

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of Vitaliy :  
Denys Notice of Apparent : Case No.  
Violation and Intent to : 19-932-TR-CVF  
Assess Forfeiture. :

- - -

PROCEEDINGS

Before Jim Lynn, Attorney Examiner, held at the  
Public Utilities Commission of Ohio, 180 East  
Broad Street, Hearing Room 11-D, Columbus, Ohio,  
on Tuesday, August 20, 2019, at 10:10 A.M.

- - -

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- - -

1 APPEARANCES:

2 Ms. Jodi Bair  
3 Assistant Attorney General  
30 East Broad Street  
4 16th Floor  
Columbus, Ohio 43215

5 On behalf of the Staff of  
6 the Public Utilities  
Commission of Ohio.

7  
8 Mr. Vitaliy Denys  
243 Regina Street  
9 Philadelphia, Pennsylvania 19116

10 Appearing Pro se.

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1 Tuesday Morning,  
2 August 20, 2019.

3 - - -

4 ATTORNEY EXAMINER: The Public  
5 Utilities Commission of Ohio has assigned for  
6 hearing at this time and place Case No.  
7 19-932-TR-CVF in the matter of Vitaliy Denys  
8 notice of apparent violation and intent to  
9 assess forfeiture.

10 I am Jim Lynn, the Attorney Examiner  
11 assigned to hear this case. And at this time we  
12 will have the appearances of the parties. We  
13 will begin with the Staff.

14 MS. BAIR: Thank you, your Honor.  
15 On behalf of the Staff of the Public Utilities  
16 Commission Dave Yost, Attorney General; Jodi  
17 Bair, Assistant Attorney General, 30 East Broad  
18 Street, Columbus, Ohio 43215.

19 ATTORNEY EXAMINER: Thank you. Mr.  
20 Denys, could you give your name and address,  
21 please.

22 MR. DENYS: My name is Vitaliy  
23 Denys. My address is 243 Regina Street,  
24 Philadelphia, Pennsylvania 19116.

25 ATTORNEY EXAMINER: Thank you. We

1 will begin with our Staff and whatever witnesses  
2 Staff may have.

3 MS. BAIR: Thank you, your Honor.  
4 Staff would like to call Aaron Lockhart as its  
5 witness, please.

6 (WITNESS SWORN)

7 - - -

8 AARON LOCKHART  
9 called as a witness, being first duly sworn,  
10 testified as follows:

11 DIRECT EXAMINATION

12 By Ms. Bair:

13 Q. Good morning. Could you please  
14 state your full name for the record?

15 A. It's Aaron Lockhart.

16 Q. And by whom are you employed and  
17 what's your position?

18 A. Public Utilities Commission of Ohio.  
19 I am a hazmat specialist.

20 Q. How long have you been with  
21 the Commission?

22 A. I have been with the Commission for  
23 five years.

24 Q. Can you please tell me what your  
25 duties are as a hazmat specialist?

1           A.    As a hazmat specialist we do  
2    roadside inspections, we do compliance reviews  
3    and investigations. We handle hazmat incidents  
4    and new entrant safety audits.

5           Q.    What type of training do you have in  
6    those areas that you just described?

7           A.    I have been through North American  
8    Part A, B, general hazmat, other bulk cargo  
9    tank, new entrants safety audit class,  
10   compliance review class, hazmat tech class,  
11   radiation specialist class. And then ongoing  
12   training in those areas every year.

13          Q.    Thank you. When you say North  
14   American, what are you referring to?

15          A.    North American Standard, FMCSA,  
16   regulations Part A and roadside inspection.

17               MS. BAIR: Your Honor, I would like  
18   to have the Driver Examination Report dated  
19   12-13-18 marked Staff Exhibit 1.

20               ATTORNEY EXAMINER: Thank you. You  
21   may bring that up.

22               (EXHIBIT HEREBY MARKED FOR  
23   IDENTIFICATION PURPOSES)

24               MS. BAIR: And, your Honor, I would  
25   like to note that I have redacted the driver's

1 license number.

2 ATTORNEY EXAMINER: Fine.

3 Q. Mr. Lockhart, do you recognize Staff  
4 Exhibit 1?

5 A. I do.

6 Q. Could you please tell me what that  
7 document is?

8 A. This is a Level 2 roadside  
9 inspection conducted December 13, 2018.

10 Q. And is this document part of the  
11 regular business records kept on behalf of  
12 the Commission?

13 A. It is.

14 Q. And is it the practice of  
15 the Commission to make this report?

16 A. It is.

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

20 A. Yes, it is.

21 Q. What was the reason for producing  
22 this report?

23 A. The roadside inspections are  
24 requirements for my job duties. We do 120 plus  
25 roadside inspections a year. And when I



1 observed Mr. Denys driving by I observed him on  
2 his telephone texting.

