \$250.

5 Q. And how was this amount calculated?

6 A. It was based upon recommendations  
7 from the Commercial Motor Vehicle Safety  
8 Alliance and a uniform fine structure.

9 Q. So I see this violation is a Group 4  
10 violation. What does that mean?

11 A. Group 4 is essentially a  
12 miscellaneous code where in other groups there  
13 can be multipliers based on the types of  
14 violation, whereas --

15 THE INTERPRETER: Excuse me, what  
16 does multipliers mean?

17 THE WITNESS: A multiplier would  
18 potentially be, there would be multiple, there  
19 would be like two, three violations in a certain  
20 category.

21 THE INTERPRETER: So you are saying  
22 there is like multiple violations here? Is that  
23 what you are saying?

24 THE WITNESS: Not for this one.  
25 If it's a different group, like Group 1, 2 or 3

1 violations tend to have those multipliers, where  
2 if there is two under a Group 2, three under  
3 Group 3, there could be multipliers in terms of  
4 a fine amount, whereas a Group 4 it's strictly  
5 based upon the violation.

6 Like in this instance this was a  
7 \$250 fine, there may be a different violation  
8 that is something entirely different. Like they  
9 didn't have DOT number on the side of the truck.  
10 And that would be like a \$100 violation.

11 Or say you get pulled over and you  
12 are caught and you are driving drunk. That  
13 could be a \$500 violation.

14 Q. So, for the code here, the 390.17 is  
15 from the Code of Federal Regulations?

16 A. Yes.

17 Q. Okay. And so is it then Staff's  
18 position then that they are recommending a  
19 forfeiture amount of \$250 for this particular  
20 code violation, this group violation, for this  
21 case?

22 A. Yes, sir.

23 Q. So this forfeiture amount, this is  
24 consistent with any other cases that come  
25 through the Commission that met this code

1 provision and this group and this description,  
2 this is the fine that the Staff would be  
3 recommending in these types of cases?

4 A. Correct. When this sort of -- when  
5 the data gets imported into our computer system  
6 anything as of today that comes through as a  
7 390.17 violation has a \$250 fine attached to it.

8 Q. So if after this hearing, if  
9 the Commission were to find Mr. Bigun in  
10 violation of this code provision, what then  
11 would be Staff's recommendation in this case for  
12 the forfeiture?

13 A. The recommendation would be \$250  
14 fine.

15 Q. Now, also I want to refer your  
16 attention to Staff Exhibit 3.

17 A. Yes.

18 Q. Is the information contained in  
19 Staff Exhibit 3 pretty much the same as Staff  
20 Exhibit 2?

21 A. With the exception of the address,  
22 yes.

23 THE INTERPRETER: Can I say  
24 something? So, the explanation why the  
25 difference in address, whoever helped him

1     translate, they put their address here. So this  
2     is, from my understanding, he said this is not  
3     his address, this is his interpreter address,  
4     whoever helped him.

5             ATTORNEY EXAMINER: The one on Staff  
6     Exhibit 3, the Broadview Heights address?

7             THE INTERPRETER: Yes. Yes. This  
8     was the translator's address, whoever helped him  
9     translate.

10            ATTORNEY EXAMINER: Okay. We will  
11     just note the Parma, Ohio address --

12            THE INTERPRETER: Right. This is  
13     his permanent address, yes.

14            Q. So the difference between Staff  
15     Exhibits 2 and 3 then are the dates for when  
16     these notices were issued; is that correct?

17            A. Yes, sir.

18            Q. And different address as to where  
19     they were sent to?

20            A. Yes, sir.

21            Q. But you are only recommending one  
22     forfeiture in this case, right, not two  
23     different forfeitures?

24            A. Correct. Only one.

25            Q. And are these Staff Exhibits 2 and

1 3, are these records kept in the ordinary course  
2 of business for the Public Utilities Commission  
3 of Ohio?

4 A. Yes, they are.

5 MR. JONES: Your Honor, I have no  
6 further questions for this witness.

7 ATTORNEY EXAMINER: Mr. Bigun, if  
8 you have any questions for this particular  
9 witness, you can only ask questions about what  
10 he testified to, which is about these two  
11 exhibits. So if you have any questions about  
12 that now would be the time to ask.

13 THE INTERPRETER: Yes, I have a  
14 question. Okay.

15 CROSS-EXAMINATION

16 By Mr. Bigun:

17 Q. So the question is, will there be  
18 points going on my license? And will this go on  
19 my record?

20 A. Any points that go on a license or  
21 record, that data is handled through the FMCSA  
22 because they keep track of CSA points, things  
23 like that that are associated with roadside  
24 inspections.

25 So, I don't have any particular

1 knowledge on whether points would be on your  
2 record or on your company's record.

