

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of :
Mahmoud M. Elkattan : Case No.
Notice of Apparent : 19-1806-TR-CVF
Violation and Intent to :
Assess Forfeiture. :

- - -

PROCEEDINGS

Before Anna Sanyal, Attorney Examiner, held at
the Public Utilities Commission of Ohio, 180
East Broad Street, Hearing Room 11-C, Columbus,
Ohio, on Tuesday, January 28, 2020, at 10:00
A.M.

- - -

Armstrong & Okey, Inc.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481 - (800) 223-9481

- - -

1 APPEARANCES:

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

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

7
8 Mr. Howard Elliott
218 South Main Street
9 Findlay, Ohio 45840

10 On behalf of the Respondent.

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Tuesday Morning,
January 28, 2020.
- - -

ATTORNEY EXAMINER: Good morning,
everyone. The Public Utilities Commission has
called for hearing Case No. 19-1806-TR-CVF which
is captioned In the Matter of Mahmoud M.
Elkattan.

My name is Anna Sanyal, and I am the
Attorney Examiner assigned to this case. I will
start with appearances, first Staff.

MS. BAIR: Thank you, Your Honor.
On behalf of the Staff of the Public Utilities
Commission of Ohio, Jodi Bair, Assistant
Attorney General, 30 East Broad Street,
Columbus, Ohio 43215.

ATTORNEY EXAMINER: Thank you, Ms.
Bair.

MR. ELLIOTT: Attorney Howard
Elliott, Findlay, Ohio, 218 South Main Street,
on behalf of the alleged violator, Mr. Elkattan.

ATTORNEY EXAMINER: Thank you. Then
the Staff, you may proceed.

MS. BAIR: Thank you, Your Honor.
Yes. Staff would like to call Officer Ogden to

1 the stand, please.

2 (WITNESS SWORN)

3 - - -

4 WILLIAM R. OGDEN

5 called as a witness, being first duly sworn,

6 testified as follows:

7 DIRECT EXAMINATION

8 By Ms. Bair:

9 Q. Would you please state your full
10 name for the record and spell it?

11 A. William R. Ogden, Jr. O-G-D-E-N.

12 Q. Where are you employed?

13 A. I am employed with the Ohio State
14 Highway Patrol, assigned to the Findlay
15 licensing and commercial standards office.

16 Q. And what is your title, what is your
17 position title?

18 A. I am the Assistant Commander for
19 the operations in the Findlay district. I
20 supervise all the motor carriers in my district
21 as well as civilian and sworn units. I
22 supervise motor vehicle inspectors and motor
23 coach inspectors.

24 Q. And how long have you been with the
25 Patrol?

1 A. Twenty-eight years.

2 Q. And what training do you have in the
3 area of motor vehicle inspections?

4 A. Initially back in 2004 I went
5 through Part A, Part B course in the North
6 American Standards, all the hazmat courses, and
7 bulk and nonbulk courses, passenger bus courses.
8 And when I took a promotion in 2005 I let my
9 certification expire, and I took over my current
10 position in 2015, and I went through those
11 courses again, which is the Part A, Part B
12 courses.

13 The bulk hazmat, nonbulk hazmat,
14 other hazmat, passenger bus. I carry all the
15 NAS certifications except Level 6.

16 Q. And when you say Part A and Part B
17 what are you referring to? What does that have
18 to do with our --

19 A. Part A is driver only inspections,
20 and Part B is the truck inspections. Equipment.
21 Basically one teaches you how to do a driver
22 only, inspect log books, driver-type violations.

23 The other one finishes the course,
24 teaches you how to do all the inspection of
25 the vehicle and the load securement.

1 MS. BAIR: Your Honor, may I
2 approach the witness?

3 ATTORNEY EXAMINER: Yes. And you
4 may do so freely during your examination today.

5 MS. BAIR: Thank you. Your Honor, I
6 would like to have the examination report marked
7 as Staff Exhibit 1.

8 ATTORNEY EXAMINER: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION)

10 Q. Do you recognize that document?

11 A. Yes. This is a copy of my
12 Driver/Vehicle Examination Report that was
13 conducted on May 27, 2019.

14 Q. And is this document kept in the
15 regular course of business at the Patrol?

16 A. Yes.

17 Q. What matters did you report on in
18 this examination report?

19 A. I have listed the violation Code
20 392.2LV, which is a lane restriction violation
21 for your traffic control sign which was all
22 trucks use left lane.

