

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of :
Robert D. Kyser Notice : Case No.
of Apparent Violation : 19-1898-TR-CVF
and Intent to Assess :
Forfeiture. :

- - -

PROCEEDINGS

Before Lauren Augostini, Attorney Examiner, held
at the Public Utilities Commission of Ohio, 180
East Broad Street, Hearing Room 11-A, Columbus,
Ohio, on Thursday, January 23, 2020, at 10:00
A.M.

- - -

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1 APPEARANCES:

2 Mr. Steven T. Darnell
3 and
4 Mr. Robert Eubanks
5 Assistant Attorneys General
6 30 East Broad Street, 16th Floor
7 Columbus, Ohio 43215

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

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1 Thursday Morning Session,
2 January 23, 2020.

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4 ATTORNEY EXAMINER: The Public
5 Utilities Commission of Ohio has assigned for
6 hearing at this time and place Case No.
7 19-1898-TR-CVF being in the matter of Robert
8 Kyser Notice of Apparent Violation and Intent to
9 Assess Forfeiture.

10 My name is Lauren Augostini, and I
11 am the Attorney Examiner assigned by
12 the Commission to hear this case. At this time
13 we will go off the record.

14 (RECESS TAKEN)

15 ATTORNEY EXAMINER: Let's go back
16 on the record. At this time let's take
17 appearances of the parties beginning with
18 Staff.

19 MR. DARNELL: Certainly, your Honor.
20 Steven Darnell on behalf of the Ohio Attorney
21 General's office and Staff located at 30 East
22 Broad Street, Columbus, Ohio 43215, joined by
23 Assistant Attorney General Robert Eubanks.

24 ATTORNEY EXAMINER: Thank you. At
25 this time it is 10:16 and Mr. Kyser is not

1 present. Mr. Darnell, were you aware if he
2 would be here or not?

3 MR. DARNELL: He did not reach out
4 to me despite my numerous repeated attempts to
5 get in contact with him, your Honor.

6 ATTORNEY EXAMINER: Thank you. With
7 that, would you like to proceed with your case?

8 MR. DARNELL: Your Honor, if we may
9 abbreviate the case and just put the evidence
10 into the record and then move for a default at
11 the end of the case in chief I think that would
12 be appropriate.

13 ATTORNEY EXAMINER: Perfect. Go
14 ahead.

15 MR. DARNELL: Certainly. So at this
16 point the Staff would call Inspector Byrne.

17 (WITNESS SWORN)

18 - - -

19 INSPECTOR MICHAEL BYRNE
20 called as a witness, being first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Darnell:

24 Q. Would you please state your name
25 spelling your last name for the record?

1 A. Inspector Michael Byrne, B-Y-R-N-E.

2 Q. And where are you employed, Mr.

3 Byrne?

4 A. The Ohio State Highway Patrol.

5 Q. How long have you been there?

6 A. I have been in this job since
7 December of 2004.

8 Q. And what are your duties as an
9 Inspector with the State Highway Patrol?

10 A. My duties is commercial enforcement.

11 Q. Would you describe briefly what that
12 entails exactly?

13 A. Commercial enforcement involves not
14 only inspecting qualifications of drivers, but
15 inspecting vehicles.

16 Q. And what sort of training do you
17 have to have to be an inspector with the State
18 Highway Patrol?

19 A. We have our North American Standard
20 Level 1 training, which is held at the academy.

21 Q. So, why exactly are we here today?

22 A. We are here because of Mr. Kyser
23 failing to wear his seat belt while operating a
24 commercial motor vehicle.

25 Q. And is this something that you

1 regularly do in the course of your business?

2 A. Yes, it is.

3 Q. And how many inspections do you
4 perform on average every year?

5 A. On average a thousand.

6 MR. DARNELL: Your Honor, may I
7 approach the witness?

8 ATTORNEY EXAMINER: You may.

9 MR. DARNELL: Thank you.
10 Presenting what I have marked as Staff's Exhibit
11 1.

12 (EXHIBIT HEREBY MARKED FOR
13 IDENTIFICATION PURPOSES.)