3 Q. I would really prefer if I neither  
4 had points on my record or company's record.

5 A. Unfortunately, I don't have any  
6 discretion to remove a violation.

7 ATTORNEY EXAMINER: Mr. Persinger, I  
8 have a question. So who would be the  
9 appropriate authority Mr. Bigun should contact  
10 to gain information about points?

11 THE WITNESS: I would contact the  
12 Federal Motor Carrier Safety Administration,  
13 FMCSA, which is out of like Washington, D.C.  
14 It's a federal agency that regulates --

15 THE INTERPRETER: So, he has to call  
16 there?

17 THE WITNESS: Or he could go  
18 online.

19 THE INTERPRETER: Yes. When we  
20 finish could somebody write him information,  
21 like the name of it or so I can explain to him?

22 THE WITNESS: Yes. Can I have a  
23 piece of paper?

24 ATTORNEY EXAMINER: I have a  
25 question. I have paper and a pen. We will just

1 do it right now.

2 Q. So, will I get a violation on my  
3 record today?

4 A. That information I don't know.

5 Q. So the decision is not made yet;  
6 right?

7 ATTORNEY EXAMINER: Can we go off  
8 the record for a second?

9 (DISCUSSION OFF THE RECORD)

10 ATTORNEY EXAMINER: Let's go back  
11 on the record.

12 Did Mr. Bigun have another question  
13 about the forfeiture?

14 Q. I think that when I was pulled over  
15 I did not violate any rules. I should --

16 MR. JONES: Objection, your Honor.  
17 There is no question, it seems it's just a  
18 statement.

19 Q. Just look at the tracker path, it's  
20 an app on the phone.

21 ATTORNEY EXAMINER: I am going to  
22 stop you right there. There all of these  
23 questions, so we have an objection first of all  
24 from Mr. Jones, because none of these questions  
25 are about what Mr. Persinger testified to. So I



1 believe probably these questions are more  
2 appropriate for the second witness.

3 So why doesn't Mr. Bigun just hold  
4 on.

5 THE INTERPRETER: Wait for  
6 the second witness?

7 ATTORNEY EXAMINER: Right. Because  
8 the questions that you have are not related to  
9 this witness.

10 Mr. Jones, your objection was  
11 obviously sustained.

12 MR. JONES: Thank you, your Honor.

13 ATTORNEY EXAMINER: Okay. Any other  
14 questions about Staff Exhibit 2 or 3?

15 THE INTERPRETER: No.

16 ATTORNEY EXAMINER: Okay. Mr.  
17 Persinger, you are excused. If you could just  
18 provide that FMCS information.

19 MR. JONES: Your Honor, at this time  
20 I would move for the admission of Staff Exhibits  
21 2 and 3 into the record.

22 ATTORNEY EXAMINER: Does Mr. Bigun  
23 have any objections to the submission of these  
24 two exhibits into the record?

25 THE INTERPRETER: You are going to

1 put it on the record?

2 ATTORNEY EXAMINER: Right. Do you  
3 have any objections?

4 THE INTERPRETER: Basically I would  
5 like if I can pay the fine like the 250, I agree  
6 to that as long as this does not go on record.  
7 It will make things harder for me and my job.  
8 And I also just opened like transportation  
9 business of my own. So this will be -- make it  
10 very hard for me. And if that will go on my  
11 record.

12 ATTORNEY EXAMINER: A couple of  
13 things. This is just an exhibit from Staff, so  
14 I have not made a determination yet. So this  
15 getting on the record does not automatically do  
16 anything. So, the record, there is two  
17 different records. The record, like  
18 the transcript for this hearing, that is  
19 the record I am talking about. I think he is  
20 talking about his driving record. Two different  
21 records.

22 And then I also heard that there  
23 might be some opportunity for settlement if Mr.  
24 Bigun wants to pay the fine at this point. We  
25 can take a brief recess and you two can talk

1 about it. But, like if he wants to pay it then  
2 we should not continue this hearing.

3 INTERPRETER: I am interested in  
4 paying it off and if possible to reduce, even  
5 remove it from my record. That could  
6 potentially, you know, affect my driving record.  
7 I agree to do anything.

8 ATTORNEY EXAMINER: Well, let's go  
9 off the record at this point then.

10 (DISCUSSION OFF THE RECORD)

11 ATTORNEY EXAMINER: We will go back  
12 on the record because the State still has one  
13 more witness. And we will finish that up.

14 And, Mr. Jones, are you ready to  
15 proceed with your second witness?

16 MR. JONES: Yes, Your Honor. And  
17 Staff would call Inspector Matt Leite.

18 (WITNESS SWORN)

19 - - -

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

23 DIRECT EXAMINATION

24 By Mr. Jones:

25 Q. Would you please state your name for

1 the record, please?