23 And also noted violation of
24 392.80(a), which is "Driving a commercial motor
25 vehicle while texting. Cell phone was observed

1 in right hand to and being held up by the dash
2 as driver passed officer setting at exit on I-75
3 entering construction zone."

4 Q. Thank you. I meant to ask you, is
5 this document in the same condition or
6 substantially as of the day that you issued it?

7 A. Yes.

8 Q. And can you tell me specifically
9 where you were in the roadway at the time?

10 A. Yes, I can. That particular time
11 and day I was out sitting on the on ramp in an
12 elevated position looking down on the
13 interstate. Vehicles coming into the
14 construction zone there on I-75 on the
15 southbound side. That elevated position put me
16 slightly above the height of the truck. So I
17 could actually see down inside the vehicles as
18 they were coming by to note any type of
19 violations inside the cab such as seatbelt,
20 texting and driving, and/or anything else that
21 would constitute a violation inside the vehicle.

22 Q. And in this circumstance what
23 specifically did you observe?

24 A. Sitting there, I had my door open, I
25 was kind of sitting facing the interstate and

1 observed the vehicle go by me. And as the
2 vehicle went by me, like I said, the sun was
3 shining down inside the cab so it was very well
4 illuminated.

5 And as the driver went by I could
6 see in his right hand holding up, not super
7 high, but holding up a cell phone and appeared
8 to be manipulating it with his thumb. And I was
9 able to observe that probably 2 seconds, 3
10 seconds, during that time.

11 And as he passed by I went, pulled
12 out behind him. And at that time his vehicle
13 was in the right lane. So he was in the lane
14 actually closest to me. The only lane that
15 would have been between us right there in that
16 spot would have been the berm. As he passed by
17 the lane shifted over. Traffic was shifted onto
18 the berm. And that's why they didn't want --
19 they had this lane restriction there, they
20 didn't want the trucks operating on the berm
21 side because they were doing the construction,
22 all the mud and grass and stuff was tore up.

23 And the berm was not developed as
24 well as the highway to support weight. And we
25 also were having incidents where drivers were

1 dropping off into the mud and being pulled over
2 and being involved in crashes.

3 So ODOT had put a restriction in
4 there telling them they were to use the
5 left-hand lane.

6 Q. And there were signs up on the
7 roadway instructing them?

8 A. Yes. The signs started being posted
9 up near the -- about probably half,
10 three-quarters of a mile north of where I was
11 sitting at the 161 exit ramp. And, like I said,
12 then they were posted again right there as you
13 go by the ramp where I was at as well.

14 Q. Just one further question about your
15 vantage point. Your vantage point would have
16 been from the passenger side at an elevated --

17 A. Right. I would have seen him from
18 the passenger side view, yes. I would have been
19 looking down in the truck across the passenger
20 seat through the front windshield and through
21 the side window.

22 Q. And according to the report what is
23 the violation listed here specifically?

24 A. The violation was 392.80(a), driving
25 a commercial vehicle while texting. Cell phone

1 was observed in his right hand to and being held
2 up by the dash as driver passed by officer
3 setting at exit 161 and Interstate 75 entering
4 construction zone.

5 Q. And where did you pull Mr. Elkattan
6 over?

7 A. At about five miles south of where I
8 observed him, that was the exit, two exits off
9 of US 78 and State Route 15. He did exit off
10 there and I stopped him there outside the
11 construction zone.

12 Because I explained in the
13 construction zone there was only two lanes
14 active, there was no safety berm or -- and the
15 exits are kind of adjusted in that area because
16 it is a urban area and there is a lot of traffic
17 that uses those.

