

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Request of Thomas L. :
Vanmeter for an : Case No. 13-1580-TR-CVF
Administrative Hearing. :
- - -

PROCEEDINGS

before Mr. Bryce McKenney, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10 a.m.
on Thursday, November 7, 2013.

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APPEARANCES:

Mike DeWine, Ohio Attorney General
By Mr. William L. Wright, Section Chief
Public Utilities Section
Mr. John Jones, Assistant Section Chief
And Ms. Katie Johnson,
Assistant Attorney General
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On behalf of the Staff of the PUCO.

Mr. Richard E. Hackerd
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On behalf of Thomas L. Vanmeter.

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Staff Exhibit	Identified	Admitted
1 Driver/Vehicle Examination Report	9	35

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Thursday Morning Session,
November 7, 2013.

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EXAMINER McKINNEY: Let's go on the record at this time. The Public Utilities Commission of Ohio calls for hearing at this time and place Case No. 13-1580-TR-CVF being in the Matter of Mr. Vanmeter, Notice of Apparent Violation and Intent to Assess Forfeiture. My name is Bryce McKenney, and I am the Attorney Examiner assigned by the Commission to hear this case.

At this time I'll take the appearances of the parties beginning with staff.

MR. JONES: Yes, good morning, your Honor. On behalf of the staff of the Public Utilities Commission of Ohio, Ohio Attorney General Mike DeWine, Assistant Attorneys General Katie Johnson and John Jones.

EXAMINER McKINNEY: Thank you, Mr. Jones. Mr. Hackerd.

MR. HACKERD: Richard Hackerd on behalf of Mr. Vanmeter. This is Mr. Vanmeter to my left.

EXAMINER McKINNEY: Thank you.

Staff, did you have anything you wanted to make on the record before we proceed?

1 MS. JOHNSON: Just as a preliminary
2 matter, we would like to note that the parties have
3 stipulated that the amount of the civil forfeiture
4 was 0 dollars and also that notice of the 0 dollars
5 civil forfeiture was given in the Notice of
6 Preliminary Determination to Mr. Vanmeter and
7 Mr. Hackerd.

8 EXAMINER McKINNEY: All right. Thank
9 you.

10 Mr. Hackerd, is that correct?

11 MR. HACKERD: It is correct.

12 EXAMINER McKINNEY: All right. Staff,
13 are you ready to proceed?

14 MS. JOHNSON: We are. First, we would
15 like to call to the stand Officer Ron Kisner.

16 (Witness sworn.)

17 EXAMINER McKINNEY: All right. You are
18 now under oath. Please have a seat.

19 - - -

20 TROOPER RON KISNER

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

23 DIRECT EXAMINATION

24 By Ms. Johnson:

25 Q. Good morning.

1 A. Good morning.

2 Q. Could you please state your name.

3 A. Trooper Ron Kisner.

4 Q. Okay. Where are you employed?

5 A. I work for the State Highway Patrol on
6 the Ohio Turnpike.

7 Q. And what is your position there?

8 A. I'm a State Trooper/Motor Carrier
9 Inspector.

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

11 A. 17 years.

12 Q. And what are your duties in your capacity
13 as a -- as an officer?

14 A. Law enforcement, I enforce the commercial
15 motor vehicle safety regulations, I assist the
16 motoring public, investigate accidents.

17 Q. Okay. And what is your educational
18 background?

19 A. I graduated high school and then I have
20 Patrol Academy and then yearly in-services and the
21 Federal Motor Carrier Safety Regulations School,
22 about four months of that.

23 Q. Okay. Is there any other additional
24 training that you've received?

25 A. There's yearly in-service they give us

1 and then they -- they update us on the motor carrier
2 regulation. When the laws change, they bring us down
3 and give us usually a whole day of school.

4 Q. Okay. And what types of certifications
5 do you have?

6 A. We have to certify with the Federal
7 Government brake checks every year, and we have
8 Hazmat regulations we have to be certified on. I
9 inspect commercial buses and bulk shipments of
10 hazardous materials.

11 Q. Okay. And were you trained specifically
12 to enforce the Federal Motor Safety Regulations?

13 A. Yes.

14 Q. Okay. So without getting into the
15 details of this specific violation, can you please
16 describe the motor inspection -- the motor inspection
17 process generally.

18 A. Well, I patrol the highways to detect
19 violations of driver violations or vehicle violations
20 on commercial motor vehicles, and I stop them for
21 that and then do the motor vehicle inspection on
22 them.

23 Q. Okay. And what are the reasons for these
24 inspections?

25 A. Safety of the motoring public.

1 Q. Okay. What type of documents do you
2 generate during a traffic stop?

3 A. It's a computer-generated document. It's
4 called a FMCSA program.

5 Q. Okay. And what type of information does
6 that report contain?

7 A. Everything that pertains to the stop that
8 day.

9 Q. Okay. Were you working on the day of
10 December 7, 2012?

11 A. Yes, I was.

12 Q. And do you remember the inspection and
13 traffic stop of Mr. Vanmeter?

14 A. Yes, somewhat.

15 Q. Okay.

16 MS. JOHNSON: Your Honor, I would like to
17 mark this document as Staff Exhibit No. 1.

18 EXAMINER McKINNEY: What is this
19 document?

20 MS. JOHNSON: Sorry. It's -- let me
21 mark -- I am marking it.

22 EXAMINER McKINNEY: Is it the inspection
23 report?

24 MS. JOHNSON: Yes.

25 Your Honor, may I approach opposing

1 counsel?