2 A. Matthew Leite.

3 Q. And where are you employed?

4 A. By the Ohio State Highway Patrol.

5 Q. And what is your position?

6 A. I am a Motor Carrier Enforcement  
7 Inspector.

8 Q. And what are your job duties and  
9 responsibilities?

10 A. Conducting driver and vehicle  
11 examinations in accordance with the CVSA and  
12 protocols of the North American Standard  
13 classes.

14 Q. And what post are you stationed at?

15 A. I am out of the Bucyrus District LCS  
16 unit which is Licensing and Commercial  
17 Standards. And my reporting location is the  
18 Sandusky Post.

19 Q. And what are your qualifications for  
20 your position?

21 A. I have taken CVSA standard classes  
22 Part A, Part B, hazmat, other bulk hazmat and  
23 nonbulk hazmat and passenger vehicles.

24 Q. So you have been trained on how to  
25 enforce the Federal Motor Carrier Safety

1 Regulations?

2 A. Yes, sir.

3 Q. And what equipment is issued to you  
4 to do your job?

5 A. An assigned patrol car, and personal  
6 mounted laptop computer is in the vehicle which  
7 has software called Aspen and it has internet  
8 access to access the PUCO system and FMCSA  
9 database.

10 Q. And what is the scope of your  
11 jurisdiction?

12 A. Any public roadway within the State  
13 of Ohio or on other state required inspections  
14 such as mandatory inspection of private property  
15 or post-crash on private property at the request  
16 of another law enforcement agency like  
17 the sheriff's office or local police department.

18 Q. What required paperwork is generated  
19 during an inspection?

20 A. The inspection would be typed on the  
21 Aspen software then generate the Driver/Vehicle  
22 Examination Report, which is uploaded typically  
23 at that time it's accessed by the PUCO.

24 Q. I have before you what is marked as  
25 Staff Exhibi 1. Could you please identify that

1 document for the record, please?

2 A. Yes. That is copy of the  
3 Driver/Vehicle Examination Report.

4 Q. And according to Staff Exhibit 1 did  
5 you have occasion to conduct an inspection on  
6 January 19th, 2018 involving one Vasyl Bigun?

7 A. Yes, sir.

8 Q. Okay.

9 THE INTERPRETER: Yes, it was in  
10 January.

11 Q. Could you tell us how that  
12 inspection came about?

13 A. Yes. I was using a selection where,  
14 for example, we have truck No. 10, whatever  
15 commercial vehicle that has passed us on the  
16 side of the road we would stop versus having  
17 something like probable cause or seeing an  
18 obvious violation.

19 That is the method I was using.  
20 At that time I was sitting at the top of the  
21 eastbound entrance ramp from State Route 260  
22 South on to Route 2.

23 I was sitting at the top of the exit  
24 ramp, followed the vehicle down the ramp and  
25 activated my lights.

1 I stopped the vehicle for inspection  
2 just east of State Route 260 South. At that  
3 time the driver failed to pull over for  
4 inspection, continued driving with the right  
5 side tires --

6 ATTORNEY EXAMINER: If you have any  
7 questions you should reserve them. Thank you.

8 Q. Let me stop you there for a second.  
9 Let me ask you a question.

10 Were you on duty at the time?

11 A. Yes, sir.

12 Q. And what were you wearing?

13 A. I would have been wearing Patrol  
14 issued uniform. At that time it would have been  
15 all Navy blue in color for roadside inspections.

16 Q. Okay.

17 A. Class C uniform.

18 Q. And what type of vehicle were you  
19 driving?

20 A. It would have been a Chevy Tahoe PPB  
21 police vehicle.

22 Q. And would this vehicle have a light  
23 bar?

24 A. Yes, sir.

25 Q. Okay. And would there be insignia

1 on the vehicle as well?

2 A. Yes, sir. It's marked with a State  
3 Highway Patrol emblem with the flying wheel logo  
4 and also State Motor Carrier Enforcement on the  
5 side.

6 Q. And when did this inspection occur?  
7 What time of day?

8 A. It started at 1:01 P.M. on January  
9 19th, 2018.

10 Q. Okay. So at this time you saw the  
11 commercial motor vehicle driven by Mr. Bigun.  
12 And after you had then started in motion to stop  
13 this vehicle would you then pick up as to what  
14 you observed?

15 A. Yes. After I activated my lights  
16 the vehicle failed to pull over. I then  
17 observed the vehicle drive off the right side of  
18 the road with the right side tires going past  
19 the white fog line at least three separate  
20 times.

21 At that time I then pulled my  
22 vehicle up beside the cab. I observed the  
23 driver holding a cell phone in his right hand  
24 and moving his thumb over the screen.

25 I observed the driver's head looking



1 down at the phone. And when he finally looked  
2 up he saw me beside him on the left side.

