

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of Mark E. :  
Wilcox, Notice of Apparent:  
Violation and Intent to : Case No. 09-358-TR-CVF  
Assess Forfeiture. :

- - -

PROCEEDINGS

before Mr. Kerry K. Sheets, Hearing Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-F, Columbus, Ohio, called at 10:00  
a.m. on Thursday, August 13, 2009.

- - -

ARMSTRONG & OKEY, INC.  
222 East Town Street, 2nd Floor  
Columbus, Ohio 43215  
(614) 224-9481 - (800) 223-9481  
Fax - (614) 224-5724

- - -

1 APPEARANCES:

2 Mr. Mark Wilcox  
3 9200 Johnstown-Alexandria Road  
4 Johnstown, Ohio 43031

5 Pro se.

6 Richard Cordray, Ohio Attorney General  
7 Duane W. Luckey, Section Chief  
8 Public Utilities Section  
9 By Mr. John H. Jones  
10 Assistant Attorney General  
11 180 East Broad Street, 9th Floor  
12 Columbus, Ohio 43215-3793

13 On behalf of the staff of the Public  
14 Utilities Commission of Ohio.

15 - - -

## INDEX

- - -

## WITNESS PAGE

Officer Jonathan M. Holzworth	
Direct examination by Mr. Jones	5
Cross-examination by Mr. Wilcox	19
Rebuttal - Direct exam by Mr. Jones	49
Jonathan Frye	
Direct examination by Mr. Jones	24
Mark E. Wilcox	
Direct testimony	31
Cross-examination by Mr. Jones	32
Further cross-examination by Mr. Jones	38
Further cross-examination by Mr. Jones	45

- - -

## STAFF EXHIBITS ID'D REC'D

1 - Driver/Vehicle Examination Report	8	24
2 - Fine Schedule	27	31
3 - Notice of Preliminary Determination	28	31

## RESPONDENT'S EXHIBITS ID'D REC'D

1 - 5/31/07 Ohio State Highway Patrol Statement of Policy	36	42
2 - Photographs (A through D)	37	44

- - -

Thursday Morning Session,

August 13, 2009.

- - -

THE EXAMINER: Let's go on the record.

I'll call the hearing. The Public Utilities Commission of Ohio has set for hearing at this time and place case number 09-358-TR-CVF, in the matter of Mark E. Wilcox. My name is Kerry Sheets, I'm an attorney-examiner for the Commission, and I've been assigned to hear this case.

May I now have the appearances of the parties, please.

MR. JONES: Yes, your Honor. On behalf of the staff of the Public Utilities Commission of Ohio, Ohio Attorney General Richard Cordray, Assistant Attorney General John Jones, 180 East Broad Street, Columbus, Ohio.

THE EXAMINER: Very good.

Is the respondent present in the hearing room today?

MR. JONES: I'm sorry?

THE EXAMINER: We have no respondent today?

MR. JONES: Yes, we do. Mr. Wilcox.

MR. WILCOX: I'm sorry, I didn't hear

1 you, sir.

2 THE EXAMINER: Give your name and address  
3 for the record.

4 MR. WILCOX: Mark Wilcox, 9200  
5 Johnstown-Alexandria Road in Johnstown, Ohio 43031.

6 THE EXAMINER: Very good.

7 Do we have any preliminary matters to  
8 take care of today?

9 MR. JONES: None, your Honor.

10 THE EXAMINER: Let's proceed with the  
11 case, then. Do you have witnesses to call,  
12 Mr. Jones?

13 MR. JONES: Yes, your Honor. I'd call  
14 Officer Holzworth to the stand, please.

15 THE EXAMINER: Raise your right hand.

16 (Witness sworn.)

17 THE EXAMINER: Be seated.

18 - - -

19 OFFICER JONATHAN M. HOLZWORTH  
20 being first duly sworn, as prescribed by law, was  
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Jones:

24 Q. Would you please state your name for the  
25 record, please.

1 A. Jonathan M. Holzworth.

2 Q. Where are you employed?

3 A. Ohio State Highway Patrol, Bucyrus, Ohio.

4 Q. And what is your job title?

5 A. Motor Carrier Enforcement Inspector.

6 Q. And what are your job duties?

7 A. We patrol public roadways, inspect  
8 commercial motor vehicles, drivers, cargo, HazMat,  
9 et cetera.

10 Q. How long have you been employed in that  
11 position?

12 A. I have been doing this for 11 years.

13 Q. And what is your training,  
14 qualifications?

15 A. I am certified in motor coach, HazMat,  
16 cargo tank, Northern American Standard Level 1 for  
17 FMCSA.

18 Q. And what area are you assigned to?

19 A. I'm assigned to District 2 which covers  
20 nine counties. The majority of my patrolling is  
21 Marion County, Richland County, Crawford County and  
22 Wyandot County.

23 Q. And for you to do your job what equipment  
24 is issued to you?

25 A. We're issued, obviously, a uniform,

1 patrol car, laptop, creeper, chocks, soapstone,  
2 coveralls, tape measures, all kinds of stuff.

3 Q. Do you also have a laptop that's issued  
4 to you?

5 A. Yes, I do, a laptop.

6 Q. And so your job is to do inspections of  
7 commercial motor vehicles?

8 A. Commercial motor vehicles and drivers of  
9 commercial motor vehicles.

10 Q. From doing your inspections is there any  
11 paperwork generated from those inspections?

12 A. Yes. We gather the information -- once  
13 we make the stop, do the inspection, all the  
14 information that we've gathered during the  
15 inspection, we enter it in our laptop in a program  
16 called ASPEN, and then we print the copy out and give  
17 it to the driver and have them -- go over it with  
18 them, and they need to turn that in to their carrier,  
19 and their carrier, they're supposed to sign off and  
20 fax it back.

21 And then we would upload that inspection  
22 and it would be sent down to the Public Utilities  
23 Commission.

24 Q. And you have different levels of  
25 inspection that you do?

1 A. Yes, sir.

2 Q. What are the differences?

3 A. Level 1 would be a full inspection where  
4 you would do the walk-around portion, take brake  
5 adjustments, check underneath, the undercarriage,  
6 leaf springs, brakes, such like that. Level 2 is  
7 just a walk-around where you check the tires,  
8 lighting. You observe the driver on all levels of  
9 inspections, logbook, et cetera.

10 Q. I don't know if I gave you a packet of  
11 exhibits. Do you have exhibits up there?

12 A. No, sir, I don't.

13 MR. JONES: Your Honor, may I approach  
14 the witness?

15 THE EXAMINER: You may.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. I'm handing you what's marked Staff  
18 Exhibit 1. Would you please identify that document  
19 for the record, please.