2 EXAMINER McKINNEY: You may. It will be
3 marked Staff Exhibit 1.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MS. JOHNSON: Your Honor, may I approach
6 the witness as well?

7 EXAMINER McKINNEY: You may.

8 Q. (By Ms. Johnson) Okay. Mr. Kisner, what
9 is this document?

10 A. This is the motor vehicle inspection
11 that's generated by the FMCSR program when I complete
12 it.

13 Q. Okay. Now, did you prepare this
14 document?

15 A. Yes.

16 Q. And does this document contain the same
17 information as the inspection report that you
18 generated --

19 A. Yes.

20 Q. -- when you pulled Mr. Vanmeter over?

21 A. Yes, it does.

22 Q. Okay. And when did you prepare this
23 document?

24 A. At the scene of the stop.

25 Q. Okay. Did you make the report

1 contemporaneously with the stop or?

2 A. Yes.

3 Q. Okay. Is it the general practice of the
4 Patrol to make documents like this report?

5 A. Yes, it is.

6 Q. And does the Highway Patrol make and keep
7 this type of record in the ordinary course of
8 business?

9 A. Yes, we do.

10 Q. Does this report contain information that
11 you observed, on matters that you observed directly?

12 A. Yes.

13 Q. And in this specific report did you
14 report on matters you observed pursuant to a duty
15 imposed by law?

16 A. Yes.

17 Q. Okay. Now, with regard to this document,
18 at the top of the document it says report number.
19 Can you explain what the report number is?

20 A. Well, the first two letters are for Ohio.
21 The second -- the four numbers following that are my
22 unit number, and then the rest of the numbers are the
23 sequential number that the computer generates.

24 Q. Okay. And what was the inspection date
25 marked on this report?

1 A. December 7 of 2012.

2 Q. Okay. And at what time of the day was
3 this?

4 A. 9:58 a.m.

5 Q. And the report mentions the inspection
6 level.

7 MR. HACKERD: Objection.

8 EXAMINER McKINNEY: What grounds?

9 MR. HACKERD: Hearsay. He is testifying
10 from a document prepared out of court.

11 MS. JOHNSON: Your Honor, this is a
12 business record.

13 EXAMINER McKINNEY: Yeah. I think we've
14 established.

15 MR. HACKERD: With all due respect may I
16 argue that point? It is not a business record.

17 EXAMINER McKINNEY: Ms. Johnson, would
18 you like to respond?

19 MS. JOHNSON: Yeah, it was made from his
20 own personal knowledge. It was made in the regular
21 course of business, and it was made at a time that's
22 close -- or contemporaneous to when he -- when the
23 stop happened.

24 EXAMINER McKINNEY: I agree. The
25 objection is overruled. We've established the

1 foundation for the document. He filled out the
2 document, so the objection to hearsay is overruled.

3 MR. HACKERD: I would reiterate my
4 objection, and I would also like to voir dire the
5 witness with respect to this document. Police
6 reports are generally not considered business record
7 exceptions because they are prepared in anticipation
8 of litigation, and they are not admissible into
9 evidence as business records.

10 EXAMINER McKINNEY: Mr. Hackerd, we have
11 an abundance of case law in allowing the witness to
12 testify to the inspection reports, and I've never had
13 anyone request voir dire of a witness on this issue,
14 so I am going to deny your request for voir dire of
15 the witness on the inspection report. I am going to
16 overrule your objection on hearsay grounds and allow
17 Ms. Johnson to continue.

18 MR. HACKERD: Okay.

19 Q. (By Ms. Johnson) Okay. So the report
20 mentions the inspection level. Can you explain what
21 that means?

22 A. Yes. Inspection level I is a complete
23 inspection, more detailed inspection, underneath the
24 vehicle, the brakes. Level II is just a walk around
25 looking for obvious violations. Level III is just a

1 driver violation and the registration, driver's
2 license, medical card, that type of thing.

3 Q. Okay. The document mentions Mr. Thomas
4 Vanmeter's name and also Great Lakes Petroleum
5 Company. Could you explain who those different
6 entities are.

7 A. Great Lakes Petroleum would have been the
8 company he was working for, the DOT number on the
9 door, and Thomas Vanmeter was the driver that day.

10 Q. Okay. And below the driver's name it
11 says license number. Can you explain whose license
12 number that would be?

13 A. It was Thomas Vanmeter's license number.
14 It was an Ohio driver's license.

15 Q. Okay. And when did you look at
16 Mr. Vanmeter's license?

17 A. When he presented it to me after I asked
18 him for it.

19 Q. Okay. And when you looked at that, did
20 it match your identification of Mr. Vanmeter?

21 A. Yes.

22 Q. Okay. Mr. Kisner, in the middle of Staff
23 Exhibit 1 there is a number that says violation code.
24 Could you explain what is a violation code.

25 A. That's the numbers that the Federal

1 Government assigns for each violation in the Federal
2 Motor Carrier book.

3 Q. Okay. And do you know what this specific
4 violation was?

5 A. 392.16 is a seat belt violation.

6 Q. Okay. In the middle of the document it
7 also mentions a violation description. What is --
8 what is a violation description?