3 I then motioned with my hand for him  
4 to pull over. The driver then pulled over to  
5 the ride berm at the exhibit ramp for US 6  
6 westbound, which was probably a mile and a half  
7 beyond where I initially activated my lights.

8 I then asked the driver upon my  
9 initial approach what he was doing with  
10 the phone, or if he was texting. The driver  
11 replied to me he was using his phone to look up  
12 directs to a truck stop.

13 Then informed the driver he needed  
14 to pull off to the side of the road so he could  
15 safely use his cell phone to make a call, to  
16 text or even look up directions.

17 And because of that, not stopping  
18 for one and a half miles, and driving outside a  
19 marked lane repeated times creating an unsafe  
20 situation during the stop.

21 Q. Okay. Let's walk through Staff  
22 Exhibit 1 here. I see there is a report number  
23 that is listed in the top right-hand corner.  
24 Where does that report number come from?

25 A. That number is generated through our

1 Aspen system. Automatically goes in sequential  
2 order after the State abbreviation for OH. The  
3 next four numbers are my unit ID, which is 3260.  
4 And the remaining numbers are sequentially  
5 generated by Aspen.

6 Q. Then after that what information is  
7 provided right below that?

8 A. The next section includes the  
9 carrier's name, which was The 4 Way Inc, Buffalo  
10 Grove, Illinois.

11 Includes their DOT number. And on  
12 the right side is the driver information.

13 Q. So you have the carrier information  
14 to the left and the driver information to the  
15 right; is that correct?

16 A. Yes, sir.

17 Q. Okay. And the report indicates you  
18 conducted an inspection, Level 3 inspection.  
19 What is that?

20 A. That is what is also known as a  
21 driver inspection. That would be not really  
22 checking on the vehicle besides markings, also  
23 make sure they have insurance for the vehicle  
24 and registrations.

25 The main purpose of that is to

1 inspect the driver, including his CDL, medical  
2 certificate and logbook.

3 Q. And the next block of information,  
4 what does that indicate there?

5 A. That indicates the location of the  
6 inspection was conducted at.

7 Q. That has what highway?

8 A. State Route 2 in Erie County, County  
9 Mile Post 4.

10 Q. That is in the State of Ohio?

11 A. Yes, sir.

12 Q. Okay. And what was the origin  
13 and destination information?

14 A. At that time he left Huron, Ohio and  
15 was on his way to Tobyhanna, Pennsylvania.

16 Q. And the cargo?

17 A. It was general freight.

18 Q. And let me ask you, how were you  
19 able to identify Mr. Bigun as to his identity?  
20 How did you do that?

21 A. After speaking with the driver, one  
22 of the pieces of information we collect on our  
23 initial approach would have been his actual CDL.  
24 I would have returned to my car and ran him  
25 through LEAS, which is the Law Enforcement

1 Authentication System Profile. And also FMCSA.

2 Q. So having his CDL, his commercial  
3 driver's license, you were able to see  
4 the information on that license, his picture in  
5 order to run that through your database to see  
6 that was one and the same person; is that  
7 correct?

8 A. Yes, sir. One of the automated  
9 returns we get when you run a license is a  
10 photograph since he had an Ohio license.

11 Q. I take it that the pictures shown on  
12 the license, you match that to who is before  
13 you; is that correct?

14 A. Yes, sir.

15 Q. And it matched?

16 A. Yes, sir.

17 Q. The next block of information,  
18 vehicle identification. What's provided there?

19 A. That is both the semi-tractor and  
20 semi-trailer that was being operated at the time  
21 of the inspection. Both the year, the license  
22 plates, and the VIN, as long as it's carrier  
23 assigned equipment ID numbers for the vehicles.

24 Q. What is GVWR?

25 A. That would be the gross vehicle

1 weight rating of each unit.

2 Q. Okay. And then the next block of  
3 information, what's the violation noted for this  
4 inspection?

5 A. It was Section 390.17.

6 Q. Okay. And could you describe what's  
7 in that line there going from left to right?

8 A. At the violation code and  
9 the section, the unit is D which stands for  
10 driver. Out of service is the next column, and  
11 that indicates no.

12 There was no citation issued by  
13 another law enforcement officer at the time.  
14 The verify would only apply to a vehicle that  
15 was placed out of service, verify the repair at  
16 the scene.

17 It was not related to a crash. And  
18 then the violation description was "Operating a  
19 CMV while using additional equipment and  
20 accessories that decreases the safety of  
21 operation. Driver observed with phone in right  
22 hand and using thumb to touch screen. When  
23 questioned driver stated was looking up  
24 directions to a truck stop."

25 And then I put a note there, to

1 refer to my note section, which I read earlier.