18 I would have taken him there or
19 taken him on down towards the rest area near
20 mile post 153, 154.

21 Q. And when you pulled Mr. Elkattan
22 over did you see that there was a phone there?

23 A. At the time I exited my car I made a
24 passenger side approach, we had him unlock the
25 door, open the door. I opened the door and I

1 stepped up on the side boards. I was not
2 complete in the vehicle, but I was standing on
3 the rail with the door open and I could actually
4 see the driver.

5 And at the time of the stop his cell
6 phone was in a cup holder to his right down on
7 the just -- it's a shelf they put on the trucks.
8 And at the time I noted that his cell phone was
9 playing an audio file, like, I don't want to say
10 squawk box, but something similar to that. He
11 was listening to music, an app was open at that
12 time and appeared to be playing that type of --
13 some type of music.

14 And I asked him about the violation,
15 which he adamantly denied. When you went by me
16 the phone was right here (indicating) in your
17 hand, you were looking at it and I could see
18 your fingers moving.

19 And through the course of the
20 contact he continued to deny it. I advised
21 him, also asked him about why he didn't move
22 over to the left lane like the signs required
23 him. And I don't remember what
24 the conversation, how that transgressed, but he
25 did exit down there, so I am thinking if he

1 travels that route he probably thought he needed
2 to be over to avoid any complications exiting
3 later.

4 Q. And after that you issued a report
5 which Mr. Elkattan received a copy of?

6 A. Yes. I went back to my car,
7 completed the report, and when I was finished
8 went up, explained everything to him, presented
9 him a copy of the report, a signed copy by me.
10 And advised him that he needed to turn that into
11 his company within 24 hours.

12 MS. BAIR: Okay. Thank you. Your
13 Honor, I would move Staff Exhibit 1 into
14 evidence subject cross-examination.

15 MR. ELLIOTT: No
16 objection.

17 ATTORNEY EXAMINER: Okay. We will
18 just admit all the exhibits at the end at that
19 time for administrative purposes.

20 MS. BAIR: Thank you.

21 (Mr. Elliott had a conversation with
22 his client off the record)

23 CROSS-EXAMINATION

24 By Mr. Elliott:

25 Q. As I understand it you indicated

1 you observed a cell phone being held in the
2 right hand I believe you said it was?

3 A. Yes, sir.

4 Q. Okay. And at one point you said it
5 appeared to you to be manipulating with the
6 thumb.

7 A. Yes, sir.

8 Q. Okay. And then later on you
9 testified that it appeared to be involving
10 the other fingers manipulating it.

11 A. I said with his fingers, fingers,
12 thumbs. Depends on how you conject five
13 fingers, or four fingers and the thumb. So, he
14 was manipulating the phone.

15 Q. Was it the thumb or was the other
16 fingers involved in this?

17 A. Sir, it was the thumb.

18 Q. Okay. All right. Now, you said
19 that you observed the phone that was in there.
20 When you ultimately stopped his vehicle and then
21 looked in the truck you said the phone was in a
22 cup holder.

23 A. Yes, sir.

24 Q. Okay. And you said he appeared to
25 be listening to audio files?

1 A. At that time, like I stated, screen
2 was open. When you play music, there was music
3 and --

4 Q. Did he appear to have some
5 headphones on?

6 A. Not that I recall, no, sir.

7 Q. Okay. Could have been, you just
8 don't recall?

9 A. It could have been, yes, sir.

10 Q. Did you hear music playing in the
11 truck?

12 A. Not that I recall, no. I couldn't
13 say for sure.

14 Q. Now, you were there, did you ask to
15 take a look at the phone?

16 A. I did see the phone in his hand and
17 stuff.

18 Q. Correct.

19 A. I did touch the phone, yes.

20 Q. You did touch the phone. Did you
21 check with the phone to see if there were any
22 text messages that had been generated within a
23 couple of minutes after that?