20 A. This is a copy of my inspection report  
21 completed on October 30th, 2008, at 12:10 to 12:40  
22 hours.

23 Q. So were you involved, then, with an  
24 inspection that occurred on October 30th, 2008,  
25 involving a driver Mark Wilcox?



1 A. Yes, sir.

2 Q. Can you explain how that inspection  
3 occurred?

4 A. From reviewing what I see here, I was  
5 working in Marion County, U.S. 23 on the southbound  
6 side, and I believe I issued a seat belt violation  
7 for Mr. Wilcox.

8 Q. And where were you sitting at the time  
9 that you made this observation?

10 A. It's just north of the rest areas in the  
11 crossover. It's approximately milepost 7, 7.02,  
12 something like that. It's just as you travel south  
13 we go -- we give about a mile, mile-and-a-half from  
14 the rest area so we can get out in the traffic and  
15 make a safe stop into the rest areas.

16 Q. And at this time, then, you were on duty  
17 and in uniform --

18 A. Yes, sir.

19 Q. -- in your vehicle that was issued to  
20 you?

21 A. Yes, sir.

22 Q. Now, let's walk through your report  
23 there, Staff Exhibit 1. What's in the first field of  
24 information at the top of the report?

25 A. The first field would be the, just the

1 report number, which would be the inspection number.

2 Once we begin a new inspection, it would go from  
3 OH329100 to 6122, after this one it just compiles.

4 Q. So does your laptop automatically  
5 generate, then, a number for you for your report,  
6 your next report?

7 A. Yes, sir. As soon as we open the ASPEN  
8 software and then generate a -- click on the tab New  
9 Inspection, it will automatically add another number.

10 Q. What other information is provided in the  
11 first field there underneath the number?

12 A. Would be inspection date, the time  
13 started, time ended, what inspection level we did, if  
14 there was HazMat. And what we handed the driver on  
15 the left side would be, you know, what district did  
16 it, you know, which ours is the State Patrol,  
17 obviously, Motor Carrier Enforcement, District 2  
18 headquarters, and just gives them the phone number to  
19 that district headquarters if they have any  
20 questions.

21 Q. And what date's provided for your report  
22 as to when the inspection took place and the time  
23 that it took to complete your inspection?

24 A. Date was October 30th, 2008. And it  
25 took approximately a half hour, from 12:10 to 12:40

1 for the walk-around inspection.

2 Q. And what level was this inspection?

3 A. It was a Level 2 walk-around inspection.

4 Q. Okay. And then the next field of  
5 information there, the next box, what's provided  
6 there?

7 A. The next box shows who the carrier is,  
8 their address, location, their phone number and their  
9 U.S. DOT number, along with the driver's information  
10 which would be their name, driver's LN number and  
11 their date of birth and what state they're residing  
12 in.

13 Q. And what sources do you get this  
14 information from to provide for your report?

15 A. We would get the carrier information, if  
16 they have a DOT number, we just punch that in our  
17 computer and that will pull that up. Their  
18 information will come from their driver's license.

19 Q. So then the person that you identified  
20 driving the commercial motor vehicle that you stopped  
21 for inspection on this date and at that location,  
22 this was Mark E. Wilcox that was identified from this  
23 stop?

24 A. Right; that's what the name is on the  
25 report.

1 Q. And the other information that's  
2 contained there, the license number and date of  
3 birth, that was also taken from the driver's license  
4 information?

5 A. Yes, sir. Yes.

6 Q. And now the next box of information,  
7 what's contained there?

8 A. That's going to be our location; what  
9 type of inspection was it, a roadside. Another  
10 caption would be a terminal inspection if we're doing  
11 like mandatory buses, we use that. But this would be  
12 the roadside highway, U.S. 23, Marion County, just  
13 tell you what milepost we were at, what kind of, if  
14 there was an origin, destination, we fill that out if  
15 it's loaded, which it wasn't, and then the bill of  
16 lading. You know, the cargo was empty so there won't  
17 be any bill of lading or origin/destination for that.

18 Q. Okay. Then the next field, vehicle  
19 identification, what's contained there?

20 A. That's going to tell us what kind of  
21 vehicles they are and just the VIN numbers, years,  
22 makes, license number, unit number. We'll get that  
23 information from the registrations or from running  
24 the license plate itself.

25 Q. So in this case there was a tractor unit

1 and a trailer unit?

2 A. Yes, sir.

3 Q. And then there's another field that's  
4 titled Violations, what's contained there?

5 A. This is where we fill out what violations  
6 were observed or found during the inspection. Could  
7 be anywhere from the logbooks, seat belt, to  
8 lighting, tires, frames, just load securement, that  
9 would be documented in the violation section codes.

10 Q. And the particular violation that was  
11 noted from this inspection?

12 A. 392.16, which is failing to wear a seat  
13 belt while operating a commercial motor vehicle.

14 Q. Okay. That's taken from the Federal  
15 Motor Carrier Safety Regulations?

16 A. Yes, sir.

17 Q. And that regulation requires that all  
18 drivers of commercial motor vehicles be restrained by  
19 a seat belt?

20 A. That's correct.

21 Q. And it's your testimony that you made an  
22 observation that you noticed that this driver,  
23 Mr. Wilcox, was not wearing a seat belt at the time  
24 that he passed you at that location?

25 A. Yes, sir.

1 Q. And there's other information that's  
2 there such as a unit and an OOS. Can you describe  
3 what that information is?

4 A. Which field are you talking about?

5 Q. In the same field, Violations. Left to  
6 right.

7 A. That pertains to who the violation's on.  
8 Unit D would stand for driver. OOS stands for out of  
9 service. N is no. Level 6 inspections, no. There's  
10 no citation issued to that which would be if we  
11 called a trooper and they would issue a citation,  
12 we'd document that also.

13 Q. And the violation description that you  
14 noted for the report, what's it say?

15 A. Driver witnessed violating commercial  
16 motor vehicle without wearing a seat belt when  
17 required.

18 Q. And how soon after such time as you made  
19 contact with the driver that you then incorporated  
20 this information into your report and generated this  
21 report?

22 A. As soon as the report is printed out, is  
23 that your question?

24 Q. Yes.

25 A. Yes. I'll go over the inspection time,

1 where I stopped him at, what the violations are, then  
2 I'll ask them if they have questions.

3 Q. And then there's another field there,  
4 Special Checks. Is there anything noted there?

5 A. No, there's not.

6 Q. Okay. And the next field, Inspection  
7 Notes, do you have notes from this inspection?

8 A. Yes, sir, I do.

9 Q. And could you read those notes that  
10 appear there in your report?

11 A. My inspection notes state: Driver was  
12 observed by this unit traveling south on U.S. 23  
13 milepost 7 without wearing a seat belt. Driver was  
14 wearing a plaid shirt, seat belt was tan in color.  
15 As I got behind the tractor-trailer I also witnessed  
16 driver put his seat belt on in left side side-view  
17 mirror.