2 Q. So what is the equipment or  
3 accessories in this situation?

4 A. I am sorry?

5 Q. What is the equipment or accessories  
6 you are noting here?

7 A. The equipment?

8 Q. What is the equipment or accessory  
9 that is noted for the violation?

10 A. Oh, I am sorry. I thought you meant  
11 the truck. That would have been the cell phone  
12 in his hand, using it to look up directions.

13 Q. Okay. This citation here, 390.17,  
14 that is under what code?

15 A. That is under Title 49 of Code of  
16 Federal Regulations which has been adopted by  
17 the PUCO.

18 Q. And I see you also have inspection  
19 notes. How soon from the time you did  
20 the inspection did you record these notes?

21 A. Those would have been typed before I  
22 even printed the report. If I make a referral  
23 to notes it's typed in the Aspen before I even  
24 print it.

25 Q. So it was all fresh in your memory

1 at the time you recorded these notes?

2 A. Yes, sir.

3 Q. So according to your notes you  
4 activated your lights, your bar lights on your  
5 vehicle; is that correct?

6 A. Yes, sir.

7 Q. And it took one and a half miles to  
8 stop Mr. Bigun after you activated those lights?

9 A. Yes, sir.

10 Q. And that was both you being behind  
11 Mr. Bigun and also then driving up to the side  
12 of Mr. Bigun?

13 A. Yes, sir. I activated them behind  
14 him after coming down the ramp. Then was  
15 straddling the dotted line in the center  
16 dividing lane 1 and lane 2. I was sort of  
17 off-set so he could observe me in his rearview  
18 mirror.

19 And then at that point I then pulled  
20 up beside him.

21 Q. Okay. And so the driving that you  
22 observed then for that one half a miles by Mr.  
23 Bigun, you would describe that as iritic driving  
24 during that period of time?

25 A. I would describe it as unsafe

1 because he traveled outside of a marked lane.

2 If there had been a disabled vehicle or somebody  
3 parked along the berm of the road they could  
4 have been struck by that driver.

5 Q. So you observed this unsafe  
6 situation with him going over the white line at  
7 least three separate times?

8 A. Right. That would have been the far  
9 most right lane marker on two-lane highway, the  
10 white line.

11 Q. Okay. And at such time as you then  
12 pulled alongside Mr. Bigun to look into the cab  
13 and observed him, how long was it then until you  
14 were able to get his attention being alongside  
15 of him?

16 A. I don't recall the exact amount of  
17 time. I know when I was looking up I saw him  
18 holding a phone in his right hand, his thumb was  
19 swiping across the screen, and his head was  
20 looking down at that time.

21 Q. Do you know approximately how long  
22 you observed him looking at his phone?

23 A. I would estimate between three to  
24 five seconds at that time when I was beside him  
25 before he looked up and saw me. Three to five



1 seconds.

2 Q. So after such time and you did get  
3 his attention and he saw you waive to pull over  
4 to the berm, you then made contact with Mr.  
5 Bigun?

6 A. Yes, sir.

7 Q. And you asked then Mr. Bigun what he  
8 was doing with the phone; is that correct?

9 A. Yes, sir. I asked him what he was  
10 doing with the phone, even asked him if he was  
11 texting because of the motion I observed with  
12 his thumb. At that time he said he was looking  
13 up directions to a truck stop.

14 Q. So it's your opinion that Mr. Bigun  
15 through what you observed his driving that he  
16 created an unsafe driving situation with his  
17 commercial motor vehicle on a highway in Ohio?

18 A. Yes, sir.

19 Q. Are you making a recommendation then  
20 to the Public Utilities Commission to find Mr.  
21 Bigun in violation of this offense, this code  
22 violation you have written up for your  
23 inspection report in Staff Exhibit 1?

24 A. Yes, sir.

25 Q. Let me ask you then, after such time

1 as you had stopped Mr. Bigun and had a  
2 conversation with him and afterwards then what  
3 did you do?

4 A. After I made my initial contact with  
5 him on the stop for the inspection I returned to  
6 my Patrol car, type up our inspection on Aspen.  
7 Would have entered all the vehicle info, ran the  
8 driver's license, the vehicle registrations,  
9 make sure there weren't any outstanding hits  
10 like a stolen vehicle hit.

11 And would have reviewed his shipping  
12 papers and stuff like that.

13 Q. Was it at that time then you were  
14 able to generate your report?

15 A. Yes, sir.

16 Q. And who did you serve your report  
17 on?

18 A. It would have been on the driver,  
19 Mr. Bigun.

20 Q. And did you explain the report to  
21 him?

22 A. Yes, sir. There is several lines.  
23 I am not sure how it would have printed out on  
24 Staff Exhibit 1 versus the hard copy format.  
25 It's a little different because of the printer

1 in our car. It's a thermal jet printer. There  
2 are several lines the driver would have been  
3 required to sign before turning that into his  
4 carrier who then would have returned it to  
5 the PUCO if they followed the procedure.