3 Q. Who is the driver listed in this  
4 report?

5 A. Mr. Denys.

6 Q. And do you see Mr. Denys here today?

7 A. I do.

8 Q. Did he get a copy of this report at  
9 that stop?

10 A. He did, yes.

11 Q. Okay. And let's get into, what is  
12 the specific violation noted in that report?

13 A. The specific violation is 397.17,  
14 operating a CMV while texting.

15 Q. And how did you make that  
16 determination on December 13, 2018?

17 A. I was sitting at a location in  
18 between a stop light and a heavily traveled  
19 place that has damaged vehicles that are sold,  
20 bought, sold and resold. They deliver, they  
21 pick up. There is always truck traffic through  
22 there.

23 So, I was at that location because  
24 trucks go slow through there because nine out of  
25 ten times they are going there or to another

1 place just down the road.

2 I observed Mr. Denys come up to the  
3 stop light. I watched him at the stop light.  
4 When the light turned green I watched him as he  
5 approached me, and as he was going by my he had  
6 his telephone in his hand looking down at it  
7 using his fingers doing something, which  
8 appeared to be texting.

9 Q. Was the motor vehicle that Mr. Denys  
10 was driving, was he moving at the time that you  
11 saw the texting?

12 A. He was moving. He was running about  
13 20 miles an hour. It's a short distance between  
14 the stop light and the location he was going to.

15 Q. And the location he was going to, is  
16 where the cars were?

17 A. The auto salvage place, yes.

18 Q. And where did this inspection take  
19 place?

20 A. On Reiser Avenue. I followed Mr.  
21 Denys into the location that he was going. I  
22 can't remember if he was loading are unloading  
23 vehicles, but I followed him into that location.

24 Q. In the report you cited the CFR  
25 390.17; correct?

1           A.    I did.

2           Q.    Do you have that before you?

3           A.    I do.

4           Q.    Okay. And how would you determine  
5 that it was a violation of 390.17, what you saw  
6 that day?

7           A.    It was Mr. Denys had an electronic  
8 device in his hand, and he was looking down at  
9 the electronic device, which that section is not  
10 specific to texting, that section is specific to  
11 using the electronic device while operating a  
12 commercial motor vehicle.

13          Q.    And does that have to do with  
14 safety?

15          A.    It does have to do with safety  
16 because your eyes are not on the road, you can't  
17 see things that could happen quickly in front of  
18 you because you are not looking at the road  
19 ahead.

20               MS. BAIR: Thank you. Your Honor, I  
21 would move Staff Exhibit 1 into evidence.

22               ATTORNEY EXAMINER: Okay. And, Mr.  
23 Denys, do you have an objection from Staff  
24 Exhibit 1 being admitted into evidence?

25               Well, actually, Ms. Bair, before we

1 do that, Mr. Denys, did you have any questions  
2 for the witness?

3 MR. DENYS: My question because I was  
4 very surprised when the police officer stopped  
5 me.

6 ATTORNEY EXAMINER: Well, Mr. Denys,  
7 what we can do is this. You will have a chance  
8 to come up here and tell your story too, but did  
9 you have any particular questions for the  
10 inspector?

11 MR. DENYS: No.

12 ATTORNEY EXAMINER: Okay. Do you  
13 have any objections to this inspection report  
14 being admitted into evidence for our proceedings  
15 today?

16 MR. DENYS: Objections?

17 ATTORNEY EXAMINER: It's like do you  
18 disagree?

19 MR. DENYS: I am actually disagree,  
20 yes.

21 ATTORNEY EXAMINER: You have  
22 disagreement with the violation, but as part of  
23 the proceedings today --

24 MR. DENYS: The situation like  
25 described, it's was -- I was holding like this

1 (indicating) but didn't held my phone.

2 ATTORNEY EXAMINER: Okay. Well,  
3 wait until you are up here on the stand and  
4 explain what you were doing. But, as far as --  
5 okay. I will say it this way.

6 You were given a copy of this at the  
7 inspection. Now, you may disagree with it, but  
8 do you have any -- you may disagree with  
9 the violation, but do you have any disagreement  
10 with saying, okay, this is what the inspector  
11 says, this will be part of the record for this  
12 case. Do you have any objection to that?