18 Q. Okay. So initially you were sitting in  
19 the median, then --

20 A. Correct.

21 Q. -- of U.S. and you observed Mr. Wilcox  
22 going southbound?

23 A. Yes, sir.

24 Q. Approximately what distance would that  
25 have been for you to be able to observe that he was

1 not wearing a seat belt?

2 A. Well, we sit in a crossover, it's usually  
3 about 20 to 30 feet of passing. As we're sitting  
4 this way, they're passing in which would be the right  
5 lane. It's approximately 30 feet. So it's not real  
6 far away.

7 Q. And did you have an unobstructed view to  
8 see that he was not wearing a seat belt?

9 A. Yes, sir.

10 Q. And you say that after such time, then,  
11 as you pulled into traffic and got behind Mr. Wilcox,  
12 you then observed the driver, Mr. Wilcox, then  
13 placing his seat belt on from --

14 A. That's correct.

15 Q. -- what you observed through the mirror?

16 A. Yes, sir.

17 Q. And during that time, did you notice  
18 anything about the driving during that taking place?

19 A. I can't recall exactly on this one. Like  
20 I said, this has been about, approximately 800 faces  
21 ago that I've seen, but most of the time when they do  
22 buckle up, which is the drivers, their vehicle will  
23 veer off to the right a little bit and touch the line  
24 and come back over; that's pretty much standard  
25 practice when we pull out and get behind them when



1 they weren't wearing their belt.

2 Q. And then after you have incorporated all  
3 this information into your laptop and you generate  
4 this driver/vehicle examination report which is Staff  
5 Exhibit 1, what do you do with this report?

6 A. This gets uploaded to PUCO.

7 Q. So you sent it electronically --

8 A. Yes, sir.

9 Q. -- to the Commission?

10 A. Yes, sir.

11 Q. And is that standard practice, then, for  
12 you?

13 A. Yes, sir. Every day, once we complete  
14 our day, we upload all the inspections, or after the  
15 inspection's completed; all depends on if you can get  
16 on the air card or not.

17 Q. And so then since that's a routine is  
18 this a business record that's kept in the ordinary  
19 course of business that's part of your job duties to  
20 generate these reports --

21 A. Yes, sir.

22 Q. -- from inspections and keep them?

23 A. Yes, sir.

24 Q. And then what do you do as far as this  
25 report and the driver? I mean, do you have a

1 conversation about the report? How does it go?

2 A. Once I complete my inspection, I'll print  
3 out a copy for the driver, I'll walk up and give it  
4 to him, explain this is the time I stopped you,  
5 here's your location, the time will be for your  
6 logbook if they're required to run one, to log it "on  
7 duty not driving," and then I'll just explain a  
8 violation of what I observed or what violations I  
9 found during the inspection. And then I'll have them  
10 sign it and tell them they need to turn that copy in  
11 to their carrier, their carrier needs to sign off and  
12 fax it back to the Public Utilities Commission within  
13 15 days.

14 Q. So you have the driver sign the report  
15 and then you sign a report and then a copy is issued  
16 to the driver?

17 A. Yes, sir.

18 Q. And that was done in this case for  
19 Mr. Wilcox?

20 A. Yes, sir.

21 Q. And so all the information contained here  
22 in Staff Exhibit 1 is accurate based on your  
23 knowledge and how you conducted this inspection?

24 A. Yes.

25 Q. And it's also, it's your opinion then,

1 based on your observations, that Mr. Wilcox violated  
2 the code provision of the Federal Motor Carrier  
3 Safety Regulations as to not wearing his seat belt  
4 while operating a commercial motor vehicle; is that  
5 correct?

6 A. Yes, sir.

7 MR. JONES: Your Honor, I have no other  
8 questions.

9 THE EXAMINER: Very good.

10 Mr. Wilcox, do you have any questions for  
11 this witness?

12 MR. WILCOX: Yes.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Wilcox:

16 Q. You stated that it's a long time ago and  
17 you really don't remember, you know, whether I was  
18 weaving or not in the lane when you say that I put my  
19 belt on. It has been a long time ago, right?

20 A. It's been approximately a year ago,  
21 almost.

22 Q. Right.

23 A. About 11 months.

24 Q. So then that wouldn't -- since you can't  
25 remember, why would you say that?

1 A. I'm sorry?

2 Q. You say typically, you know, when a  
3 driver puts his belt on, they drift over to the  
4 right, but you said you couldn't remember, so why  
5 would you state that?

6 A. I didn't say you did, sir.

7 Q. Oh, okay. You're just saying in  
8 general --

9 A. Right.

10 Q. -- when you do that.

11 A. Right.

12 Q. Not necessarily me.

13 A. I didn't say you swerved over because I  
14 can't literally remember each detail of that, like I  
15 said, this is almost 800 stops after you, so I see a  
16 lot of faces, I'm in a lot of -- I'm pretty busy with  
17 other people, other inspections, I can't vividly  
18 remember each one of them. That's almost a year ago.

19 Q. So from 75 feet behind me you can see me  
20 put my belt on in my mirror.

21 A. 75 feet?

22 MR. JONES: I guess I would object, your  
23 Honor, I don't think the evidence established it was  
24 75 feet behind. I don't think there's a foundation  
25 that was laid for that question.

1 THE EXAMINER: Where did you get the  
2 figure 75 feet?

3 MR. WILCOX: He stated that he was behind  
4 me and he saw me in my mirror, okay? Well, you have  
5 a 53-foot trailer and a 20-foot tractor and he's at  
6 least 10 or 15 feet behind me, you know, so I mean  
7 he's 75 feet behind me and he's looking in my mirror  
8 and he's saying he can see me putting my seat belt  
9 on.

10 THE EXAMINER: See if you can answer the  
11 question. If you have an answer to that question.

12 A. What I observed in your mirror is you  
13 reaching back and putting your seat belt on. As far  
14 as the footage, I can't quote how many feet it was,  
15 but yes, I seen you do that.

16 THE EXAMINER: Do you have any other  
17 questions?

18 Q. Do you have proof of this like a picture  
19 or something that you --

20 A. No; we're not issued cameras for our car.

21 Q. I'm sorry?

22 A. We don't have in-car cameras, so no, I  
23 don't have a video of it.

24 Q. So it's just your word against mine that  
25 I say I was wearing it and you say I wasn't, so you

1 don't have any picture proof or even another officer  
2 that saw it, so you can just pick anybody up driving  
3 down the road and say "Oh, look, that one needs a  
4 ticket today."