14 Q. Do you recognize this, Inspector
15 Byrne?

16 A. Yes.

17 Q. What is it?

18 A. This is a Driver/Vehicle Examination
19 report that we prepare for our commercial
20 inspections.

21 Q. Does it seem to be a fair and
22 accurate copy of that report that you make in
23 the course of your business?

24 A. Yes, it is.

25 Q. And you do keep these in the

1 ordinary course of business?

2 A. Yes.

3 Q. Do you have any corrections to this
4 report?

5 A. There is one correction, actually
6 two, corrections in the inspection notes. With
7 the first sentence where it mentions East Alexis
8 Road to IR 75 northbound mile post 210,
9 northbound, which is abbreviated NB, needs to be
10 changed to SB for southbound.

11 There is also a sentence where it
12 also mentions IR 75 NB for northbound, that also
13 needs to be corrected to SB for southbound.

14 Q. Thank you. So what notes did you
15 make on that day regarding this stop?

16 A. My notes are the observation that I
17 made of Mr. Kyser failing to wear his seat belt
18 as he turned from East Alexis Road to Interstate
19 75 southbound at mile post 210.

20 Q. Would you mind reading those notes?

21 A. Sure. Would you like me to read
22 those notes with the correction?

23 Q. Yes, please.

24 A. Okay. "The seat belt violation was
25 observed while stationary to the right of the

1 onramp from East Alexis Road to IR 75 southbound
 2 mile post 210. As I was turned rearward and
 3 watched with binoculars I saw the CMV turn right
 4 from East Alexis Road eastbound and proceed down
 5 the onramp to IR 75 southbound. I clearly saw
 6 the driver. He was wearing a fluorescent yellow
 7 vest with no seat belt webbing across his chest.
 8 The orange webbing was to the left rear of the
 9 driver. As the CMV came closer I watched the
 10 driver reach rearward with his left hand then
 11 pull the orange webbing across his chest. The
 12 seat belt was now in use. There were no
 13 obstructions with visibility and weather
 14 conditions were clear."

15 "The seat belt was in proper use
 16 when I initiated the driver interview from the
 17 passenger side. The driver asked 'What did I
 18 do?' I inquired why he didn't have the seat
 19 belt on when he turned onto the onramp and
 20 explained I saw him reach for it. He said he
 21 was putting it on when he turned the corner. I
 22 replied he didn't put it on until he saw me as
 23 the CMV was coming down the onramp. He
 24 mentioned he was eating his lunch and just left
 25 the nearby Wendy's restaurant. I asked why

1 wouldn't you put the seat belt on before leaving
2 Wendy's. He replied 'That's true sir.'

3 I asked if there were any problems reflected
4 with the seat belt and Mr. Kyser replied no."

5 Additionally, the last paragraph,
6 "Cargo is empty racks coming from Piston
7 Automotive, 1212 East Alexis Road, Toledo, Ohio
8 and going to the Dana Incorporated Central
9 Avenue, Toledo Ohio."

10 Q. So how did you first observe Mr.
11 Kyser?

12 A. I was on the side of the onramp from
13 Alexis Road to 75 southbound. I was positioned
14 on the right side of the road with the door open
15 and me pointing rearward with the binoculars, I
16 can clearly see the commercial motor vehicle not
17 only turning from the right, but also as it's
18 approaching down the onramp.

19 MR. DARNELL: May I approach, Your
20 Honor?

21 ATTORNEY EXAMINER: You may.

22 (EXHIBIT MARKED FOR THE PURPOSE OF
23 IDENTIFICATION)

24 MR. DARNELL: I am approaching with
25 what has been marked as Staff Exhibit 2.

1 ATTORNEY EXAMINER: So marked.

2 Q. Inspector Byrne, do you recognize
3 this document?

4 A. Yes, I do.

5 Q. What is it?

6 A. These are my Bushnell binoculars
7 that I use for observing seat belt violations.

8 Q. And do you know who took this
9 picture?

10 A. I did.

11 Q. And when did you take it?

12 A. I took it during the day of the
13 violation.

14 Q. Is this a fair and accurate copy of
15 what you saw on that day with your bachelors?

16 A. Yes.

17 Q. Thank you. Did you make any other
18 contemporaneous recordings or anything of your
19 stop?

20 A. I did make an audio recording at the
21 initiation of the inspection.

22 MR. DARNELL: May I approach, Your
23 Honor?

24 ATTORNEY EXAMINER: You may.

25 MR. DARNELL: I am approaching with

1 what has been marked as Staff's Exhibit 3 and 4.