9 A. It's the actual law itself for 392.16.

10 Q. Okay. After the violation or during the
11 violation, do you write any notes with respect to the
12 violation that just took place?

13 A. Yes. When I -- when I -- the computer
14 program I click on the 3 -- 392.16. It will make a
15 population failing to use a seat belt while operating
16 a commercial vehicle, and they want us to describe it
17 a little further as to an example would be did not
18 have on seat belt as he passed patrol car, white
19 shirt and black seat belt. They want us to put more
20 detail in it.

21 Q. Okay. And why did you write on the
22 report that he was wearing a white shirt and a black
23 seat belt?

24 MR. HACKERD: Objection.

25 EXAMINER McKINNEY: What grounds?

1 MR. HACKERD: Hearsay, best evidence.

2 EXAMINER McKINNEY: Ms. Johnson?

3 MS. JOHNSON: Your Honor, I am asking him
4 to testify as to his personal knowledge about the
5 type of information that he reports when you are
6 describing a violation.

7 MR. HACKERD: The proper method of using
8 a document would be to have the witness testify from
9 his recollection. If the witness is unable to
10 recall, she might then refresh the witness's
11 recollection ,but he is essentially reading a report
12 so he's -- he's -- it's hearsay.

13 EXAMINER McKINNEY: I disagree. I don't
14 believe this is hearsay. I understand what your
15 objection is but I disagree, so the objection is
16 overruled.

17 MR. HACKERD: Very well, your Honor.

18 Q. (By Ms. Johnson) Okay. So, once again,
19 why is it that you would write that he was wearing a
20 white shirt and a black seat belt?

21 A. So there was no doubt in my mind that I
22 know he didn't have it on, and due to the fact that
23 if there's a challenge to it, then it would refresh
24 my memory somewhere down the road.

25 Q. Are there certain types of clothing and

1 belt color combinations that make it more difficult
2 to view a seat belt violation?

3 A. Yes.

4 MR. HACKERD: Objection.

5 EXAMINER McKINNEY: Grounds?

6 MR. HACKERD: Speculation, opinion.

7 EXAMINER McKINNEY: The objection is
8 overruled on those grounds. However, I will caution
9 counsel please try to be careful with the leading
10 questions.

11 MS. JOHNSON: Okay. Yes, your Honor.

12 EXAMINER McKINNEY: If you could rephrase
13 the question, please.

14 Q. (By Ms. Johnson) What types of color
15 combinations make it easier or more difficult to
16 observe a seat belt violation?

17 MR. HACKERD: Objection.

18 EXAMINER McKINNEY: What grounds?

19 MR. HACKERD: Leading.

20 EXAMINER McKINNEY: Ms. Johnson, please
21 try to make your questions a little more open ended.

22 Q. What type of --

23 EXAMINER McKINNEY: Inspector, are there
24 different types of shirts and belt combinations that
25 make it easier or more difficult to observe a belt?

1 THE WITNESS: There's a lot of different
2 situations. If I'm not 100 percent sure, I won't
3 stop a person for that. He had a day cab. It was
4 easy to see inside. There was plenty of light.
5 There are trucks that have neon green, orange seat
6 belts. Some are light gray, light tan. It makes it
7 easy to see that they have it on. Sometimes when a
8 person has a black shirt, black seat belt, it's
9 impossible to tell.

10 EXAMINER McKINNEY: Thank you, Inspector.
11 Ms. Johnson, you may continue.

12 MS. JOHNSON: Thank you.

13 Q. (By Ms. Johnson) So after you generate
14 this specific report, where do you send that report?

15 A. I download that to the Public Utilities
16 Commission of Ohio.

17 Q. Okay. Thank you. So as -- going more
18 specifically into this particular incident, do you
19 commonly -- I guess this is more generally, I'm
20 sorry. Do you commonly as part of your job look
21 for -- specifically for seat belt violations?

22 A. Yes.

23 Q. And on this specific occasion what were
24 you looking for? What type of violations were you
25 looking for?

1 A. You know, on patrol I look for everything
2 all day, but I'll generally look at the driver to see
3 if he has his seat belt on. If it's easy to tell and
4 I am 100 percent sure, I'll stop them for it. If
5 there is any doubt in my mind, I don't.

6 Q. What time of day did you observe this --
7 this violation?

8 A. It was morning, approximately 10 a.m.

9 Q. Okay. And how was the weather on that
10 day?

11 A. I don't remember.

12 Q. Okay. How far were you from the vehicle
13 when you saw the violation?

14 A. Oh, probably a couple hundred feet. I
15 can't remember exactly.

16 Q. Okay. And what type of vehicle were you
17 in when you observed the violation?

18 A. Chevrolet Tahoe.

19 Q. How high does that vehicle sit?

20 A. Well, I guess I sit about 4 foot off the
21 ground.

22 Q. Okay. Was there -- what was obstructing
23 your view when you saw Mr. Vanmeter's violation?

24 A. Nothing.

25 Q. And how long would you say that you

1 observed Mr. Vanmeter before you decided to pull him
2 over?