5 MR. JONES: Objection, your Honor, as to  
6 the characterization.

7 THE EXAMINER: You need to ask the  
8 witness a question and not testify on the record.

9 Q. So do you have any proof that I was not  
10 wearing my belt?

11 A. Do I have proof? Define "proof," sir.

12 Q. Do you have a picture?

13 A. Do I have a picture of you --

14 Q. Right.

15 A. -- not wearing a seat belt? I do not.

16 THE EXAMINER: I think he answered the  
17 picture question.

18 MR. WILCOX: I'm sorry?

19 THE EXAMINER: I think we've answered the  
20 picture question.

21 MR. WILCOX: Okay. So it's his word  
22 against mine. I say I wasn't wearing my belt, he  
23 says -- I'm sorry, the other way around. He says I  
24 wasn't wearing it and I'm saying I was.

25 MR. JONES: Objection.

1 THE EXAMINER: You've got to go back to  
2 the question-and-answer format. At this point in the  
3 hearing you get to ask the witness a question and he  
4 provides the answer.

5 MR. WILCOX: I'm sorry. I've never been  
6 here before, so I don't really know how all of  
7 this --

8 THE EXAMINER: Do you have another  
9 question for this witness?

10 Q. Okay. You state in your report that my  
11 seat belt was tan in color, correct?

12 A. Yes, that's what I stated.

13 Q. I've taken pictures of my truck and the  
14 interior, and the seat belt is gray.

15 A. Okay.

16 Q. It's not tan. You're standing 2 feet  
17 from me.

18 A. Okay.

19 MR. JONES: Objection, your Honor, as to  
20 the foundation for the pictures.

21 THE EXAMINER: We'll get to your side of  
22 the case after this witness, Mr. Wilcox.

23 MR. WILCOX: Okay. I don't know that I  
24 have any other questions. I don't really know how  
25 all this works, so . . .

1 THE EXAMINER: You have no other  
2 questions?

3 MR. WILCOX: I guess not.

4 THE EXAMINER: Mr. Jones, do you have any  
5 on redirect?

6 MR. JONES: No, your Honor.

7 THE EXAMINER: You're excused.

8 (Witness excused.)

9 MR. JONES: Your Honor, at this time I'd  
10 move for the admission of Staff Exhibit 1 into  
11 evidence.

12 THE EXAMINER: I would admit Staff  
13 Exhibit 1 into evidence at this time.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 MR. JONES: Your Honor, the staff has  
16 another witness, Jonathan Frye, I'd like to call to  
17 the stand, please.

18 (Witness sworn.)

19 - - -

20 JONATHAN FRYE

21 being first duly sworn, as prescribed by law, was  
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Jones:

25 Q. Could you please state your name for the



1 record, please.

2 A. Yes. Jonathan Frye, F-r-y-e.

3 Q. And where are you employed?

4 A. Public Utility Commission of Ohio,  
5 transportation department.

6 Q. And what's your job title?

7 A. I'm the chief of the Compliance division.

8 Q. And what are your duties?

9 A. To assess monetary fines against  
10 carriers, shippers, and drivers who are found to be  
11 in violation of the Federal Motor Carrier Safety  
12 Regulations.

13 Q. And are you here today to testify about  
14 the forfeiture that was assessed against Mr. Wilcox  
15 for this violation?

16 A. Yes.

17 Q. And did you have an opportunity to review  
18 the report involved here?

19 A. Yes.

20 Q. And how does your department receive  
21 reports from the field as to inspections occurring?

22 A. The field inspector will upload the  
23 driver/vehicle examination report, the information is  
24 then downloaded into our computer system, the  
25 computer will generate the violations and each

1 violation is assessed a dollar amount.

2 Q. How long have you been in that  
3 department?

4 A. In the department itself, 20 years.

5 Q. Twenty years. So you've had training and  
6 you're certified to make these assessments, your  
7 department?

8 A. That's correct, yes.

9 Q. And do you have guidelines to follow as  
10 to different categories of offenses that occur in the  
11 field, then, for making those assessments as to  
12 violations?

13 A. Yes. We have a violation assessment  
14 chart that we utilize, it's broken up into four  
15 different categories, categories 1, 2, 3, and 4,  
16 based upon the severity of the particular violations,  
17 and in this particular case the violation at issue  
18 fell into one of the four violation categories for  
19 which we assess a fine.

20 Q. Before we get there, so you had an  
21 opportunity to review Staff Exhibit 1 for what the  
22 offense is and that's the document that the  
23 assessment was made to in this case?

24 A. That's correct, yes.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. And if you would look there to the  
2 exhibits provided, Staff Exhibit 2, could you  
3 identify that document for the record, please.

4 A. Yes. Staff Exhibit 2 is the fine  
5 schedule that we use in order to assess a fine based  
6 upon violations that are found out on the roadway.

7 Q. Okay. And in this case it involves a  
8 seat belt violation. Where would we find that in  
9 your fine schedule as to Staff Exhibit 2?

10 A. Not using a seat belt would be found as a  
11 Group 4 violation which would be on page 2 of Staff  
12 Exhibit 2.

13 Q. And how much, then, is noted there for a  
14 fine -- recommended fine for this type of  
15 classification or violation of the seat belt, not  
16 wearing a seat belt?

17 A. \$100.

18 Q. And so according to your guidelines this  
19 is the standard fine that your department would  
20 recommend in cases involving drivers of commercial  
21 motor vehicles not wearing seat belts that you would  
22 recommend from your department?

23 A. That's correct, yes.

24 Q. And is the fine and your recommendation  
25 of a hundred dollars for this type of violation

1 consistent with the Commercial Motor Vehicle Safety  
2 Alliance?

3 A. Yes, it is.

4 Q. So in your department's review and the  
5 procedures that were followed here in making this  
6 determination, they were all consistent with the  
7 Commercial Vehicle Safety Alliance?

8 A. That's correct.

9 Q. And that's the alliance of the state of  
10 Ohio and other states that follow for consistency in  
11 what fines should be apportioned for different types  
12 of offenses; is that correct?

13 A. That's correct.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. And also if you would please look at  
16 Staff Exhibit 3 and identify that document for the  
17 record, please.

18 A. Yes. Staff Exhibit 3 is a notice of  
19 preliminary determination. This is a letter that's  
20 generated after the driver makes a request for a  
21 conference. If we are unable to reach a resolution  
22 of the case, then we will issue this notice of  
23 preliminary determination letter explaining to the  
24 driver the options that are available to him on a  
25 going-forward basis after the telephone conference.

1 Q. Okay. So then the purpose, then, of  
2 Staff Exhibit 3 is to give the driver, in this case  
3 Mr. Wilcox, notification of what assessment in terms  
4 of forfeiture that the Transportation staff of the  
5 Public Utilities Commission is recommending to be  
6 assessed in this case for this type of violation?