24 A. No.

25 Q. Prior to the stop?

1 A. No.

2 Q. So you didn't examine it for that
3 purpose?

4 A. That would require a warrant for me
5 to go that far.

6 Q. Or require permission?

7 A. Sure.

8 Q. How did you manage to touch
9 the phone without --

10 A. He handed it to me.

11 Q. All right. And you didn't think it
12 appropriate to ask him whether or not you could
13 examine the phone?

14 A. I didn't feel there was a need to
15 examine the phone at that time.

16 Q. That would solve the problem,
17 wouldn't it? Obviously he is disputing what you
18 are saying.

19 A. Sure.

20 Q. Okay. And I understand you need a
21 warrant.

22 A. Yes.

23 Q. But, you may or may not have been in
24 a position to get a warrant at that time;
25 correct?

1 A. Correct.

2 Q. Okay. However, the warrant is taken
3 care of if you ask for permission and he gives
4 it; correct?

5 MS. BAIR: Objection. Calls for
6 legal conclusion. He is not testifying as an
7 attorney.

8 Q. Let me ask you about your training
9 then, sir.

10 Why do you think that a warrant was
11 necessary? Because that's part of your
12 training; correct?

13 A. It's like anything else, yes. My
14 training would be say personal property, some of
15 that stuff requires some type of search warrant
16 without I guess probable -- in the absence of
17 probable cause to do certain things.

18 Like I said, not fully understanding
19 what search warrants or what requirements would
20 be to search the compartment.

21 Q. But --

22 MS. BAIR: Objection. He needs to
23 be able to answer the question without being
24 interrupted.

25 ATTORNEY EXAMINER: Can you allow

1 the witness --

2 Q. Certainly. You can continue.

3 A. If I would have something of that
4 nature I would contact counsel to ensure that I
5 was not proceeding unlawfully.

6 Q. Okay. So you have an understanding
7 that you often times need a warrant; as part of
8 your training that there are exceptions to
9 whether you need a warrant?

10 A. Yes.

11 Q. Okay. And that is part of what you
12 are taught; correct?

13 A. Yes.

14 Q. Is it a fair statement that if
15 someone gives you permission that is one of
16 the exceptions to a warrant; correct?

17 A. Yes.

18 Q. Okay. So, someone asks, so, for
19 example, if you asked somebody to search their
20 car and they say it's okay, your training is
21 that is all right.

22 A. Yes.

23 Q. Okay. So, you asked to examine the
24 phone and he said it was okay, your training
25 would say that is correct; correct?

1 A. Right.

2 Q. Okay. But that wasn't done in this
3 case?

4 A. No, because --

5 Q. No. Nothing further.

6 MS. BAIR: Object.

7 ATTORNEY EXAMINER: I am going to
8 let him finish his answer.

9 THE WITNESS: Because at the time I
10 entered the violation he was manipulating the
11 phone with his thumb. Whether he was texting or
12 whether he was initiating a phone call, whether
13 he would have been opening or closing an
14 internet site, he was still using the device
15 during the time I observed him.

16 Q. But that is your supposition;
17 correct? Your interpretation of what you saw?

18 A. That is what I saw.

19 Q. Okay. How long did you see him in
20 this mode?

21 A. As I explained it was two or three
22 seconds.

23 Q. How fast was he traveling?

24 A. He would be probably -- the posted
25 speed limit for that area at that time was 55

1 miles an hour.

2 Q. So somewhere in that range?

3 A. Yes.

4 Q. And you say you are located if I
5 understand the exit, you are on -- is this the
6 161 exit?

7 A. Yes. County Road 99.

8 Q. So you are halfway down the exit
9 ramp, give or take?

10 A. Give or take, yes. If you go down
11 there is a place to pull off that is paved where
12 I sat.

13 Q. So you are halfway down the exit
14 ramp?

15 A. Yes.

16 Q. Okay. And the vehicle is coming
17 from your back; correct?

18 A. Well, as I explained, I had turned
19 sideways so my vehicle is facing this way, and I
20 am looking straight down at the interstate, so I
21 have a very --

22 Q. Diagonally cross your front?

23 A. Perpendicular across the front.

24 Q. Okay. At what point did you first
25 observe the vehicle?

1 A. As far as --

2 Q. You said you observed --

3 A. So my --

4 MS. BAIR: Objection. The witness
5 should be able to answer the question.

6 MR. ELLIOTT: Ma'am, he had trouble
7 with the question, so I was trying to help him.

8 MS. BAIR: He wasn't having any
9 trouble with the question.

10 ATTORNEY EXAMINER: Okay. We are
11 just going to slow down your questions so you
12 stop talking over each other. Okay?