6 Q. So Mr. Bigun would have gotten the  
7 original which would of had your signature on  
8 which you would have observed him put his  
9 signature on, and then that would have been  
10 something kept by Mr. Bigun?

11 A. Yes, and I would have explained the  
12 procedure for how to return that to the PUCO.

13 Q. And then how did you then send a  
14 copy then to the Commission?

15 A. Copies are uploaded electronically  
16 until the end of the day if the federal program  
17 is operational.

18 Q. So that copy then would be  
19 transmitted electronically to the PUCO?

20 A. Yes, sir.

21 Q. And is Staff Exhibit 1 a record kept  
22 in the ordinary course of business with  
23 the State Highway Patrol?

24 A. Yes, sir.

25 Q. Staff's Exhibit 1 is an accurate

1 representation of the report that you prepared  
2 and generated from the inspection that occurred  
3 in this case?

4 A. Yes, sir.

5 MR. JONES: Your Honor, I have no  
6 further questions.

7 ATTORNEY EXAMINER: Okay. So at  
8 this time, Mr. Bigun, you can ask any questions  
9 you may have with the inspector.

10 INTERPRETER: No questions.

11 ATTORNEY EXAMINER: Okay.

12 MR. JONES: Your Honor, I guess I  
13 can wait until I move admission.

14 ATTORNEY EXAMINER: Let's do all the  
15 exhibits at the end because I don't think we  
16 admitted 2 or 3 either because we had some  
17 questions earlier.

18 At this time Mr. Bigun can get on  
19 the stand and present his version of the events.  
20 We can put another chair for you over there if  
21 that is -- because you will actually be speaking  
22 to the court reporter.

23 THE INTERPRETER: I will speak with  
24 him.

25 ATTORNEY EXAMINER: Let's put

1 another chair beside there.

2 And just so the record is clear I  
3 would like to note that since we have sworn in  
4 Mr. Bigun's interpreter we will not be swearing  
5 in Mr. Bigun because the court reporter is  
6 taking down the interpreter.

7 Mr. Jones, I will not be swearing in  
8 Mr. Bigun because I have already sworn in the  
9 interpreter and she will be interpreting on his  
10 behalf.

11 MR. JONES: I would still request  
12 him to be sworn in as well.

13 ATTORNEY EXAMINER: Sure.

14 (WITNESS SWORN)

15 ATTORNEY EXAMINER: Thank you.

16 MR. JONES: Thank you, your Honor.

17 - - -

18 VASYL BIGUN  
19 called as a witness, being first duly sworn,  
20 testified as follows:

21 ATTORNEY EXAMINER: And then all  
22 that we would want is to have Mr. Bigun state  
23 his name for the record and then --

24 THE INTERPRETER: Vasyl Bigun.

25 ATTORNEY EXAMINER: And then just

1 provide his version of events and why he feels  
2 like this forfeiture should not be assessed  
3 against him.

4 THE INTERPRETER: The only think I  
5 would like to say is I use my cell phone for  
6 work purposes. Before I looked into the phone I  
7 looked ahead, my side view mirrors, make sure,  
8 just make sure there is nothing in my way. And  
9 I am not going to break any laws.

10 And those few seconds I was trying  
11 to find the closest truck stop from where I was  
12 at.

13 I am not too sure about all the  
14 laws, you know, here in America. There is laws  
15 that -- there is a law, I am not concerned about  
16 it, but it gives you six to eight seconds to use  
17 your cell phone for work purposes.

18 I think that -- I don't think this  
19 is a violation.

20 ATTORNEY EXAMINER: Anything else?

21 THE INTERPRETER: I use my phone  
22 only for work purposes. And I was trying to  
23 locate a truck stop. All truck drivers do that.  
24 I was not texting and driving. I was just  
25 trying to find the closest truck stop.

1                   ATTORNEY EXAMINER: I believe Mr.  
2 Bigun has an exhibit. At this point do you want  
3 to go over the exhibit?

4                   THE INTERPRETER: I made a printout  
5 from T-Mobile. Actually this printout right  
6 here proves on that particular day I did not  
7 even use my cell phone.

8                   ATTORNEY EXAMINER: Can you tell us  
9 what page?

10                  THE INTERPRETER: On Page 7. As you  
11 see looking at the Page 7 you don't even see one  
12 text message for that particular day.

13                  ATTORNEY EXAMINER: And what is the  
14 date that you want me to look at?

15                  THE INTERPRETER: Particularly the  
16 January 18th day. As from 3:02 A.M. as you can  
17 see there was no text messages.