13 MR. DENYS: No.

14 ATTORNEY EXAMINER: Thank you. And  
15 so we will admit Staff Exhibit 1 into evidence.  
16 Thank you. You can have a seat, Mr. Denys. And  
17 you will be given a chance to come up here.

18 (EXHIBIT ADMITTED INTO  
19 EVIDENCE)

20 ATTORNEY EXAMINER: Ms. Bair,  
21 anything beyond that with the inspector?

22 MS. BAIR: No.

23 ATTORNEY EXAMINER: Okay.  
24 Inspector, should I say Specialist?

25 THE WITNESS: However.

EXAMINATION

By the Attorney Examiner:

Q. Okay. I have a question. Could you tell me what time of day, it was 11:35, what were the weather conditions like that day?

A. They were sunny that day.

Q. Okay. And Mr. Denys was driving towards you?

A. Correct

Q. This was a two-lane road?

A. Two-lane road. And as he passed me he was on the opposite side, so it was driver side facing the way I was.

Q. You were on the opposite side of the street?

A. Correct.

Q. He was coming towards you?

A. Correct.

Q. And he actually ended up pulling into the area where you were parked; am I right about that?

A. Just down the road, correct. It's -- the salvage place is probably a half a mile from the stop light. And I was in between the stop light and the salvage place.

1 ATTORNEY EXAMINER: All right.

2 Thank you. I have no more questions for you at  
3 this time. You can take your seat. And if I  
4 have questions further you are still under oath,  
5 sworn testimony. So thank you very much.

6 THE WITNESS: Thank you.

7 ATTORNEY EXAMINER: Mr. Denys, if  
8 you would like to come up.

9 MS. BAIR: Mr. Persinger, civil  
10 forfeiture.

11 ATTORNEY EXAMINER: Correct. Sorry,  
12 Mr. Denys. One more witness for the Staff.

13 MS. BAIR: Staff calls Thomas  
14 Persinger to the stand, please.

15 (WITNESS SWORN)

16 - - -

17 THOMAS PERSINGER  
18 called as a witness, being first duly sworn,  
19 testified as follows;

20 DIRECT EXAMINATION

21 By Ms. Bair:

22 Q. Could you please state your name and  
23 tell by whom you are employed?

24 A. My name is Thomas Persinger. I am  
25 employed by the Public Utilities Commission of

1 Ohio as a hazardous materials compliance  
2 officer.

3 Q. What are your duties as a hazardous  
4 materials compliance officer?

5 A. My duties include going out and  
6 doing roadside inspections of vehicles. I go  
7 through hazardous materials training, vehicle  
8 safety training.

9 I also conduct, I help determine  
10 the fines resulting from after the roadside  
11 inspections have been completed.

12 Q. And what are your qualifications for  
13 this job?

14 A. My qualifications include going  
15 through the North American Standard class, the  
16 Part A, the Part B. General hazmat, bulk  
17 package cargo tank. I also go to refresher  
18 training that are held for the Staff here. I  
19 also have educational qualifications including a  
20 law degree.

21 Q. And how long have you been in your  
22 position at the Commission?

23 A. Little over eight years.

24 Q. Eight years?

25 A. Yes, ma'am.



1 MS. BAIR: Let's go ahead and I  
2 would like to have marked as Staff Exhibit 2 the  
3 Notice of Preliminary Determination.

4 ATTORNEY EXAMINER: Please bring  
5 that up. Thank you.

6 (EXHIBIT HEREBY MARKED FOR  
7 IDENTIFICATION PURPOSES)

8 Q. Please explain how for a forfeiture  
9 is determined by the Commission.

10 A. I will start off with the life  
11 process, how it comes to this stage. Any  
12 violation that comes from a roadside inspection,  
13 like the inspection Mr. Lockhart will do, enters  
14 into our system through SafetyNet. And then it  
15 enters into our internal system that depending  
16 upon the violation that's presented, a fine  
17 amount can be attached to a particular  
18 violation.

19 Then those violations with fines, we  
20 send out notices to respondents on cases with  
21 certain fine amounts on them. They have a  
22 chance to request a conference.

23 And then at the conference stage if  
24 the matter cannot be resolved then they have the  
25 right to take their matter to an administrative

1 hearing, which is where we are at today.