3 A. Before I decided to, it was probably
4 maybe 5 or 10 seconds.

5 Q. Was there any sort of device that you
6 used to observe Mr. Vanmeter?

7 A. No.

8 Q. So just how -- so how did you --

9 A. Just my sight, by sight.

10 Q. Thank you. Were the windows of
11 Mr. Vanmeter's vehicle tinted at all?

12 A. I do not believe so.

13 Q. Okay. And when you approached the car --
14 or the vehicle, did you notice again what color the
15 shirt and the seat belt were?

16 A. Yes.

17 Q. Okay. And what were the color of the
18 shirt and the seat belt?

19 A. A white shirt and a black seat belt.

20 Q. Okay. Thank you. And so do you
21 recognize or would you recognize Mr. Vanmeter?

22 A. Yes.

23 Q. And could you please point out
24 Mr. Vanmeter.

25 A. He is at the table with the brown shirt

1 and brown pants on.

2 Q. Okay. And he is the same driver that was
3 at the vehicle that day?

4 A. Yes.

5 Q. Okay. Thank you.

6 MS. JOHNSON: Your Honor, I would like to
7 let the record reflect that the Officer has
8 identified Mr. Vanmeter as the person sitting in this
9 courtroom.

10 EXAMINER McKINNEY: The record will so
11 reflect.

12 MS. JOHNSON: Okay.

13 Q. When you pulled over Mr. Vanmeter and you
14 finished your -- the traffic stop, did you give him a
15 copy of a report or?

16 A. Yes.

17 Q. Okay. And did that information -- what
18 type of information did that report contain?

19 A. Exact same thing I have here as stated in
20 Staff Exhibit 1.

21 Q. And Staff Exhibit 1 is an accurate
22 representation of the report you handed to
23 Mr. Vanmeter?

24 A. Yes.

25 MS. JOHNSON: Okay. Your Honor, at this

1 time I would like to move to admit Exhibit 1 into
2 evidence, Staff Exhibit 1, I'm sorry.

3 EXAMINER McKINNEY: First, Ms. Johnson,
4 are you finished questioning the witness?

5 MS. JOHNSON: I am; yes, I am, your
6 Honor. Sorry.

7 EXAMINER McKINNEY: Mr. Hackerd, do you
8 object to the admission of Staff Exhibit 1?

9 MR. HACKERD: I do, your Honor.

10 EXAMINER McKINNEY: I assumed that you
11 might. Before I rule on the admission of Staff
12 Exhibit 1 because you object to it, I will give you
13 the opportunity to do cross-examination.

14 MR. HACKERD: Thank you. This is -- this
15 is voir dire essentially with respect to this exhibit
16 only; is this my understanding? Or is this
17 cross-examination?

18 EXAMINER McKINNEY: This is examination.
19 Your voir dire was denied.

20 MR. HACKERD: I understand.

21 EXAMINER McKINNEY: Ms. Johnson, you are
22 completed with the witness, your questioning?

23 MS. JOHNSON: I am but I would like to
24 reserve Officer Kisner for rebuttal.

25 EXAMINER McKINNEY: You will be granted

1 an opportunity for redirect after cross-examination.

2 MS. JOHNSON: Okay. Thank you.

3 EXAMINER McKINNEY: Mr. Hackerd, you may
4 proceed with cross-examination.

5 MR. HACKERD: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Hackerd:

9 Q. Good morning, Officer Kisner. We met
10 earlier in the hallway.

11 A. Yes, sir.

12 Q. With respect to Staff Exhibit 1 you
13 prepared this document for what purpose?

14 A. It's a report we generate when we stop
15 commercial motor vehicles for inspections.

16 Q. And is this document prepared in
17 anticipation of this hearing?

18 A. It's what I have to repair -- prepare on
19 the side of the road.

20 Q. Right. And do you prepare it for the
21 purposes of presenting it at this hearing?

22 A. Well, if there is a hearing, I guess,
23 yes.

24 Q. And for the purpose of refreshing your
25 recollection at a later date?

1 A. Yes, yes.

2 Q. All right. How did you prepare for your
3 testimony this morning? Did you take any action?

4 A. I read the report that I had prepared at
5 the scene.

6 Q. And then you read it again prior to
7 beginning your testimony this morning --

8 A. Yes.

9 Q. -- on the witness stand?

10 A. Uh-huh.

11 Q. Did you take any other action in
12 preparation for your testimony?

13 A. Just my memory, trying to remember the
14 stop.

15 Q. Right. Is it fair to say that your
16 memory was vague about this matter prior to reading
17 these reports and refreshing your recollection?

18 A. Yes.

19 Q. Would you say you've made a number of
20 other stops in the intervening period?

21 A. Yes, sir.

22 Q. This incident occurred in December of
23 last year; is that correct?

24 A. Yes, sir.

25 Q. And it's been, well, close on to a year.

1 What do we have? 11 months have passed.

2 A. Uh-huh.

3 Q. In those intervening 11 months how many
4 traffic stops have you made?

5 A. Over a thousand.

6 Q. Without -- without referring to Staff
7 Exhibit 1 do you recall what color Mr. Vanmeter's
8 truck was?

9 A. I believe it was white.

10 Q. Do you recall what was onboard that
11 truck, if anything?

12 A. Pretty much empty, flatbed.

13 Q. Did you observe anything else inside of
14 the truck, inside of the cab of the truck?

15 A. Just paperwork, nothing significant, I
16 guess.

17 Q. Now, you've testified that this traffic
18 stop took place at 10 o'clock in the morning. You
19 did not testify as to the lighting conditions. Do
20 you recall what the lighting conditions were?