2 ATTORNEY EXAMINER: So marked.

3 (EXHIBITS MARKED FOR THE PURPOSE OF
4 IDENTIFICATION)

5 MR. DARNELL: May I play Exhibit 3
6 for the court, Your Honor?

7 ATTORNEY EXAMINER: You may.

8 MR. DARNELL: Thank you.

9 (At this time Staff Exhibit 3, the
10 audio recording of the interview between
11 Inspector Byrne and Mr. Kyser made at the time
12 of the stop, was played)

13 Q. Inspector Byrne, do you recognize
14 that recording?

15 A. Yes, I do.

16 Q. How do you recognize it?

17 A. That is my recording that I took
18 during the inspection.

19 Q. And whose voices are on that
20 recording?

21 A. My voice is on there as well as Mr.
22 Kyser's.

23 Q. Has it been altered or changed in
24 any way?

25 A. No, it has not.

1 Q. Is it a fair and accurate copy of a
2 reflection of what you heard that day?

3 A. Yes, it is.

4 MR. DARNELL: Thank you. Your
5 Honor, may I play Exhibit 4?

6 ATTORNEY EXAMINER: Sure.

7 (At this time Staff Exhibit 4, the
8 audio recording of the interview between
9 Inspector Byrne and Mr. Kyser made at the time
10 of the stop, was played)

11 Q. Do you recognize that recording,
12 Inspector Byrne?

13 A. Yes, I do.

14 Q. What is that recording of?

15 A. That is my recording presenting the
16 Driver/Vehicle Examination report to Mr. Kyser.

17 Q. So Mr. Kyser did get a copy of that
18 report?

19 A. Yes, he did.

20 Q. And did he admit to the violation at
21 that time?

22 A. If I remember with the recording of
23 what he said, yes.

24 Q. And has this recording been altered
25 in any way?

1 A. It has not.

2 MR. DARNELL: Thank you. Your
3 Honor, may I approach?

4 ATTORNEY EXAMINER: You may.

5 MR. DARNELL: I am approaching
6 with what has been marked as Staff Exhibit 5.

7 ATTORNEY EXAMINER: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION)

9 Q. Inspector Byrne, do you recognize
10 this exhibit?

11 A. Yes, I do

12 Q. What is it?

13 A. This is a photo I took of not only
14 the orange seat belt webbing, but in the
15 background also that of the driver's orange
16 reflective vest and of his dark clothing.

17 Q. Thank you. And has this picture
18 been altered in any way?

19 A. It has not.

20 Q. Is it a fair and accurate copy of
21 what you saw that day?

22 A. Yes, it is.

23 Q. Thank you. Do you wear glasses or
24 contacts?

25 A. No, I do not.

1 Q. Do you have your eyes checked
2 regularly?

3 A. Yes.

4 Q. And how sure are you that Mr. Kyser
5 was not wearing his seat belt when you saw him
6 that day?

7 A. 100 percent.

8 MR. DARNELL: Thank you, Your Honor.
9 I have no further questions for this witness.

10 ATTORNEY EXAMINER: Thank you. You
11 may be excused.

12 MR. DARNELL: Your Honor, Staff
13 would call Chip Moser to the stand.

14 (WITNESS SWORN)

15 - - -

16 ROD MOSER
17 called as a witness, being first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Darnell:

21 Q. Would you please state your name
22 spelling your last for the record?

23 A. My name is Rob Moser, M-O-S-E-R.

24 Q. And what do you do for a living,
25 Mr. Moser?

1 A. My title is Chief of Compliance for
2 the Transportation Department within the Public
3 Utilities Commission of Ohio.

4 Q. And how long have you been doing
5 that?

6 A. Closing on three years now.

7 Q. What exactly are your duties in that
8 position?

9 A. My primary duty is the
10 administration of the civil forfeiture function
11 for the Transportation Department.

12 Q. Do you have any expert
13 qualifications or trainings in the subject
14 matter of violations?

15 A. I am certified in North American
16 Standards Parts A and B, general hazmat, cargo
17 tank, bulk, non-bulk, motor coach.