2 Q. And does the Commission apply this  
3 process uniformly to all drives?

4 A. Yes. That is correct. So a brake  
5 out of service violation would be the same  
6 across all carries.

7 Q. And do you recognize Staff Exhibit  
8 2?

9 A. Yes, I do.

10 Q. Could you please tell me what that  
11 is?

12 A. This is a Notice of Preliminary  
13 Determination letter that is sent out to the  
14 Respondent upon the conclusion of a conference  
15 that did not result in a resolution.

16 Q. And is this document kept in the  
17 regular course of the Commission's business?

18 A. Yes, it is.

19 Q. Okay. And I know you have explained  
20 how these civil forfeitures are derived, but  
21 specific to this case could you please give an  
22 explanation how the \$250 was developed?

23 A. Different violations tend to have  
24 different group numbers on them. In this case,  
25 depending upon the type of Group 4 violation

1 that it is, certain Group 4 violations carry  
2 fines, could be 100, could be 250, could be 500.

3 In this case a texting violation  
4 carries with it a \$250 fine and that is a Group  
5 4 violation.

6 Q. Where does a Group 4 violating come  
7 from? Is that Federal Carrier reference?

8 A. Yes. There is a general guideline  
9 that we follow, CVSA, a fine, recommended  
10 guidelines.

11 Q. And CVSA is Commercial Vehicle  
12 Safety --

13 A. Commercial Vehicle Safety Alliance.

14 Q. Alliance. Thank you. And what is  
15 the forfeiture amount in this case?

16 A. Here the forfeiture amount for the  
17 alleged violation is \$250.

18 Q. And is that the correct forfeiture  
19 amount that you would recommend to the  
20 Commission?

21 A. Yes, ma'am.

22 MS. BAIR: Thank you. I would move  
23 Staff Exhibit 2 not into evidence subject to  
24 cross-examination.

25 ATTORNEY EXAMINER: Thank you. Mr.

1 Denys, do you have any objections to this being  
2 admitted into evidence as part of the record in  
3 this case? Again, you may disagree with the  
4 violation, you may think you didn't commit a  
5 violation and have to pay the fine, but just as  
6 far as part of the record of what Staff is  
7 presenting here, do you have any objection to it  
8 being admitted into evidence?

9 MR. DENYS: No.

10 ATTORNEY EXAMINER: Thank you. All  
11 right. In that case we will admit Staff Exhibit  
12 2 into evidence as well.

13 (EXHIBIT ADMITTED INTO EVIDENCE)

14 ATTORNEY EXAMINER: And, Mr. Denys,  
15 do you have any questions for the witness?  
16 Again just questions about how the fine was  
17 calculated.

18 MR. DENYS: No.

19 ATTORNEY EXAMINER: All right.  
20 Thank you. Thank you very much. Ms. Bair,  
21 nothing further from you at this time?

22 MS. BAIR: No.

23 ATTORNEY EXAMINER: Okay. Mr.  
24 Denys, if you would like to come up here and  
25 trade places with Mr. Persinger here.

1 MS. BAIR: Exhibit 2 was moved into  
2 evidence?

3 ATTORNEY EXAMINER: Yes. We  
4 admitted both Exhibits 1 and 2 into evidence.  
5 Certainly.

6 Mr. Denys, come on up. Thank you.  
7 Please raise your right hand.

8 MR. DENYS: I am not going to  
9 swear. I never swear in my life.

10 ATTORNEY EXAMINER: Well, this is  
11 just --

12 MR. DENYS: What I say is true.

13 ATTORNEY EXAMINER: Well, the  
14 statements you are about to make are true?

15 MR. DENYS: Well, what I say is  
16 true. I not swear in my life. I never swear.

17 ATTORNEY EXAMINER: Well, this  
18 doesn't --

19 MR. DENYS: That is my understanding  
20 of Bible.

21 ATTORNEY EXAMINER: Sure, we will go  
22 off the record.

23 (DISCUSSION OFF THE RECORD)

24 ATTORNEY EXAMINER: Mr. Denys,  
25 please raise your right hand. Do you affirm

1 that the statements you are about to make are  
2 true from your perspective?

3 MR. DENYS: Yes.

4 ATTORNEY EXAMINER: Thank you very  
5 much.

6 MR. DENYS: Sorry about that.

7 ATTORNEY EXAMINER: Well, you stand  
8 by your beliefs. That is respectful. Thank  
9 you.

10 - - -

11 VITALIY DENYS

12 called as a witness, being first duly affirmed  
13 to tell the truth, testified as follows:

14 ATTORNEY EXAMINER: Now, Mr. Denys,  
15 I appreciate you coming here. I notice you are  
16 from Philadelphia, so I am sure it was not a  
17 short trip at all.