18                  ATTORNEY EXAMINER: But when is the  
19 date of the report? It was the 19th.

20                  MR. JONES: The 19th, Your Honor.

21                  THE INTERPRETER: Well, apparently  
22 there is page 8 missing. Like it goes from 7 to  
23 9.

24                  I am looking through my other stuff.

25                  ATTORNEY EXAMINER: We will go off

1 the record for a few moments.

2 (DISCUSSION OFF THE RECORD)

3 ATTORNEY EXAMINER: Let's go back on  
4 the record.

5 THE INTERPRETER: We are looking at  
6 Page 6, and as you can see for January 19th like  
7 the calls, there is none of them are text  
8 messages. And to the right as you can see there  
9 is a speak and text message. That is to the  
10 right.

11 But if look particularly January  
12 19th there is no text message.

13 ATTORNEY EXAMINER: Okay. Is there  
14 anything else?

15 THE INTERPRETER: I think that was  
16 it.

17 ATTORNEY EXAMINER: Okay. Mr.  
18 Jones, do you have any questions?

19 MR. JONES: Yes. Thank you, your  
20 Honor.

21 CROSS-EXAMINATION

22 By Mr. Jones:

23 Q. So, Mr. Bigun, you were driving a  
24 commercial motor vehicle through Ohio on January  
25 19th, 2018; correct?



1           A.    Yes.

2           Q.    And you were stopped for an  
3 inspection by an officer, for inspection of  
4 yourself as a driver?

5           A.    Yes.

6           Q.    Okay. And while you were driving on  
7 that date at the time that right before you were  
8 stopped for the inspection, that you were using  
9 a hand-held device being your phone; is that  
10 correct?

11          A.    Yes. I was at the Trucker, but it's  
12 an app on the phone. I was trying to locate the  
13 nearest truck stop.

14          Q.    Okay. And you were doing that while  
15 driving?

16          A.    Yes. I was driving, but my phone  
17 was on the panel.

18          Q.    Isn't it true, Mr. Bigun, that you  
19 also had the hand-held devise in your hand at  
20 certain points?

21          A.    Only with my fingers.

22          Q.    And that this went on for some time.  
23 You were trying to get directions to this truck  
24 stop and you were doing this for at least 30  
25 seconds to a minute?

1           A.    Yes.  It was briefly, like five, six  
2 seconds.  I put, yes, I was looking down and  
3 then I looked up and continued driving.

4           Q.    Let me ask you about your phone  
5 records.

6           MR. JONES:  First of all, is this  
7 Respondent's Exhibit 1, your Honor?

8           ATTORNEY EXAMINER:  We can mark it  
9 so.

10           (EXHIBIT HEREBY MARKED FOR  
11 IDENTIFICATION PURPOSES)

12           Q.    On your Exhibit 1 you were referring  
13 us to page 7.  And specifically January 19th.

14           Now, I don't see --

15           THE INTERPRETER:  It was page 6.  
16 Sorry.

17           Q.    Page 6, January 19th.  Your phone  
18 records here, they only report what's incoming  
19 and outgoing calls; is that correct?

20           A.    No.  It shows everything.  Text  
21 messages.  That day in particular I did not  
22 text.

23           Q.    I don't see -- where do you see text  
24 message indicated on page 6?

25           ATTORNEY EXAMINER:  It's from

1 the bottom of this left-hand column, that is  
2 where all the texts are calibrated. So, if you  
3 look on the left-hand column at the very bottom  
4 it says texts. So, those are all his text  
5 messages.

6 Q. Okay. I am following the text mark  
7 now. It goes over to Page 7. And I don't see  
8 anything for January 19th. I see January 18th,  
9 I don't see January 19th.

10 THE INTERPRETER: So, he is  
11 saying -- well, there is another because I  
12 didn't text that day.

13 Q. Now, I want to refer your attention  
14 underneath the data part of the phone record  
15 here. On the same Page 7 at the bottom it says  
16 data, and if you look down to January 19th it  
17 says mobile internet, and then it gives the --  
18 shows the megabyte usage during that day.

19 So, there it does show that you did  
20 use the phone on the 19th. This shows  
21 the amount of megabytes; is that correct?

22 A. I am not sure. Are you referring to  
23 page 6 where it says total? Is that --

24 Q. No. I am looking at Page 7 under  
25 data.

1 A. Okay.

2 Q. January 19th.

3 A. Yes. We found it.

4 Q. So, that is the area that would  
5 apply. Since you said you were using your GPS,  
6 that would be a data recording on your phone  
7 record; would it not?

8 A. Yes.

9 Q. Okay. Because you explained to the  
10 officer you weren't texting, but you were trying  
11 to find directions to a truck stop; is that  
12 correct?