21 A. It was daylight.

22 Q. Was the sun out?

23 A. I don't remember all that.

24 Q. Was there sunshine?

25 A. I don't know.

1 Q. Okay. Any fog?

2 A. Probably not.

3 Q. You also testified that you were 200 feet
4 away from Mr. Vanmeter's truck at the time of your
5 observation. I would like to explore that somewhat
6 further. Where was your vehicle precisely with
7 respect to the highway at the time that you made this
8 observation?

9 A. I was either on the side of the road on
10 the right, or I was in the crossover. I don't
11 remember where.

12 Q. Okay. And when you say the crossover,
13 that's a section of highway -- a section of space
14 between the lanes of travel?

15 A. Yes.

16 Q. How many lanes of traffic are there in
17 each direction on this particular stretch of roadway?

18 A. Three.

19 Q. Three in each direction.

20 A. Yes.

21 Q. Do you recall which lane -- well, which
22 way does this highway run?

23 A. East and west.

24 Q. East and west. Can you tell me in which
25 direction Mr. Vanmeter's vehicle was traveling?

1 A. West.

2 Q. Which lane was Mr. Vanmeter's vehicle?

3 A. I do not remember that.

4 Q. All right. If Mr. Vanmeter's vehicle
5 were in the curb or berm lane, that would be the lane
6 to the far right traveling in the -- you said he was
7 traveling west?

8 A. Yes.

9 Q. Okay. How wide is a lane?

10 A. 12 feet.

11 Q. You were on the side of the road?

12 A. I don't remember if I was in the
13 crossover or --

14 Q. I see.

15 A. -- travel plaza. It happened right
16 around 139. We have a travel plaza there. I could
17 have been there on the shoulder. I don't remember.

18 Q. All right. You stated you were 200 feet
19 way from Mr. Vanmeter's vehicle. 200 feet in which
20 direction with respect to the direction of travel?
21 Do you follow my question?

22 A. Yes, but I don't know if it was exactly
23 200. It was that or less, depending on if he was
24 coming towards me or I observed it right when he went
25 by me. It would only be 36 feet so I don't remember.

1 Q. You don't recall.

2 A. No.

3 Q. Okay. So is the 200 feet an estimate or
4 a guess?

5 A. Both.

6 Q. Okay. And you testified that it could be
7 as little as 36 feet and as much as 200 feet.

8 A. Yes.

9 Q. All right. What is the speed limit on
10 that stretch of roadway?

11 A. 70.

12 Q. Was the traffic traveling at that speed?

13 A. Most people do, yes.

14 Q. All right. So Mr. Van -- we can
15 successfully assume Mr. Vanmeter's vehicle is
16 traveling at 70 miles per hour?

17 A. Or less.

18 Q. Or less. 60 miles per hour?

19 A. Yes.

20 Q. Unlikely to be traveling less than that
21 because he would become an obstruction; is that a
22 fair statement?

23 A. Trucks usually drive in the right line,
24 and they do less than the speed limit usually.

25 Q. Do you happen to know how quickly a

1 vehicle is moving in feet per minute when traveling
2 at 60 miles an hour?

3 A. I would have to do the math on that, but
4 I would probably say 30 or 40 feet a second.

5 Q. Okay. I did do the math, and it's
6 88 feet per minute.

7 A. Okay.

8 Q. Would you buy that, or would you like to
9 do the math to check that?

10 A. No, that's fine.

11 Q. Now, earlier you testified that you had 5
12 to 10 seconds within which to make your observation.
13 Would you agree with me though that if you're
14 200 feet away and travel at 88 feet per second, that
15 that number is more like 2 seconds?

16 A. Usually when the weather is clear, you
17 know, I can see them coming for quite a ways. I
18 can't make a positive ID on whether a seat belt is on
19 or not until it's closer.

20 Q. Well, my question was you had earlier
21 testified that you had 5 to 10 seconds within which
22 to make your observation. I'm asking you now in
23 light of the speed of the vehicle and the distance
24 that you've guessed you were at, would you agree with
25 me that your observation time is more like 1 or 2

1 seconds?

2 A. Depending on his speed, yeah. No, I
3 probably had more than that, yes.

4 Q. Well, that would -- if you had more than
5 that, that would certainly be inconsistent with your
6 earlier testimony; is that true?

7 A. Well, you know, I don't remember what the
8 speed was. He didn't do anything wrong, and I am
9 sure I told him that so.

10 Q. Well, it's fair to say you don't
11 remember --

12 A. Right.

13 Q. -- so a lot of this is a guess and an
14 estimate --

15 A. Yes.

16 Q. -- and so forth. Now, there was no
17 testimony with respect to traffic. Was there other
18 traffic on the highway this morning?

19 A. Yes.

20 Q. Other trucks?

21 A. Yes.

22 Q. Other cars?

23 A. Yes.

24 Q. Were there cars and trucks in between you
25 and Mr. Vanmeter's vehicle?

1 A. When I observed him, I would say no.

2 Q. Do you have a recollection of that, or
3 are you speculating that that's the case?

4 A. Well, his truck sits high so he would be
5 sitting above it -- a car that was passing him.
6 Trucks I never would have saw him. I wouldn't have a
7 nice clear sight to observe the violation.