18 Tell me what brings you, and  
19 apparently you disagree with the violation, or  
20 you don't think there was one, tell me from your  
21 perspective what happened, or what your thoughts  
22 are?

23 MR. DENYS: Yes. Actually, the  
24 situation happened on the road. It was like  
25 same exactly like was explained here.

1 I was on the traffic light. Before  
2 me it was the Sherry Drive, and on the green  
3 light make a right. I crossed this road, and on  
4 the left side I see the vehicle was inspector.  
5 And was drive through that and make a left on  
6 that.

7 And I see the lights behind me.  
8 And somebody stops me. And I was surprised what  
9 happened, why it happened. Why he stops me.

10 And when the police officer says I  
11 saw you text message, I couldn't confirm that.  
12 And I told him I didn't text because I know from  
13 my previous situation and from the drivers that  
14 I don't supposed to hold my phone in my hand.

15 That is why I have special holder in  
16 my truck, and I hold my phone -- and I have like  
17 a headset over there, for my neck. And I use  
18 the headset every time for talking.

19 I don't know how this happened. I  
20 have automatic transmission. I look on the  
21 automatic transmission, but I can't confirm that  
22 I text. And when I got this violation, and then  
23 when I got the letter from the Ohio Public  
24 Utilities Commission that I have fine 250, and I  
25 think if I didn't text and I didn't hold a phone

1 in my hand why I have to pay this fine.

2 That is why I make decision, say I  
3 am not guilty, and send a message to here that I  
4 didn't text. I don't have -- I tried to find  
5 some confirmation of that. I called to Verizon  
6 and Verizon give me the letter, the text history  
7 older than 90 days would need to be request  
8 through Verizon's CS, but may not be available.  
9 And if available may require a court order.

10 That is why I spend like probably  
11 two and a half hours on the phone when I called  
12 somewhere to get this record. I didn't find  
13 this record. But, I got record from my phone  
14 right here. And that the 13, I didn't have any  
15 text messages. I have messages 11, I have  
16 messages from 14. 12 and 13 I don't have  
17 messages.

18 ATTORNEY EXAMINER: Okay. So, first  
19 thank you for your comments. So, we will make a  
20 copy of that for the Staff. But, Ms. Bair, I  
21 have some questions.

22 MS. BAIR: And I would object to  
23 entering this into -- there is no  
24 authentication. I haven't even seen it. And  
25 looking at it from here I don't know how he can



1 authenticate it.

2 ATTORNEY EXAMINER: Well, let's have  
3 the Staff take a look at it now, please. That  
4 would I think help.

5 Go off the record just for a minute,  
6 Mike.

7 (DISCUSSION OFF THE RECORD)

8 ATTORNEY EXAMINER: Let's go back  
9 on the record.

10 EXAMINATION

11 By the Attorney Examiner:

12 Q. Before we get to what Mr. Denys  
13 wanted to produce as an exhibit, tell me again  
14 what your recollection is of the whole incident.

15 That is you said you are at a stop  
16 light, the light changed to green, you begin to  
17 go driving again, and you are saying like  
18 changing lanes or something like that?

19 Q. No. I just pass the intersection.

20 Q. You went through the intersection.  
21 Now, you are saying that -- were you holding  
22 anything in your hand? Did you have anything in  
23 your hand at all?

24 A. No.

25 Q. You are indicating sort of like a

1 holder or place to set down your phone in the  
2 truck?

3 A. Yes.

4 Q. And did you say that you have say a  
5 ear piece or something so you can hear on that?  
6 I didn't quite understand that part of it.

7 A. Oh, it's wireless connection. And I  
8 have another device. I have wire headset and --  
9 but at this time, at this time when I drive in  
10 this situation I didn't use any headset.

11 Q. Well --

12 A. Yes. But, if I remember how this  
13 happened, probably because sometime on my  
14 transmission sometime there comes service light,  
15 sometime. And I have to stop, but I am not sure  
16 at this time the service light was on. But  
17 probably because sometime I look on my  
18 transmission, my transmission is right here  
19 (indicating) and I could look there. But at  
20 this time I want to confirm service light was  
21 not on. Everything was good.

22 Q. So, you are indicating that if you  
23 were not looking at the road you may have been  
24 looking at say the dashboard or some sort of,  
25 you know, feedback on about your truck?