13 Q. Okay.

14 A. Could you repeat that, sir?

15 Q. At what point did you first observe
16 the vehicle?

17 A. It was slightly to my left. Exactly
18 what angle or perspective I don't know. But as
19 I am looking down I can see down through the
20 front windshield and see what he was doing there
21 at that point.

22 And, like I said, I continued to
23 observe him as he come across in front of me and
24 then, like I said, once he would get at an angle
25 that I couldn't see anymore that is as far as I

1 could see.

2 Q. Now, the vehicle he was driving was
3 a commercial truck?

4 A. Yes.

5 Q. Correct? Had a trailer?

6 A. Yes.

7 Q. The truck itself, do you recall
8 whether it was simply a cab only, or did it have
9 a sleeper cab?

10 A. To the best of my recollection it
11 was a sleeper birth truck.

12 Q. Okay. So it was a sleeper birth,
13 just so we understand for the record, then would
14 have varying size, maybe six to eight feet,
15 maybe a little bit less, little bit more, behind
16 the driver's seat and the passenger seat;
17 correct?

18 A. Yes, sir. Probably.

19 Q. And generally, it would be generally
20 your experience those would generally be covered
21 with metal, not part of the windshield or the
22 side windows?

23 A. You are talking about the part
24 behind the driver?

25 Q. Sleeper cab.

1 A. Yes. Everything behind the driver
2 encompassed and enclosed.

3 Q. So your vantage point then typically
4 on a vehicle of that nature would be through the
5 windshield and to some extent through the side
6 windows for the passenger's side?

7 A. Yes.

8 Q. Okay. And your testimony is you had
9 that vantage point for three seconds?

10 A. Two to three seconds, yes, sir.

11 MR. ELLIOTT: Okay. Nothing further
12 for this witness.

13 MS. BAIR: I have a question on
14 redirect.

15 ATTORNEY EXAMINER: Sure.

16 REDIRECT EXAMINATION

17 By Ms. Bair:

18 Q. Just to be clear about your vision,
19 that day you said what was the weather like?

20 A. It was sunny.

21 Q. Did the sun help you see more
22 clearly into the driver?

23 A. Yes. It illuminated the interior
24 of the cab. And as I explained, with the 2 to 3
25 seconds at 60 miles an hour going roughly 90

1 feet per second, so at three seconds he only
2 went 180 feet.

3 So it may have been longer. So, it
4 depends on how long I see him. So it could have
5 been longer, but two or three seconds is my best
6 guess.

7 MS. BAIR: Thank you. I have
8 nothing further.

9 ATTORNEY EXAMINER: Actually let's
10 go off the record.

11 (DISCUSSION OFF THE RECORD)

12 (RECESS TAKEN)

13 ATTORNEY EXAMINER: Back on the
14 record. And, Mr. Elliott, do you have any
15 questions?

16 MR. ELLIOTT: I do not.

17 ATTORNEY EXAMINER: Okay. You may
18 step down.

19 THE WITNESS: Thank you.

20 ATTORNEY EXAMINER: Does the Staff
21 have another witness?

22 MS. BAIR: Yes. Staff would like
23 to call Brad Long to the stand, please

24 (WITNESS SWORN)

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BRAD LONG

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

DIRECT EXAMINATION

By Ms. Bair:

Q. Would you please state your name and
spell it for the record?

A. Brad Long, L-O-N-G.

Q. And where are you employed?

A. Compliance Section, Transportation,
Public Utilities Commission of Ohio.

Q. And what is your position at the
Commission?

A. Assistant Chief of Compliance.

Q. How long have you been in that
position?

A. In this position for two months now.

Q. And what's your employment history
immediately before that?

A. Twenty-five years as a State
Trooper. During that 25 years I had 11 years as
a crash reconstructionist. And my last two
years with the Highway Patrol was with the
licensed commercial standards section in
Columbus, Ohio.