7 A. That's correct. To give him notice of  
8 the information that you've just indicated and an  
9 opportunity for him to contest the violation at the  
10 next stage in the administrative process.

11 Q. Okay. In part of that notification, it  
12 provides the regulation of the code section and the  
13 description of the offense and the amount for that  
14 offense; is that correct?

15 A. That's correct.

16 Q. And what other information is provided  
17 there as far as cross-referencing that this is  
18 matching up with the report that your department  
19 would have received as to the field inspection?

20 A. Right. The notice of preliminary  
21 determination letter has the case number that's  
22 consistent with the report number that's contained in  
23 the Staff Exhibit 1. Staff Exhibit 1 has the report  
24 number which is the exact report number or case  
25 number that's listed in Staff Exhibit 3. And in

1 addition to the case number in Staff Exhibit 3, the  
2 same violation codes are the exact same codes that  
3 are listed in the driver/vehicle examination report.

4 Q. And the address to the driver is the same  
5 that was provided for the report as well where the  
6 letter of notification was sent to?

7 A. Yes, that's correct. Yes.

8 Q. And is this a record, then, that's kept  
9 in the ordinary course of business for your  
10 department to keep on all inspections that occur  
11 within Ohio?

12 A. Yes.

13 Q. And so then would it be your testimony,  
14 then, that what you're recommending for the  
15 Commission to adopt here is a forfeiture of a hundred  
16 dollars for Mr. Wilcox for not wearing a seat belt  
17 while operating a commercial motor vehicle?

18 A. Yes.

19 MR. JONES: Your Honor, I have no further  
20 questions.

21 THE EXAMINER: Mr. Wilcox, do you have  
22 any questions?

23 MR. WILCOX: No, sir.

24 THE EXAMINER: You're excused.

25 (Witness excused.)

1 MR. JONES: Your Honor, at this time, I  
2 would move for the admission of Staff Exhibits 2 and  
3 3 to be admitted into the record, please.

4 THE EXAMINER: I will admit those  
5 exhibits into the record at this time.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 THE EXAMINER: Mr. Wilcox, do you wish to  
8 present testimony?

9 MR. WILCOX: Sure.

10 (Witness sworn.)

11 THE EXAMINER: Be seated.

12 Now, go ahead and tell your story about  
13 the events of that day.

14 - - -

15 MARK E. WILCOX  
16 being first duly sworn, as prescribed by law, was  
17 examined and testified as follows:

18 DIRECT TESTIMONY

19 MR. WILCOX: Okay. I was traveling  
20 southbound on Route 23 there and I did see the  
21 officer in the center, you know, way down the road.  
22 I'm a company driver so I don't have any reason to be  
23 in a hurry. I drive the speed limit. I have a very  
24 clean driving record, and had my seat reclined back  
25 and, you know, knew I wasn't doing anything wrong.

1 And then the next thing, I realize he's behind me,  
2 and so I sat up in my chair, and that may have been  
3 when he saw the seat belt. You know, I sat up to  
4 look out the mirror to see what was going on. And so  
5 that may be where he saw the seat belt on my  
6 shoulder.

7 But no, I had my belt on and pulled over  
8 and he did his inspection and then wrote me a ticket.

9 THE EXAMINER: Does that conclude your  
10 testimony?

11 THE WITNESS: Yes.

12 THE EXAMINER: Mr. Jones.

13 MR. JONES: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Jones:

17 Q. Mr. Wilcox, then it's your testimony that  
18 you were operating a commercial motor vehicle  
19 southbound on U.S. Route 23 on October 30th, 2008;  
20 is that correct?

21 A. Correct.

22 Q. And then you did notice that there was an  
23 officer that was positioned in the median and you had  
24 passed that officer --

25 A. Yes.



1 Q. -- on that route?

2 A. Uh-huh.

3 Q. And that there was shortly thereafter an  
4 event where you were then stopped by the officer --

5 A. Uh-huh.

6 Q. -- that you observed in the median and  
7 then questioned about the seat belt; is that correct?

8 A. He didn't question me about it. He just  
9 told me that he was giving me a citation for it.

10 Q. Okay. Is it also correct, Mr. Wilcox,  
11 that you were wearing a plaid shirt?

12 A. Yes. I brought it with me so everybody  
13 could see it. This is the shirt I was wearing.

14 THE EXAMINER: Let the record show that  
15 the witness is now holding up a plaid shirt. Do you  
16 want to describe the colors of that?

17 THE WITNESS: It's tan and gray and cream  
18 colored, and just multiple colors, reds and stuff  
19 like that in it.

20 THE EXAMINER: Very good.

21 Q. Mr. Wilcox, there's a seat belt apparatus  
22 in the cab of your tractor unit that has a shoulder  
23 strap that goes across your body, your chest, and  
24 then down and connects to a lock mechanism; is that  
25 correct?

1           A.    Yes.  It also does have a clip at the top  
2 up here where you can pull some slack and lock it in  
3 place so that it's not choking you all the time.  It  
4 will allow you to have some slack in there.

5           Q.    Mr. Wilcox, what is your company policy  
6 for being cited for a seat belt or any other type of  
7 violations as a result of an inspection occurring for  
8 a driver?

9           A.    Company policy?

10          Q.    Yes.  You said you're a company driver;  
11 is that correct?

12          A.    Yes.  If I get a ticket, it's, you know,  
13 mine to pay.  Does that answer your question?

14          Q.    Yeah.  What other the ramifications are  
15 there for the driver?

16          A.    They're very -- if we get I think more  
17 than two tickets, then they put us on notice that,  
18 you know, if you get any more, then we'll have to let  
19 you go.

20          Q.    And are you still employed with that  
21 company?

22          A.    I'm presently laid off.

23          Q.    Presently laid off.

24          A.    Uh-huh.

25          Q.    And at what time were you laid off?

1 A. April.

2 Q. April?

3 MR. JONES: I have no other questions,  
4 your Honor.

5 THE EXAMINER: Very good.

6 Mr. Wilcox, do you have any further  
7 statements to make?

8 THE WITNESS: Yes. I'm wondering, you  
9 guys operate under the Ohio State Patrol, correct?

10 OFFICER HOLZWORTH: That's correct.

11 THE WITNESS: In the enforcement  
12 guidelines under OSP-200.05-01, paragraph A, in the  
13 third -- number 3 here it says that ". . . motorists  
14 shall be treated fairly and given every benefit of  
15 the doubt."

16 MR. JONES: I would object, your Honor.

17 THE EXAMINER: Excuse me. I didn't quite  
18 get what you were reading from.

19 THE WITNESS: This is the Ohio State  
20 Highway Patrol enforcement guidelines.

21 THE EXAMINER: Okay. Do you wish to  
22 offer any exhibits?

23 THE WITNESS: Sure, you can use that as  
24 an exhibit.

25 THE EXAMINER: Okay. Let's go off the

1 record here for a moment.