1 A. On the transmission, yes.

2 Q. And you are saying you have an  
3 automatic transmission. So you are not shifting  
4 the vehicle or something.

5 A. No.

6 Q. I see. Okay. Mr. Denys, what you  
7 have here, which you are saying is a record of  
8 your telephone calls. How did you produce  
9 this? I mean, did you --

10 A. How I do this?

11 Q. Yes.

12 A. It's a screen shot from my phone and  
13 I print it out.

14 Q. Screen shot of your record?

15 A. My record.

16 Q. Calls from your phone. Okay. And  
17 this is -- does this show all calls, both going  
18 out and coming in, calls you make and calls  
19 people make to you?

20 A. Yes.

21 Q. Okay. But you also indicated that  
22 when you contacted Verizon, let's see, was  
23 the difficulty in obtaining a record from  
24 Verizon because, one, the inspection occurred  
25 and they were saying something like -- did you

1 say about 90 days, so when it was over 90 days  
2 you are saying Verizon couldn't produce such a  
3 record for you?

4 A. Yes.

5 Q. Unless a court ordered Verizon, they  
6 had a court order or something.

7 A. Yes.

8 Q. Okay. Well, let's see.

9 A. But, I am sure if Verizon give me a  
10 record it's going to be the same like right  
11 here.

12 Q. So, Mr. Denys, when you were stopped  
13 and when the stop light changed and you were  
14 going through the intersection, do you recall  
15 whether you were actually looking at the road or  
16 looking at something?

17 A. I looked at the road, yes.

18 Q. Okay. And you are saying if you  
19 happened to be not looking at the road it might  
20 just be looking at your dashboard about the  
21 vehicle?

22 A. Yes.

23 Q. You mentioned something about a  
24 check service light or something. So you are  
25 saying to your recollection then you were

1 looking at the road when the light changed, you  
2 kept driving, you were looking at the road.

3 A. Yes.

4 Q. That's your perspective of that.

5 A. Yes.

6 Q. So you weren't holding anything in  
7 your hand at that time. That is what you are  
8 saying?

9 A. Yes.

10 ATTORNEY EXAMINER: Ms. Bair.

11 MS. BAIR: I have some questions.

12 ATTORNEY EXAMINER: Please go ahead.

13 And please go ahead with your questions and  
14 then we will get to what he wanted to introduce  
15 into evidence.

16 CROSS-EXAMINATION

17 By Ms. Bair:

18 Q. What other uses do you use on your  
19 phone? What applications do you have on your  
20 phone? You don't just use your phone to talk  
21 and text. What else do you use your phone for?

22 A. I have a lot of applications.

23 Q. For example, are your logbooks kept  
24 on your phone?

25 A. Logbooks?

1 Q. Yes.

2 A. Yes. My logbook is on my phone,  
3 yes.

4 Q. Okay. How about GPS, is that on  
5 your phone?

6 A. No. I have GPS on the dash.

7 Q. Separate instrument?

8 A. Yes.

9 Q. So beside calls and text messages  
10 you do use your phone for other uses just like  
11 you testified.

12 A. Yes.

13 Q. Do you use your phone for logbook?

14 A. Yes.

15 Q. What other uses do you use your  
16 phone for on a daily basis? What else would you  
17 use your phone?

18 A. Lot of options.

19 Q. So you use it a lot during the day?

20 A. Yes. Exactly, yes. If I have in my  
21 phone.

22 Q. And none of those are indicated in  
23 that piece of paper that you have in front of  
24 you; right? None of those uses are on that  
25 piece of paper?

1 A. Yes.

2 Q. But you are still using your phone?

3 A. In the day?

4 Q. Yes.

5 A. Yes. Exactly. Yes, I use my phone.

6 Q. Okay.

7 A. I use my phone for everything, yes,  
8 sure because I don't know, if I don't have my  
9 phone I don't do my job. I have connection with  
10 everybody, with customers, because I am owner of  
11 my company, and I have connections.

12 Q. Does dispatch, in other words, the  
13 carrier tells you what to do come through your  
14 phone?

15 A. Dispatch? Usually when I got  
16 dispatch I make a screen shots from my dispatch  
17 and I keep my screen shots and when they make my  
18 order I am using those screen shots and because  
19 I don't have printer I not print it out.

20 Q. Okay. Are your shipping papers  
21 contained on the phone?

22 A. Yes.

23 Q. Okay. And the piece of paper that  
24 you have here today, do you recall participating  
25 in pre-hearing conference with Staff on May

1 30th, 2019 when we talked to you?