1 Q. And currently with the Commission
2 how would you describe your duties?

3 A. Duties right now is maintain records
4 and files. I assist in supervision of the
5 compliance officers in the Compliance Division.
6 And also assist with the oversight of the civil
7 forfeiture program.

8 Q. And do you have training,
9 certifications, any expert qualifications for
10 this position?

11 A. Yes. I was certified in North
12 American Standards Part A, B, bulk cargo,
13 hazmat, general hazmat, other bulk, and school
14 bus inspections. All that.

15 MS. BAIR: Thank you. And may I
16 approach the witness, Your Honor?

17 ATTORNEY EXAMINER: Yes, you may.

18 MS. BAIR: Thank you. I would like
19 to mark the Notice of Preliminary Determination
20 as Staff Exhibit 2.

21 (EXHIBIT HEREBY MARKED FOR
22 IDENTIFICATION PURPOSES)

23 ATTORNEY EXAMINER: It shall be so
24 marked.

25 Q. Do you recognize this document, Mr.

1 Long?

2 A. I do.

3 Q. Could you please tell me what it is?

4 A. What we call an NPD, Notice of
5 Preliminary Determination.

6 Q. And could you explain how a
7 forfeiture amount is determined at the
8 Commission?

9 A. Sure. Once a roadside inspection
10 has been completed it's turned into whatever
11 agency files that inspection, then it comes into
12 what we call Safety Net.

13 In Safety Net, one of our files
14 storage systems, once it goes in there it goes
15 into an internal program we call Sales Force.

16 Sales Force then takes the
17 violations that are on the inspection sheet and
18 automatically groups them based on their
19 violation in their grouping. There is six total
20 groupings. Zero to 4 are your equipment
21 violations and your driver violations with the
22 5th what we call the 6 violations, solely hazmat
23 violations.

24 So once they are broken down then
25 Sale Force automatically assesses the forfeiture

1 based on those violations and those groupings.

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

4 A. Yes. Everyone that's in the Group 4
5 or this type of violation are issued the same
6 forfeiture amount.

7 Q. And referring back to Staff Exhibit
8 2, is this document sent to the Respondent?

9 A. Yes, it is.

10 Q. Is this document kept in the regular
11 course of a Commission record?

12 A. Yes, it is.

13 Q. And is the penalty here that has
14 been assessed consistent with the fine schedule
15 according to the Commercial Motor Vehicle
16 Alliance?

17 A. Yes. Commercial Vehicle Safety
18 Alliance, yes.

19 Q. That is a federal program?

20 A. That's correct.

21 Q. And what is the forfeiture amount in
22 this case?

23 A. It's \$250.

24 Q. Do you believe that to be the
25 correct forfeiture?

1 A. I do.

2 Q. And would you recommend this
3 forfeiture amount to the Commission?

4 A. I do.

5 MS. BAIR: Thank you. I have no
6 further questions.

7 MR. ELLIOTT: No questions, Your
8 Honor.

9 ATTORNEY EXAMINER: Okay. You may
10 step down. Any other witnesses for the Staff?

11 MS. BAIR: No. We would like to
12 move Staff Exhibit 2 into evidence, Your Honor.

13 ATTORNEY EXAMINER: Okay.

14 MR. ELLIOTT: No objection.

15 ATTORNEY EXAMINER: Okay. Staff
16 Exhibits 1 and 2 are admitted.

17 (EXHIBITS ADMITTED INTO EVIDENCE)

18 ATTORNEY EXAMINER: Mr. Elliott,
19 you are free to present your case whenever you
20 are ready.

21 MR. ELLIOTT: The Staff has rested?

22 ATTORNEY EXAMINER: The Staff has
23 rested.

24 MR. ELLIOTT: I would call Mahmoud
25 Elkattan to the stand, Your Honor.

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(WITNESS SWORN)

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MAHMOUD M. ELKATTAN

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

DIRECT EXAMINATION

By Mr. Elliott:

Q. Sir, can you state your name for the
record?

A. Mahmoud Elkattan.

Q. And where do you live?

A. I live in Dearborn, Michigan.

Q. Are you employed?

A. Yes, sir.

Q. How are you employed?

A. 18 years.

Q. What do you do?

A. Truck driver.

Q. You have been doing that for 15
years you said?

A. 18.

Q. Okay. Now, I am going to turn you
back to May the 27th, 2019. So a little over
six months ago. Were you driving truck on that
day?