2 (Discussion off the record.)

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

4 THE EXAMINER: Let's go back on the  
5 record.

6 You had questions about what's been  
7 marked, a statement about Respondent's Exhibit 1?

8 THE WITNESS: This one.

9 THE EXAMINER: Now, proceed from there.  
10 Can you pick up your train of thought where you were  
11 with that?

12 THE WITNESS: It's just my understanding  
13 that the PUCO operate under the State Highway Patrol  
14 charter.

15 THE EXAMINER: And Respondent's Exhibit 1  
16 is what?

17 THE WITNESS: Is the enforcement  
18 guidelines.

19 THE EXAMINER: Of?

20 THE WITNESS: Of the Ohio State Patrol.

21 THE EXAMINER: And you got that from the  
22 Ohio State Patrol's website; is that correct?

23 THE WITNESS: I actually got it from a  
24 state trooper friend of mine; yes, I'm sure that's  
25 where he got it.

1 THE EXAMINER: Okay. Is there any other  
2 statement you wanted to make concerning that exhibit?

3 THE WITNESS: It just talks about the  
4 benefit of the doubt be given to the defendant. If  
5 there's any, you know, doubt in the case, that it  
6 should go to the defendant.

7 THE EXAMINER: Do you have any further  
8 statements to make about Exhibit 1?

9 THE WITNESS: No.

10 THE EXAMINER: Let's go to Respondent's  
11 Exhibit 2, a series of four pictures labeled A  
12 through D.

13 THE WITNESS: Yes.

14 THE EXAMINER: Did you have any comments  
15 to make about those?

16 THE WITNESS: The officer said that my  
17 seat belt is tan in his report, and it's not. It's  
18 gray. This is a succession of pictures here that  
19 shows that it's gray, which it could have blended in  
20 with my shirt very easily.

21 THE EXAMINER: Okay. So Exhibit 2A on  
22 top is what? They're labeled on the back.

23 THE WITNESS: Oh, I'm sorry. 2A is the  
24 color of the gray seat belt.

25 THE EXAMINER: And what is 2B?

1 THE WITNESS: 2B is the color of the  
2 interior seat being gray.

3 THE EXAMINER: 2C?

4 THE WITNESS: C is the open door to the  
5 cab of the truck that shows the gray seat.

6 THE EXAMINER: And now D.

7 THE WITNESS: And D is the closed door  
8 showing the company logo and the U.S. DOT numbers.

9 THE EXAMINER: Do you have any further  
10 comments to make about that exhibit?

11 THE WITNESS: No.

12 THE EXAMINER: Mr. Jones.

13 MR. JONES: Thank you, your Honor.

14 - - -

15 FURTHER CROSS-EXAMINATION

16 By Mr. Jones:

17 Q. Mr. Wilcox, Respondent's Exhibit 1, did  
18 you obtain that from your friend the trooper?

19 A. Uh-huh.

20 Q. And who is -- what's his name?

21 A. Do we need to give my friend's name in  
22 this?

23 Q. Yes.

24 A. Anthony Kobach.

25 Q. And did you take those pictures?

1           A.    No, I didn't. One of the other drivers  
2 took it for me because I'm laid off from work; that's  
3 why I had him take a picture of the side of the truck  
4 door.

5           Q.    So those pictures weren't taken in your  
6 presence either, right?

7           A.    No.

8           MR. JONES: Well, your Honor, I'm going  
9 to object to Respondent's Exhibits 1 and 2, 2A  
10 through D, for several reasons. Start with Exhibit  
11 1, being the State Highway Patrol policy. First of  
12 all, he did not personally download that from the  
13 internet. This was given to him by someone else.  
14 And so that person's not here to establish, you know,  
15 a chain of evidence that this person got this as a  
16 policy of the State Highway Patrol.

17                Number two, that policy pertains to sworn  
18 officers that are sworn to uphold the Ohio Revised  
19 Code and not to civilian officers, as Officer  
20 Holzworth is here, as to motor carrier inspections.

21                So, first of all, there's a distinction  
22 here that is very significant in the sense that that  
23 policy has no application to this office. That's  
24 clearly for officers who are enforcing traffic laws  
25 of the state of Ohio under the Ohio Revised Code.

1 Here we're dealing with Federal Motor Carrier Safety  
2 Regulations. Those officers who abide by that policy  
3 are officers who are sworn and have the power to make  
4 an arrest and charge under the Ohio Revised Code for  
5 citations for those types of violations. So that  
6 doesn't even have application here.

7 And another reason would be that, again,  
8 Mr. Wilcox established no foundation for the part  
9 that he was reading about, you know, as to giving  
10 motorists the benefit of the doubt here.

11 Clearly, Officer Holzworth testified to  
12 what he observed, it was pretty straightforward as to  
13 what he said he observed and, in his opinion,  
14 constituted a violation of the Federal Motor Carrier  
15 safety violations and so, you know, I think for all  
16 those reasons Respondent's Exhibit 1 is not relevant,  
17 doesn't apply to this officer, and there's no  
18 foundation been laid as to the excerpt that  
19 Mr. Wilcox wants to preserve for this proceeding. It  
20 doesn't have any application.

21 So we would strenuously object to the  
22 admission of Respondent's Exhibit 1 for those  
23 reasons.

24 THE EXAMINER: Very good.

25 Did you want to make a reply, Mr. Wilcox?



1 MR. WILCOX: I guess I'm wondering what's  
2 the difference if I got it off of the internet or if  
3 I got it from a friend.

4 MR. JONES: Well --

5 MR. WILCOX: It's the State Highway  
6 Patrol, you know, guidelines. What makes the  
7 difference how I got them?

8 MR. JONES: Well, I understand what  
9 you're saying, Mr. Wilcox, but for proceedings like  
10 this it's very important for the chain of evidence to  
11 say where something came from and establishing its  
12 authenticity, giving it some credibility that it has  
13 not been tampered with or some other provisions have  
14 been incorporated into it.

15 MR. WILCOX: I mean, you know, you're  
16 saying that I typed this up myself or something?

17 MR. JONES: I'm just saying that there's  
18 rules that we follow here for proceedings and that's  
19 our practice. And when I see something that doesn't  
20 go with our practice, I make an objection, that's  
21 what my objection is.

22 MR. WILCOX: I see. No, I'm saying that  
23 it doesn't matter how I got the document, it's a  
24 document -- it's not been falsified, you know, it's  
25 right from the Ohio guidelines. Of course, I know

1 you're going to object to everything, you know,  
2 you're on his side.