2 A. Say the question again.

3 Q. Do you remember having a discussion  
4 with me -- well, okay. Then several times you  
5 have talked to the PUCO staff. For example,  
6 once on February 7th you talked to Mr.  
7 Persinger. Do you remember that?

8 A. Yes. I was here.

9 Q. And you didn't produce this piece of  
10 paper?

11 A. No. No.

12 Q. Do you recall a pre-hearing  
13 conference on May 30th where you talked to me?

14 A. Yes.

15 Q. And did you produce that piece of  
16 paper?

17 A. No. That is first time. I am  
18 trying to get from Verizon, but when I go to  
19 Verizon Verizon suggest me to do this. That  
20 when I present this to Verizon they suggest me  
21 because, sorry, we can't help you with any  
22 copies of your record. But you can make screen  
23 shot of your phone, and you can print it out and  
24 that is what you can do. That happened  
25 yesterday. And I print it out this morning. I



1 have screen shot and print it out this morning.

2 Q. I have a question. How can we tell  
3 from that piece of paper you produced that your  
4 phone number, that it yours. Is there some  
5 place on there that says that?

6 A. I can show you right now on my  
7 phone.

8 Q. The piece of paper.

9 A. How we can confirm it?

10 Q. On the piece of paper. I don't see  
11 how we -- I don't know how that shows it's your  
12 phone on that piece of paper.

13 A. Is there any number on this?

14 ATTORNEY EXAMINER: I will have to  
15 leave that up to you, Mr. Denys. I don't know  
16 what your number is.

17 A. I can sign here.

18 Q. No. Is your phone number on there?

19 A. My phone number?

20 Q. Yes.

21 A. No.

22 Q. Your phone number is not printed on  
23 the piece of paper that you are trying to --  
24 okay. So we don't really know that that is your  
25 phone number, that could be somebody else

1 because your phone number is not indicated;  
2 correct?

3 A. I have my phone. I can show you on  
4 my phone.

5 Q. We are talking bout this piece of  
6 paper in front of you. Is your phone number on  
7 that?

8 A. No. Not my phone number.

9 Q. Thank you. Do you recall your  
10 discussion about the transmission service light  
11 that you had with the Hearing Examiner a little  
12 bit ago?

13 A. No, I didn't discuss.

14 ATTORNEY EXAMINER: Well, Mr. Denys,  
15 you were mentioning to me that sometimes there  
16 is a service light that will come on on the  
17 dashboard of your truck, and that you might  
18 sometimes look down to your dashboard to see if  
19 that light is on. That's what Ms. Bair is  
20 referring to.

21 THE WITNESS: Yes.

22 ATTORNEY EXAMINER: So, Ms. Bair,  
23 please go ahead.

24 Q. So, it's your testimony that you  
25 were not looking at the service transmission

1 light; is that correct?

2 A. Yes, that's correct.

3 Q. You were not looking at it?

4 A. No.

5 MS. BAIR: Okay. I have no further  
6 questions. But in light of the  
7 cross-examination I would like to call Officer  
8 Lockhart for rebuttal testimony.

9 ATTORNEY EXAMINER: All right. We  
10 will go ahead and we will still leave pending  
11 the issue of the document that Mr. Denys has.  
12 Yes, Mr. Denys, you can take your seat for a  
13 moment, please.

14 And we will have Mr. Lockhart back  
15 up here. Thank you. Inspector, Lockhart.  
16 Thank you.

17 MS. BAIR: Staff would like to call  
18 Specialist Lockhart to the stand for rebuttal  
19 testimony, please.

20 ATTORNEY EXAMINER: Come back up.  
21 Thank you.

22 - - -

23 AARON LOCKHART  
24 recalled as a witness, being previously duly  
25 sworn, testified further as follows:

1 FURTHER DIRECT EXAMINATION

2 By Ms. Bair:

3 Q. I am going to ask you specifically  
4 what you recall about pulling over Mr. Denys  
5 this day. Did he get out of the truck that day?

6 A. He did.

7 Q. And what do you recall when you  
8 pulled him over? Do you remember anything about  
9 the phone?

10 A. I recall when I stopped Mr. Denys  
11 that he got out of the truck, was very surprised  
12 that I was stopping him at that location. And  
13 set his phone on the seat of the truck.

14 So when I asked for his shipping  
15 papers he got his phone from the seat of  
16 the truck to show me the shipping papers.