1 A. Yes, sir.

2 Q. Were you driving truck in at least
3 in the outskirts of the City of Findlay in the
4 State of Ohio?

5 A. Yes.

6 Q. Okay. Did you have -- you were
7 present in the courtroom previously when Officer
8 Ogden offered some testimony; correct?

9 A. Yes, sir.

10 Q. Did you have occasion to meet with
11 him, have an encounter with him that day?

12 A. I think Officer before this day, I
13 was pulled over on the road just to ask him if I
14 needed headphone.

15 Q. My question was relatively simple.
16 Had you met Officer Ogden before this day?

17 A. Yes.

18 Q. That was back on May 27th of last
19 year; correct?

20 A. Yes.

21 Q. Okay. Now, you heard his testimony
22 about him observing you holding a cell phone in
23 your hand; correct? You heard that?

24 A. As a matter of fact I didn't
25 remember, but all I know is that I text, I

1 didn't use the text at any time.

2 Q. I will try it again. You heard his
3 testimony about you holding a cell phone in your
4 hand; is that correct?

5 A. Yes.

6 Q. You heard that testimony. Okay.
7 What happened on that day? What do you recall
8 happened on that day?

9 A. Mr. Officer stopped me and asking me
10 if I use the phone. I use the headphone. He
11 told me I saw that, that you used the headphone.
12 And I hold him I didn't use the telephone.

13 And after that give me the -- went
14 to his car and bring the paperwork. I told him,
15 sir, but I didn't use the telephone. He told me
16 again maybe hold the telephone and didn't you?
17 That is it.

18 Q. Now, you heard his testimony that as
19 you were passing the underpass -- well, passing
20 the overpass and coming into his view he was
21 looking at the highway down there and he said he
22 saw you with a cell phone in your hand.

23 A. No.

24 Q. That did not happen, or you don't
25 recall?

1 A. I didn't use the -- didn't text at
2 all.

3 Q. Is it possible you held the cell
4 phone in your hand?

5 A. Maybe, sir. But maybe I hold stuff.
6 Sometime I take the cover for -- the glass cover
7 to change my glasses, maybe I hold the telephone
8 instead of the glass cover. But I didn't use
9 it.

10 Q. Now, he indicated that you had --
11 when he stopped your vehicle the cell phone was
12 located in a cup holder; is that correct?

13 A. Yes.

14 Q. All right. And you heard the
15 Officer testify that he had picked up the phone
16 at one point in time?

17 A. He picked the phone up, yes.

18 Q. Did he ever ask you to take a look
19 and see if you had texted on it?

20 A. I told him I didn't use
21 the telephone, and hold and put back to the
22 dash.

23 Q. If he had asked you if he could look
24 at the phone to see if you had texted would you
25 have let him?

1 A. I think I told him, but that I don't
2 remember. But I said I didn't use
3 the telephone, I didn't use it any.

4 Q. Okay. He talked in terms of, if you
5 recall his testimony, that it appeared that you
6 were listening to some music?

7 A. No, no. I had headphones in. Why
8 would I use the telephone? I had Blue Tooth.
9 If I received any call that Blue Tooth tell me
10 answer. I say yes answer or decline. Or deny
11 the call.

12 If I need to any -- to call any call
13 number by voice call number 111 for company, see
14 something like that. The Blue Tooth have full
15 option to avoid using the telephone, sir.

16 Q. So your practice is not to use
17 the phone?

18 A. Of course.

19 Q. For that. And on the day in
20 question you weren't texting?

21 A. No, of course. Of course. I don't
22 control the truck while I am texting.
23 Absolutely. I can't do that.

24 MR. ELLIOTT: Nothing further of
25 this witness.

1 CROSS-EXAMINATION

2 By Ms. Bair:

3 Q. I believe in your testimony recently
4 you said that you don't recall if you used your
5 phone; is that correct?

6 A. What now?

7 Q. Do you remember whether you used
8 your phone or not?

9 A. No, no, no. I don't say that. I am
10 not using the telephone at any time. While in
11 my home, while in shopping, while in my company.
12 I don't use the telephone, I use headphone all
13 the time.