13 A. Yes.

14 Q. Okay. So that would just show up  
15 then under data, that wouldn't show up anywhere  
16 else; correct?

17 A. Yes.

18 Q. Okay. So what the officer told you  
19 he was citing you for was using that device to  
20 get directions while at the same time you were  
21 weaving out in the lane, and that is what he  
22 said created an unsafe situation.

23 That is what he was told by the  
24 officer; right?

25 A. Yes.

1                   MR. JONES: Okay. Your Honor, could  
2 I just have a second?

3                   ATTORNEY EXAMINER: Sure.

4                   Q. So, Mr. Bigun, you understand you  
5 were not charged for texting while driving; you  
6 understand that?

7                   A. Yes.

8                   Q. And you also understand you were not  
9 charged for just making a phone call or  
10 receiving a phone call while driving. Do you  
11 understand that?

12                  A. Yes.

13                  Q. And do you understand that under the  
14 Federal Motor Carrier Safety Regulations that  
15 there are other provisions that provide for  
16 texting while driving?

17                  A. The only option I know is either  
18 look at the GPS, that is all.

19                  Q. Okay. And, Mr. Bigun, you do not  
20 dispute, do you, that the hand-held device does  
21 constitute equipment or an accessory?

22                  A. Well, I guess how much you supposed  
23 to use a GPS when it's on the phone?

24                  Q. You were using GPS on the phone.  
25 You were using GPS on the phone.

1           A.    Yes.  Yes.  I have actual GPS and  
2   GPS in my phone.  Most of the time I have two  
3   GPS, but the one on my cell phone shows more  
4   precise locations and different truck stops and  
5   accidents and different routes that is easier  
6   for me.

7           Q.    So the phone was being used as  
8   equipment or accessory to help you find  
9   directions?

10          A.    Yes.

11               MR. JONES:  Okay.  I have no other  
12   questions, your Honor.

13               ATTORNEY EXAMINER:  Does he have  
14   anything else he would like to say?

15               THE INTERPRETER:  No.

16               ATTORNEY EXAMINER:  You may be  
17   excused.  At this time let's go over the  
18   exhibits and admit them.

19               So I have three exhibits from Staff.  
20   Exhibit 1, 2 and 3.  Does Mr. Bigun have any  
21   objections to submitting any of these three?

22               THE INTERPRETER:  Yes.  All I have  
23   to say is I just used the cell phone for work  
24   purposes, and that was it.

25               ATTORNEY EXAMINER:  Okay.  But with

1 regard to the exhibits, are there any objections  
2 to those being admitted to the record?

3 THE INTERPRETER: No, that is fine.

4 ATTORNEY EXAMINER: Okay. Then, Mr.  
5 Jones, are there any objections to admitting  
6 Respondent's Exhibit 1, which is a cell phone  
7 bill?

8 MR. JONES: I have to object, your  
9 Honor. I don't know, he might have multiple  
10 phones. I don't know if this is the account to  
11 the phone that was being used that day. There  
12 is no foundation for that. It's hearsay.

13 Besides, there is no authenticity  
14 here. You know, clearly this is a usage  
15 situation, as he admitted. So the texting of  
16 the phone call information on this exhibit is  
17 not helpful to the Court. And the information  
18 that is provided for data, it just gives you  
19 the overall megabyte used for the whole day.

20 So, there is nothing here that is  
21 helpful to the finder of fact, your Honor.

22 THE INTERPRETER: I think I lost one  
23 page. Yes, I lost page 8. I think my  
24 interpreter has page 8.

25 MR. JONES: I also object on

1 relevance, I guess.

2 ATTORNEY EXAMINER: Okay. I will  
3 take those objections under advisement, and I  
4 will rule on whether it will be admitted when I  
5 issue my opinion.

6 Are there any other matters you  
7 would like to discuss before we go off the  
8 record?

9 I would like to note that on one of  
10 the few times that we went off the record we  
11 discussed that after this hearing Mr. Bigun will  
12 call the FMCSA and will find out how the points  
13 will affect his driving record. And based on  
14 that information he is going to contact Staff  
15 and let us know if he is going to pay the  
16 forfeiture or not. And he should do this as  
17 soon as possible.

18 And I should have an opinion in this  
19 matter in the next month or so. No guarantees.  
20 So as soon as he can contact the FMCSA that  
21 would be --

22 THE INTERPRETER: Okay.

23 ATTORNEY EXAMINER: If there is no  
24 other matters then we will go off the record and  
25 submit this case.



1 MR. JONES: Thank you, your Honor.

2 ATTORNEY EXAMINER: Thank you very

3 much.

4 (At 11:45 A.M. the hearing was

5 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 August  
27, 2018, and carefully compared with my  
original stenographic notes.

*Michael O. Spencer*  
Michael O. Spencer,  
Registered Professional  
Reporter.

- - -



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Summary: Transcript In the Matter of Vasyl Bigun, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on August 27th, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.