8 Q. Is it fair to say you have no
9 recollection of this particular event?

10 A. Oh, I have vague recollection, yes.

11 Q. Okay. Are you able to testify with
12 certainty -- I mean, you said he would be and he --
13 you testified in a speculative manner. Do you
14 remember this or are you speculating?

15 A. Do I remember the stop?

16 Q. Yes, sir.

17 A. Yes.

18 Q. Okay. And do you remember the details of
19 your observation that day?

20 A. Yes. He wasn't wearing his seat belt.
21 That's why I stopped him.

22 Q. No, sir, that wasn't my question. My
23 question is do you remember the details of your
24 observation that day?

25 A. Yes. I observed he was not wearing his

1 seat belt.

2 Q. We know you have guessed about the
3 distances. Now, I want to talk about the traffic, so
4 my question is do you have any specific recollection
5 of traffic in between your vehicle and Mr. Vanmeter's
6 vehicle?

7 A. I would say, no, there was no traffic
8 between them.

9 Q. You would say.

10 A. Yes.

11 Q. Thank you. Now, you were pulling out of
12 your space and on to the highway traveling in the
13 opposite direction of my client; is that correct?

14 A. I don't -- no. I don't know which way.
15 I was either sitting in the crossover facing traffic
16 coming at me, or I was on the berm. I don't remember
17 where I was.

18 Q. Do you recall that you were driving
19 eastbound and had to execute a U turn to come around
20 and make the stop?

21 A. I don't remember that.

22 Q. All right. Do you recall if your vehicle
23 was in motion at the time of your observation?

24 A. No.

25 Q. You do not recall.

1 A. No.

2 MR. HACKERD: If I might have just a
3 moment, your Honor.

4 EXAMINER MCKINNEY: You may.

5 MR. HACKERD: No further questions at
6 this time.

7 Thank you, Officer.

8 EXAMINER MCKINNEY: Ms. Johnson, would
9 you like a minute to prepare for redirect?

10 MS. JOHNSON: Yes, please.

11 EXAMINER MCKINNEY: Let's go off the
12 record.

13 (Discussion off the record.)

14 EXAMINER MCKINNEY: Let's go back on the
15 record. Ready for redirect?

16 MS. JOHNSON: Okay.

17 - - -

18 REDIRECT EXAMINATION

19 By Ms. Johnson:

20 Q. Officer, did you have an independent
21 recollection of this traffic stop and violation?

22 A. Yes.

23 Q. Okay. And so -- and you're testifying
24 today based on your independent recollection?

25 A. Yes.

1 MS. JOHNSON: Okay. Thank you. That's
2 all, your Honor.

3 EXAMINER McKINNEY: Recross?

4 MR. HACKERD: No, nothing, your Honor,
5 thank you.

6 - - -

7 EXAMINATION

8 By Examiner McKinney:

9 Q. I just have a couple of questions, and
10 then we will excuse you from the stand. Did you say
11 it's standard operating procedure to generate a
12 Driver/Vehicle Examination Report on an inspection?

13 A. Yes.

14 Q. Are you trained to do that?

15 A. Yes.

16 Q. Do you always do that?

17 A. Yes.

18 EXAMINER McKINNEY: Inspector Kisner, I
19 have nothing further. You are excused from the
20 stand. Thank you.

21 Ms. Johnson has moved for the admission
22 of Staff Exhibit 1. Mr. Hackerd, you've objected to
23 the admission -- well, before I continue,
24 Ms. Johnson, did you have any further witnesses you
25 intended to call to the stand?

1 MS. JOHNSON: No, your Honor. That's
2 all. Thank you.

3 EXAMINER McKINNEY: All right. And you
4 have moved for the admission of Staff Exhibit 1 which
5 is the Driver/Vehicle Examination Report.
6 Mr. Hackerd, you have objected to the admission of
7 the Driver/Vehicle Examination Report. This would be
8 the time to start your objection if you are
9 continuing your objection.

10 MR. HACKERD: We do, your Honor. Thank
11 you. Staff Exhibit 1 was prepared by the Officer
12 Kisner who testified that he prepared it for the
13 purpose of preserving his recollection for testimony.
14 Therefore, this document is not a business report
15 exception. It is a document prepared in anticipation
16 of litigation and is not subject to the business
17 records exception.

18 Furthermore, it's cumulative since it is
19 a repetition of his testimony, if you will, for
20 whatever that testimony was worth, and it is also not
21 the best evidence since he was available to testify
22 in person.

23 EXAMINER McKINNEY: Ms. Johnson, do you
24 care to respond?

25 MS. JOHNSON: Your Honor, I would like to

1 note this isn't a criminal proceeding. This is a
2 civil proceeding and this document is prepared for a
3 civil -- for purposes of the staff. And I would also
4 like to note that every inspection that takes place
5 the Officer has to prepare this document whether
6 there is going to be a trial or not. So this isn't
7 prepared in anticipation for litigation.