18 Q. And how do you determine the amount
19 of forfeiture in a case like this?

20 A. Violations are set into groups
21 according to the type of violation. And once
22 that group is assigned, the inspection and
23 violations go through our automated system.
24 Similar violations are treated exactly the same
25 for all respondents.

1 In this case safety belt non-use is
2 a Group 4 violation which is a \$100 fine. That
3 Group 4 violation for everyone, it's a \$100 fine
4 for everyone.

5 Q. So again that process is applied
6 uniformly?

7 A. It is, yes.

8 MR. DARNELL: Your Honor, may I
9 approach the witness?

10 ATTORNEY EXAMINER: You may.

11 MR. DARNELL: Thank you. I am
12 approaching with what has been marked as Staff
13 Exhibit 6.

14 ATTORNEY EXAMINER: So marked.

15 (EXHIBIT MARKED FOR THE PURPOSE OF
16 IDENTIFICATION)

17 MR. DARNELL: May I approach the
18 Bench?

19 ATTORNEY EXAMINER: You may.

20 Q. Mr. Moser, do you recognize this
21 document?

22 A. I do.

23 Q. What is this document?

24 A. It is what we call or refer to as an
25 NPD, which it stands for Notice of Preliminary

1 Determination.

2 Q. And is this the document or a copy
3 of the document that was sent to the Respondent
4 in this case?

5 A. Yes, it is.

6 Q. Do you review these documents in
7 preparation for hearings?

8 A. I did specifically this morning,
9 yes.

10 Q. Is this a document that is kept in
11 the regular course of business of the
12 Commission?

13 A. Yes, it is.

14 Q. And how exactly did you derive the
15 civil forfeiture in this case?

16 A. As I mentioned earlier, the
17 violations are divided into groups. Actually
18 there is six groups. There is five groups for
19 non-hazmat violations, Groups 0, 1, 2, 3 and 4.
20 And then hazmat has its own group.

21 This particular violation is a Group
22 4 violation. Group 4 violations always have a
23 fine, and the fine is dependent upon
24 the individual violations. So not everything in
25 Group 4 is \$100.

1 Q. But the violation in this case is
2 \$100?

3 A. In this case, yes. This is \$100 in
4 this case and in all cases.

5 Q. So that is the correct amount?

6 A. It is.

7 Q. And you would recommend this amount
8 to the Commission?

9 A. I would, yes.

10 Q. Is there anything else you would
11 like to note for the Attorney Examiner that I
12 have not mentioned?

13 A. No, nothing of note.

14 MR. DARNELL: I have no further
15 questions for this witness, Your Honor. And I
16 would move all 6 exhibits into evidence.

17 ATTORNEY EXAMINER: Mr. Moser, you
18 may be excused. Just for housekeeping, what has
19 been marked as Staff Exhibit 3 will be the audio
20 recording part one, and then what has been
21 marked as Staff Exhibit 4 will be audio
22 recording Part 2

23 MR. DARNELL: Yes, Your Honor.

24 ATTORNEY EXAMINER: And I just want
25 to make sure I marked Staff Exhibit 1, which has

1 been identified as the inspection report.

2 MR. DARNELL: Yes, Your Honor.

3 ATTORNEY EXAMINER: So, Staff
4 Exhibits 1 2, 3, 4, 5 and 6 will be admitted
5 into the record.

6 (EXHIBITS ADMITTED INTO EVIDENCE)

7 MR. DARNELL: Thank you, Your Honor.
8 At this point in time the staff rests their
9 case.

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

12 (DISCUSSION OFF THE RECORD)

13 MR. DARNELL: And we would also
14 like to move for default at this time, Your
15 Honor.

16 ATTORNEY EXAMINER: I will take into
17 consideration the motion for default judgment.
18 Are there any other matters that need to be
19 addressed the morning?

20 MR. DARNELL: No, Your Honor.

21 ATTORNEY EXAMINER: Okay. Hearing
22 none, this case will be submitted on the record,
23 and we are adjourned. Thank you.

24 MR. DARNELL: Thank you.

25 - - -

(At 10:40 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
January 23, 2020, and carefully compared with my
original stenographic notes.

Michael O. Spencer

Michael O. Spencer,
Registered Professional
Reporter.

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 19-1898-TR-CVF

Summary: Text In the Matter of Robert D. Kyser Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on January 23rd, 2020. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.