3 MR. JONES: Well, your Honor, I think  
4 I've established the reasons why this document should  
5 not be admitted.

6 THE EXAMINER: Okay. I'll go off the  
7 record just briefly. I'll make my ruling in a  
8 moment.

9 (Discussion off the record.)

10 THE EXAMINER: Let's go back on the  
11 record. I believe that while Mr. Wilcox's exhibits  
12 in this case may not be strictly relevant on point to  
13 the matter at hand, I think it goes to the weight of  
14 the exhibits which the Commission will consider when  
15 it makes its decision, and so I will admit those  
16 exhibits into evidence at this time.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 MR. JONES: I'm sorry, your Honor, I  
19 thought we were just dealing with the first exhibit.  
20 I just addressed the first exhibit.

21 THE EXAMINER: I'm sorry, you had an  
22 objection on the second?

23 MR. JONES: Yes, your Honor.

24 THE EXAMINER: Let's go back, let's limit  
25 my admission at this point to Exhibit 1. Go back.

1 MR. JONES: Thank you, your Honor. Your  
2 Honor, in addressing Respondent's Exhibit 2, being  
3 the four pictures that Mr. Wilcox is offering here  
4 for admission, staff would also object to the  
5 admission of those four pictures as Exhibit 2 for the  
6 reasons that Mr. Wilcox testified that he did not  
7 take those pictures. He wasn't present when those  
8 pictures were taken.

9 As you can see from the pictures  
10 themselves, we don't know if it's the particular unit  
11 that we're dealing with here. Obviously that's a  
12 company that probably has a fleet of trucks, there  
13 could be a difference as to what the interiors show  
14 for different trucks as part of that fleet.

15 You see that there's no unit number on  
16 that truck as to the picture even. I see a U.S. DOT  
17 number. It doesn't show what number in the lineup of  
18 the fleet that truck is to establish that that's the  
19 same truck that was stopped and was a part of this  
20 inspection for this case. So I think that's very  
21 significant.

22 And the other pictures, like I said, it  
23 could have been taken inside any cab. Even though we  
24 see the one picture it shows a U.S. DOT number, it  
25 may be traceable to this company that he used to work

1 for, the other pictures still, we don't know if they  
2 were taken of the interior of yet another cab.

3 So, I mean, without him being present or  
4 taking the pictures himself, he can't authenticate  
5 those pictures, that they're accurate representations  
6 of the unit that he was driving for this inspection.  
7 So I think that is very significant.

8 So for those reasons I would object to  
9 the admission of those pictures being admitted in  
10 this case.

11 THE EXAMINER: Let's go back on the  
12 record and let me ask Mr. Wilcox if those pictures  
13 were taken of your truck or a representative truck in  
14 the fleet of your employer.

15 THE WITNESS: This is my truck. We have  
16 two trucks, a whole two, and they're both Kenworths,  
17 they're both the same colors, they're identical.

18 THE EXAMINER: And by your testimony  
19 you've adopted these pictures as true representations  
20 of your truck; is that correct?

21 THE WITNESS: Yes.

22 THE EXAMINER: Okay. I'll go back on the  
23 record and admit Exhibit 2 at this time, all four  
24 pictures.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 THE EXAMINER: Now, as I believe I stated  
2 off the record, I would give staff, if you wish, any  
3 rebuttal testimony.

4 MR. JONES: Before I proceed on, your  
5 Honor, I just had maybe another question or two for  
6 Mr. Wilcox to complete my cross.

7 THE EXAMINER: Your examination, okay.

8 MR. JONES: Thank you.

9 I take it Mr. Wilcox has finished his  
10 presentation. I didn't want to cut him off. I don't  
11 know if he had anything else to offer for testimony.

12 THE EXAMINER: Did you have any other  
13 comments to make, Mr. Wilcox?

14 MR. WILCOX: No, I just want to state the  
15 fact that I was wearing my belt when I was stopped.  
16 When I passed the officer.

17 THE EXAMINER: Very good. Proceed,  
18 Mr. Jones.

19 MR. JONES: Thank you, your Honor.

20 - - -

21 FURTHER CROSS-EXAMINATION

22 By Mr. Jones:

23 Q. Mr. Wilcox, that shirt that you have  
24 there, you described that and it appears to be a  
25 plaid shirt; is that correct?

1 A. Sure.

2 Q. And that does not match the colors of the  
3 belt that's displayed in the picture you show for the  
4 interior of the cab you represent that is the cab  
5 that you were in at the time of the inspection; is  
6 that correct? They don't match.

7 A. It matches enough to me. It's got --

8 Q. No, I'm asking --

9 A. -- lines going up and down in it and --

10 Q. Mr. Wilcox, very simple, in color they  
11 don't match each other, right? The belt -- the seat  
12 belt does not match the colors in your plaid shirt.

13 A. It has gray in it.

14 Q. There's gray in that shirt?

15 A. Yeah.

16 Q. Can you hold that shirt up again, please?

17 MR. JONES: May I get a closer  
18 inspection, your Honor?

19 THE EXAMINER: Go ahead.

20 MR. JONES: May I show my officer? Thank  
21 you.

22 Q. Mr. Wilcox, can you show me where the  
23 gray is on that shirt?

24 A. The gray is in these lines here.

25 Q. You're saying these lines here?

1 A. Uh-huh.

2 THE EXAMINER: Describe for the reporter  
3 what you're --

4 Q. Could you describe what part of the shirt  
5 you're indicating is gray?

6 A. The shirt is squares, and the horizontal  
7 lines that run through it are gray.

8 MR. JONES: Your Honor, is this being  
9 admitted?

10 THE EXAMINER: No, he didn't want that  
11 marked as an exhibit.

12 MR. JONES: Can I have the Bench take a  
13 closer look at this?

14 THE EXAMINER: Yeah. Let's go off the  
15 record.

16 (Discussion off the record.)

17 THE EXAMINER: Let's go back on the  
18 record. Let the record show we've inspected the  
19 plaid shirt, and now proceed, Mr. Jones.

20 MR. JONES: Thank you.

21 Q. Mr. Wilcox, what you pointed out here is,  
22 it appears to be a faded blue and red, would you  
23 agree with that, where you're pointing where it's  
24 gray?

25 A. No. I see gray in it. I see gray

1 running through here. Of course, you're going to  
2 pick it apart, I know.

3 Q. Mr. Wilcox, please, I'm just trying to  
4 observe and ask you questions.

5 A. I know, you're trying to pick apart so  
6 that your side wins. I know what you're doing.

7 MR. JONES: All right. I have no further  
8 questions, your Honor.

9 THE EXAMINER: Okay. Did you want any  
10 rebuttal testimony?

11 MR. JONES: If I could just have a  
12 second, your Honor.

13 THE EXAMINER: Go ahead.

14 MR. JONES: Yes, your Honor, I'd like to  
15 call the officer back for rebuttal testimony, please.

16 THE EXAMINER: Excused.

17 (Witness excused.)