8 That's all, your Honor. Thank you.

9 EXAMINER McKINNEY: All right. Thank
10 you. At this time I am going to overrule the
11 objections of Mr. Hackerd. The best evidence
12 objection is overruled as well as the hearsay. And
13 Staff Exhibit 1 will be admitted into the record.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER McKINNEY: Does staff have
16 anything further for me?

17 MS. JOHNSON: No, your Honor. Thank you.

18 EXAMINER McKINNEY: Mr. Hackerd, are you
19 prepared to move forward?

20 MR. HACKERD: I am, your Honor.

21 EXAMINER McKINNEY: Do you need a minute
22 to prepare?

23 MR. HACKERD: I do not.

24 EXAMINER McKINNEY: You may call your
25 first witness.

1 MR. HACKERD: At this time we would move
2 I suppose it would be for a directed verdict at this
3 stage. In any event we would move for judgment.
4 The -- there was no testimony with respect to this
5 Officer being in uniform. There was no testimony
6 with respect to this vehicle being a duly and
7 appropriately marked police vehicle. Those are both
8 requirements under the Ohio Revised Code.

9 I'm afraid I don't have the section at
10 hand. However, there is a specific section that
11 requires all traffic stops to be made in marked
12 vehicles by officers in uniform and there was no
13 testimony to that effect in this case. We would,
14 therefore, move for directed verdict.

15 EXAMINER MCKINNEY: Ms. Johnson, would
16 you like to respond?

17 MR. HACKERD: And if you want the
18 citation, I'll jump online and grab it.

19 MS. JOHNSON: Your Honor, this stop was
20 made while he was on duty. It was made during -- as
21 an inspection purpose, and he testified as to both of
22 those things.

23 EXAMINER MCKINNEY: I agree.
24 Mr. Hackerd, your motion is denied. You may call
25 your first witness.

1 MR. HACKERD: Thank you, your Honor. At
2 this time I would call Thomas Vanmeter.

3 You will go up there, and you will be
4 sworn by him.

5 (Witness sworn.)

6 EXAMINER MCKINNEY: Please be seated.
7 You are now under oath.

8 Mr. Hackerd.

9 MR. HACKERD: Thank you.

10 - - -

11 THOMAS L. VANMETER

12 being first duly sworn, as prescribed by law, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Hackerd:

16 Q. Mr. Vanmeter, would you state your name
17 and address for the record.

18 A. Thomas Vanmeter, 4231 Kiowa Road,
19 Richfield, Ohio.

20 Q. Mr. Vanmeter, you heard Officer Kisner
21 testify to a stop, a traffic stop, at 10 a.m. on the
22 morning of December 7. Do you remember that
23 incident?

24 A. Yes.

25 Q. Can you tell us about the lighting

1 conditions at the time of that stop?

2 A. It was morning.

3 Q. Was there sunshine?

4 A. No.

5 Q. Do you recall the weather conditions?

6 A. Dry.

7 Q. Were there clouds?

8 A. Yes.

9 Q. Did those clouds obscure the sky?

10 A. Yes.

11 Q. Where were you going that day?

12 A. Heading towards Sandusky, west.

13 Q. I'm sorry?

14 A. West.

15 Q. Okay. And can you tell me about the road
16 that we're talk about, how many lanes there were?

17 A. Two heading westbound.

18 Q. Two heading westbound?

19 A. To my knowledge, yeah.

20 Q. All right. And the same number heading
21 eastbound?

22 A. Correct.

23 Q. All right. Was there anything between
24 the lanes?

25 A. No.

1 Q. Do you recall seeing Officer Kisner that
2 day?

3 A. I observed his car, yes.

4 Q. Where did you observe his car?

5 A. He was turning out of the post, the
6 actual Highway Patrol post.

7 Q. All right. Where was that Highway Patrol
8 post located?

9 A. I'm not quite sure. I was on Route 80.

10 Q. I just mean with respect to your lane of
11 travel.

12 A. Oh, he was on the eastbound side of the
13 highway.

14 Q. All right. So he was on the eastbound
15 side of the highway, and you were on the westbound
16 side of the highway.

17 A. Correct.

18 Q. Do you recall which lane you were in on
19 your side?

20 A. I was on the far right lane, curb lane.

21 Q. You testified that he was turning on to
22 the eastbound lane of travel.

23 A. Correct.

24 Q. All right. Was he in motion?

25 A. Yes.

1 Q. And he was coming from a post so he was
2 at a stop or a slow speed and accelerating to highway
3 speeds?

4 MS. JOHNSON: Objection, your Honor.
5 That's leading.

6 EXAMINER McKINNEY: Mr. Hackerd, please
7 rephrase the question.

8 MR. HACKERD: Certainly.

9 Q. You testified that his vehicle was in
10 motion. What rate of speed was it traveling at
11 initially?

12 A. I just know he was turning on to the
13 highway heading eastbound from the patrol post.

14 Q. Okay. And my question is when you first
15 observed him, you observed him in the middle of your
16 turn is your testimony.

17 A. He was in motion, correct.

18 Q. All right. Was he already in a lane of
19 travel, or was he off of the highway when you first
20 observed him?

21 A. He was entering on to the highway.

22 Q. All right. So what was his initial
23 speed?

24 A. 2 miles an hour.

25 Q. Where was your vehicle with respect to

1 his vehicle when you first observed him? How much
2 distance was there between you?