14 MS. BAIR: I have no further
15 questions.

16 ATTORNEY EXAMINER: Any questions?

17 MR. ELLIOTT: No, ma'am.

18 ATTORNEY EXAMINER: Okay. I have
19 some questions, Mr. Elkattan?

20 THE WITNESS: Okay.

21 EXAMINATION

22 By the Attorney Examiner:

23 Q. So, while you were driving could you
24 have touched your phone that day? Could you
25 have held it that day?

1 A. Hold the telephone?

2 Q. Yes.

3 A. I don't remember.

4 Q. So you don't remember. You could
5 have; is have correct?

6 A. Maybe.

7 Q. Okay. And then did you have -- was
8 the phone open, was the screen unlocked that day
9 when you were pulled over?

10 A. I looked, yes. I don't look unless
11 I receive call.

12 Q. Okay. So, did you hear Mr. Ogden
13 testify before?

14 A. Yes.

15 Q. Today?

16 A. Yes.

17 Q. Okay. So, he testified that when he
18 pulled you over the phoned had an app open.

19 A. Because Mr. Officer hold the
20 telephone, maybe he pushed a button. I don't
21 know what happened. He held the telephone by
22 his hand. Maybe he pushed the speaker.

23 Q. But he observed that there was --
24 one moment.

25 There was an audio site open and it

1 was playing visibly. Did you see that, an app
2 open?

3 A. No.

4 Q. And your phone was locked; is that
5 what you are saying?

6 A. Telephone, yes, was locked. I use
7 headphone. The telephone, I looked when I use
8 it, the headphone.

9 Q. Okay. So, it's your testimony today
10 that you don't agree that there was an app open?

11 A. Yes. I told Mr. Officer, I told him
12 I didn't use the telephone.

13 Q. Okay. Answer my question.

14 A. Yes.

15 Q. So it is your testimony today that
16 when you were pulled over your phone did not
17 have an application open?

18 A. I didn't see that. I didn't see
19 that application open.

20 ATTORNEY EXAMINER: Any questions
21 based on my questions?

22 MR. ELLIOTT: No, Your Honor.

23 FURTHER CROSS-EXAMINATION

24 By Ms. Bair:

25 Q. Do you use a music app when you are

1 driving?

2 A. Music?

3 Q. Yes.

4 A. I used the headphone sometimes.

5 MS. BAIR: Thank you.

6 ATTORNEY EXAMINER: Okay. Any other
7 questions?

8 MR. ELLIOTT: No, Your Honor.

9 ATTORNEY EXAMINER: Okay. You may
10 step down.

11 THE WITNESS: Okay.

12 MR. ELLIOTT: We will rest, Your
13 Honor.

14 ATTORNEY EXAMINER: Okay. Do we
15 want to brief this?

16 MR. ELLIOTT: I mean, it's a
17 factual --

18 ATTORNEY EXAMINER: Are you willing
19 to submit it just on --

20 MR. ELLIOTT: I mean, the violations
21 are relatively straightforward. So it's a
22 question of how you want to interpret the
23 testimony and the credibility. So there really
24 isn't anything to brief. I mean, it isn't like
25 we are trying to decide whether it's a this or a

1 that. I don't think there is anything to brief.

2 MS. BAIR: I agree with you. Are
3 you comfortable with that?

4 ATTORNEY EXAMINER: I wanted to make
5 sure I asked in case one of you was dying to
6 submit briefs on this matter. Okay. Well, any
7 other issues before we go off the record?

8 MS. BAIR: None, Your Honor.

9 MR. ELLIOTT: No.

10 ATTORNEY EXAMINER: Hearing none
11 this matter shall be submitted to the record and
12 the Commission will issue an opinion in due
13 course. We do try for three months. Thank you.

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

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
January 28, 2020, 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 Mahmoud M. Elkattan Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on January 28th, 2020. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.