18 THE EXAMINER: We'll have the officer  
19 back up on the stand.

20 MR. JONES: If we could leave the shirt,  
21 please, at the stand, Mr. Wilcox. Thank you.

22 Your Honor, staff would re-call Officer  
23 Holzworth as a rebuttal witness at this time, please.

24 THE EXAMINER: Very good. You're still  
25 under oath. Be seated.



1 OFFICER JONATHAN M. HOLZWORTH

2 being previously duly sworn, as prescribed by law,

3 was examined and testified as follows:

4 REBUTTAL - DIRECT EXAMINATION

5 By Mr. Jones:

6 Q. Officer Holzworth, you've had an  
7 opportunity to hear Mr. Wilcox give testimony here  
8 today; is that correct?

9 A. Yes, I have.

10 Q. And I believe there's an exhibit up there  
11 that's marked as Respondent's Exhibit --

12 THE EXAMINER: We didn't mark that.  
13 That's not an exhibit.

14 MR. JONES: No, I'm talking about the  
15 policy.

16 THE EXAMINER: Okay. Proceed.

17 Q. Respondent's Exhibit 1. I want to ask  
18 you some questions on that exhibit. Are you familiar  
19 with that document, first of all?

20 A. No, I'm not.

21 Q. Okay. Could you please tell us whether  
22 or not you're authorized to cite any motorist for a  
23 violation of the Ohio Revised Code?

24 A. No, we do not use the ORC in any of our  
25 inspections. All our violations are through the

1 federal regulation book which is the 392 through 395,  
2 stuff like that. We do not use ORC whatsoever.

3 Q. Okay. And would you take a second just  
4 to look through that document and see if there's  
5 anything there that provides for enforcement of the  
6 Federal Motor Carrier Safety Regulations.

7 A. Sure. I'd just like to point out the  
8 revision on this is 5/31 of 2007, and it was printed  
9 out on August 11th of '09. This states that --  
10 policy review for all sworn officers. I'm not a  
11 sworn officer. I'm a civilian employee.

12 This also states all OSP offices and  
13 facilities. The policy states I believe that the  
14 scope and safety of this part 1 refers to the Ohio  
15 Revised Code.

16 Part 2 would be enforcement. This  
17 pertains to motorists being stopped. I'll read from  
18 the policy itself: Motorists being stopped as part  
19 of a sobriety checkpoint or at a stationary, random  
20 or vehicle inspection, MVI -- which we do not do.  
21 MVI would be other troopers and civilians that are  
22 trained in the MVI, which is the motor vehicle  
23 inspection. Basically, that's for sobriety  
24 checkpoints.

25 Traffic crashes is No. 3 on there. We do

1 not do OHIs, which is the trooper's job to do the  
2 field sketch of the crash.

3 We do not enforce No. 4, the front seat  
4 passengers. We do not enforce seat belt enforcement  
5 on passengers through the federal regulation book,  
6 that would be the ORC, and the ORC is 4513.263 on  
7 that.

8 It just goes on and on and it says --  
9 it's all about the Ohio Revised Code, which we do not  
10 enforce.

11 Even truck weight -- weighing of trucks,  
12 we do not enforce -- we have a scale team that weighs  
13 the vehicle and a trooper would write the enforcement  
14 citation for that. The only thing we would do is  
15 mirror that in our inspection process under the 392  
16 and write the trooper's citation in there, which is  
17 an ORC violation. So this pertains to all ORC codes,  
18 and we don't enforce ORC.

19 Q. Okay. So you've had an opportunity to  
20 look all the way through that document and based on  
21 who it's directed to and the code provisions that  
22 would be enforced through the officers who that  
23 policy applies to, you're saying that that policy has  
24 no application to you because you're a civilian  
25 officer, that's not a sworn officer, is that correct?

1           A.    That's correct. This is provided for all  
2 sworn officers and other affected employees, but it  
3 doesn't -- if it's applied to us, it will have Motor  
4 Carrier Enforcement Inspectors on it.

5           Q.    And that's not indicated; is that  
6 correct?

7           A.    No, sir, it's not.

8           Q.    So it's your testimony that that policy  
9 has no application to you as a motor carrier  
10 enforcement officer.

11          A.    No, it doesn't.

12          Q.    And also I know there's a shirt up there  
13 that Mr. Wilcox testified to that is his shirt, and  
14 he claims that that's the shirt he was wearing during  
15 the time of the inspection. Would you take a second  
16 to examine that shirt and see if you see the color  
17 gray in that shirt anywhere.

18          A.    I do not see gray in this shirt at all.

19          Q.    Officer Holzworth, you did observe  
20 Mr. Wilcox from the vantage of being behind him after  
21 you pulled out from the median, observe Mr. Wilcox  
22 put his seat belt on.

23          A.    That's correct, that's what I stated in  
24 my notes section.

25          Q.    So if you would look at that picture that

1 Mr. Wilcox offered there, I think there's one picture  
2 out of the four that displays a seat belt. Do you  
3 see that one?

4 A. Yes, sir.

5 Q. What is that marked as?

6 A. Exhibit 2A.

7 Q. 2A. And that seat belt as it's displayed  
8 in that exhibit, does it match the shirt that  
9 Mr. Wilcox brought in? As far as the color of the  
10 silver or the gray?

11 A. No, not to me it does not.

12 MR. JONES: Okay. That's all the  
13 questions I have, your Honor.

14 THE EXAMINER: I'll give you another  
15 chance, Mr. Wilcox. Do you have any questions of  
16 this witness?

17 MR. WILCOX: No, not really.

18 THE EXAMINER: You're excused.

19 (Witness excused.)

20 THE EXAMINER: Is there anything more to  
21 offer?

22 MR. JONES: Nothing more to offer, your  
23 Honor.

24 THE EXAMINER: Very good. That said, I  
25 will confer this case submitted on the record.

1                   And, Mr. Wilcox, you want to make sure to  
2 get your shirt.

3                   MR. JONES: Thank you, your Honor.

4                   OFFICER HOLZWORTH: Thank you, sir.

5                   (The hearing concluded at 11:18 a.m.)

6                   - - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, August 13, 2009, and carefully compared with my original stenographic notes.

\_\_\_\_s/Maria DiPaolo Jones\_\_\_\_\_  
Maria DiPaolo Jones, Registered  
Diplomate Reporter and CRR and  
Notary Public in and for the  
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3429)

- - -

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

**Commission of Ohio Docketing Information System on**

**8/27/2009 12:37:53 PM**

**in**

**Case No(s). 09-0358-TR-CVF**

Summary: Transcript Mark E. Wilcox 8/13/090 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.