3 A. I would say 2,000 feet.

4 Q. And how long did it take you to traverse
5 that 2,000 feet?

6 A. I can't answer that.

7 Q. All right. At what rate of speed were
8 you traveling?

9 A. I was doing 60 miles an hour.

10 Q. All right. Were you wearing your seat
11 belt at that time?

12 A. Yes.

13 Q. All right. Did you wear your seat belt
14 continuously throughout this incident?

15 A. Yes.

16 Q. All right. How many lanes of travel were
17 there between your vehicle and Officer Kisner's
18 vehicle?

19 A. I recall two lanes westbound and two
20 lanes eastbound.

21 Q. All right. Do you know -- so do you know
22 how many lanes there were between you?

23 A. Four.

24 Q. You looked at Officer Kisner as you drove
25 past him; is that correct?

1 Q. It was red. Okay. And you were not
2 carrying a load at that time --

3 A. Correct.

4 Q. -- correct? Okay. And how long did you
5 observe the Officer would you say?

6 A. Can you be more specific? As to --

7 Q. From when you first saw him until you
8 passed the Officer.

9 A. Okay. Are we talking miles? Minutes? I
10 just want to clarify.

11 Q. Time.

12 A. Time.

13 Q. Yeah.

14 A. Probably several minutes.

15 Q. Okay.

16 A. Several minutes, 5 maybe.

17 Q. I'm sorry. Your answer was 5 minutes; is
18 that correct?

19 A. Between 3 and 5 minutes.

20 Q. So you were passing the Officer going
21 westbound, correct?

22 A. Correct.

23 Q. And he was going eastbound --

24 A. Correct.

25 Q. -- as you testified; is that correct?

1 But yet you saw each other for 5 minutes when you
2 were passing each other?

3 A. No. Objection. You asked me when did I
4 first notice the Officer.

5 Q. Okay.

6 A. Okay, as far as timewise before I passed
7 him --

8 Q. Okay.

9 A. -- leading up to. You said how many
10 minutes before I observed him pulling out of the
11 post.

12 Q. Okay.

13 A. And that's when I answered between 3 and
14 5 minutes.

15 Q. Okay. So, once again, can you just
16 describe what you saw?

17 A. I witnessed him pulling out on to the
18 eastbound lane --

19 Q. Okay.

20 A. -- of the highway.

21 Q. Okay.

22 A. He was already in motion.

23 Q. Okay.

24 A. He was already making his turn on to the
25 highway --

1 Q. Okay. So --

2 A. -- eastbound.

3 Q. -- from that point in time to when you
4 passed him was about 5 minutes.

5 A. I observed the post before I got there.

6 Q. Okay.

7 A. Because you asked timewise, okay? When
8 did you first observe the post and that particular --

9 Q. I meant the Officer. When did you first
10 observe the Officer specifically?

11 A. Pretty much before I passed the post.

12 Q. Okay. Thank you. Do you remember what
13 kind of vehicle Mr. Kisner was driving, the Officer?

14 A. It was a Patrol car.

15 Q. It was a Patrol car. And when he
16 approached you, do you remember what type of clothing
17 he was wearing?

18 A. He was in his uniform.

19 Q. Okay. Thank you. And did he issue
20 this -- a report after you were pulled over?

21 A. Yes.

22 Q. Okay. And what did that report say?

23 MR. HACKERD: Objection.

24 EXAMINER McKINNEY: Grounds?

25 MR. HACKERD: Hearsay. "What did that

1 report say?"

2 EXAMINER McKINNEY: The -- Ms. Johnson,
3 would you like to respond?

4 Q. When you were given the report, were
5 you --

6 EXAMINER McKINNEY: Ms. Johnson, would
7 you care to respond to the objection?

8 MS. JOHNSON: Oh, I would like to
9 withdraw and rephrase my question.

10 EXAMINER McKINNEY: Granted. You may do
11 so.

12 Q. (By Ms. Johnson) When -- were you made
13 aware of what you were stopped for?

14 A. Yes.

15 Q. Okay. How were you made aware of that?

16 MR. HACKERD: Objection. Well, I
17 withdraw the objection. I apologize.

18 EXAMINER McKINNEY: You may answer the
19 question.

20 A. It was verbal.

21 MS. JOHNSON: Okay. No further
22 questions, your Honor. Thank you.

23 EXAMINER McKINNEY: Thank you.

24 Redirect?

25 MR. HACKERD: Nothing.

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EXAMINATION

By Examiner McKinney:

Q. Mr. Vanmeter, I just have one quick question. You indicated that the Inspector was in a Patrol car. Do you know what type of vehicle that Patrol car was?

A. Other than the fact it was pulling out of a post.

Q. What do you mean by Patrol car? Was it a marked vehicle? Is that what you mean by a Patrol car?

A. Yes.

EXAMINER McKINNEY: At this time I have nothing further for you so you may be excused from the stand. Thank you.

THE WITNESS: Thank you.

EXAMINER McKINNEY: Mr. Hackerd, do you have anything further?

MR. HACKERD: No further witnesses. The defense rests.

EXAMINER McKINNEY: All right. Do we have any post-hearing motions from either of the parties? Staff?

MS. JOHNSON: No, your Honor.

EXAMINER McKINNEY: Mr. Hackerd?

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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 Thursday, November 7, 2013, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5777)

- - -

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