17 Q. So you see Mr. Denys place his phone  
18 on the seat before getting out of the truck?

19 A. I did.

20 MS. BAIR: Thank you. I have  
21 nothing further.

22 MR. DENYS: On the seat?

23 THE WITNESS: On the seat.

24 MS. BAIR: That's all I have.

25 ATTORNEY EXAMINER: Mr. Denys, did

1 you -- what are your thoughts involving what the  
2 inspector just stated about placing your phone  
3 on the seat and so forth?

4 MR. DENYS: For this I don't  
5 remember that. But usually when I go out from  
6 my trunk I take my phone from the holder and I  
7 hold in my hand, when I go out from my truck,  
8 because every time I use this when I pick up  
9 vehicles supposed to have in my hand.

10 EXAMINATION

11 By Attorney Examiner:

12 Q. Inspector, when you stopped the  
13 vehicle did you wait for Mr. Denys to come out  
14 of the cab, or did you go up to the cab and get  
15 up on the step and look into the cab? How did  
16 it all happen?

17 A. When I stopped him I pulled in  
18 behind him at his location. He was already  
19 getting out of the truck.

20 Q. Already getting out?

21 A. And he seen me walking up towards  
22 him. That's when he sat his phone on the seat  
23 of the truck and we started discussing why I  
24 stopped him. And there was going to be an  
25 inspection.

1           Q.    Okay.  So, you are testifying then  
2   that when you stopped Mr. Denys and he got out  
3   of the vehicle, apparently already getting out  
4   of the vehicle when you approached him?

5           A.    Correct.

6           Q.    He had the phone with him?

7           A.    Correct.

8           ATTORNEY EXAMINER:  I see.  Okay.  
9   Ms. Bair, any further questions then?

10          MS. BAIR:  No, your Honor.

11          ATTORNEY EXAMINER:  Okay.  Thank  
12   you, Inspector.  You can take your seat.  First  
13   of all thank everyone for coming.  All the  
14   comments are very interesting.  There is a lot  
15   to take into account with what was said today.

16          Ms. Bair, you had asked whether that  
17   paper that Mr. Denys has that he says is a  
18   record of his texting, you had asked whether  
19   there was a phone number of his on that  
20   document, and he indicated no.  Do you have any  
21   objection to him showing you on his phone what  
22   his phone number is?

23          MS. BAIR:  I don't see how that has  
24   anything to do with the piece of paper that he  
25   has produced.  I can look at his phone, but it

1 doesn't have anything to do with this piece of  
2 paper.

3 And I do object to having that  
4 entered into the record because of its lack of  
5 authentication whatsoever.

6 ATTORNEY EXAMINER: Thank you.  
7 I believe what I will do, as I said there are a  
8 lot of things to consider in this case. I will  
9 admit that into evidence, although your  
10 objection is noted. Obviously his phone number  
11 isn't on there. That can be noted as well. And  
12 also the other comments that were made about  
13 other uses that he -- other aspects of his phone  
14 and how he uses it for shipping papers and other  
15 documents as well. That will all be taken into  
16 account too.

17 We will go off the record for a  
18 minute.

19 (DISCUSSION OFF THE RECORD)

20 ATTORNEY EXAMINER: After some  
21 discussion we will admit, we will call that  
22 Denys Exhibit No. 1 into evidence. But we will  
23 give that the appropriate weight with everything  
24 else that was said at the hearing today.

25 (EXHIBIT ADMITTED INTO EVIDENCE)

1                   ATTORNEY EXAMINER: I believe I  
2 have no other issues to bring up. I often offer  
3 the parties a chance to do a brief, which may be  
4 unnecessary in a case like this. I am not  
5 saying you should do one.

6                   MS. BAIR: No. Mr. Denys doesn't  
7 think one is necessary, and neither does the  
8 staff.

9                   ATTORNEY EXAMINER: All right. Mr.  
10 Denys, you really said everything you had to say  
11 today; right? There is nothing more you could  
12 add at this point?

13                  MR. DENYS: No.

14                  ATTORNEY EXAMINER: A brief is  
15 basically just a written summary of your  
16 comments, and you don't have to do that. So,  
17 are you okay with just leaving things as they  
18 are there?

19                  MR. DENYS: Yes.

20                  ATTORNEY EXAMINER: All right.  
21 Thanks everyone for being here today. And I  
22 wish you all a safe trip home. Ms. Bair a safe  
23 walk back to the Attorney General's office.  
24 Thank you. Have a good morning.

25                  (At 10:55 A.M. the hearing was



concluded)

- - -

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  
20. 2019, and carefully compared with my  
original stenographic notes.

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

- - -



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