

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of :
Thomas Overturf Notice of : Case No.
Apparent Violation and : 15-359-TR-CVF
Intent to Assess Forfeiture :
- - -

PROCEEDINGS

Before Kerry Sheets, Attorney Examiner, held at
the offices of the Public Utilities Commission
of Ohio, 180 East Broad Street, Hearing Room No.
11-C, Columbus, Ohio, on Tuesday, May 7, 2015,
at 10:00 A.M.

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1 APPEARANCES:

2 Mr. John H. Jones
3 Assistant Section Chief
4 and
5 Ms. Natalia Messenger
6 Assistant Attorneys General
7 180 East Broad Street, 6th Floor
8 Columbus, Ohio 43215

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

12 Mr. Thomas Overturf
13 5162 East 112th Street
14 Garfield Heights, Ohio 44125

15 Appearing Pro se.

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1 Tuesday Morning,
2 May 7, 2015.

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4 ATTORNEY EXAMINER: The Public
5 Utilities Commission of Ohio set for hearing at
6 this time and place Case No. 15-359-TR-CVF In
7 the Matter of Thomas Overturf Notice of Apparent
8 Violation and Intent to Assess Forfeiture.

9 My name is Kerry Sheets, I am an
10 Attorney Examiner for the Commission and I have
11 been assigned to hear this case. May I now have
12 the appearances of the parties, please? Start
13 with the Staff.

14 MR. JONES: Good morning, your
15 Honor. On behalf of the Staff of the Public
16 Utilities Commission of Ohio, Ohio Attorney
17 General Mike DeWine, Assistant Attorneys General
18 Natalia Messenger and John Jones, 180 East Broad
19 Street, Columbus, Ohio.

20 ATTORNEY EXAMINER: Thank you. Now
21 for the Respondent. State your name
22 and address, please.

23 MR. OVERTURF: Thomas C. Overturf,
24 5162 East 112th Street, Garfield Heights, Ohio.

25 ATTORNEY EXAMINER: Thank you. Now,

1 we will go off the record here just briefly and
2 I will explain a little bit about the hearing
3 process to Mr. Overturf.

4 (DISCUSSION OFF THE RECORD)

5 MR. JONES: Your Honor, at this
6 time I would like to have marked as Staff
7 Exhibit 2 the Notice of Preliminary
8 Determination. This includes the calculation of
9 the forfeiture and the notice to Mr. Thomas
10 Overturf of the violation.

11 And we talked with Mr. Overturf here
12 this morning and he is willing for the parties
13 to stipulate as to the actual calculation that
14 was assessed here of \$100 for the log book
15 violation.

16 Now, Staff Exhibit 2 would be
17 modified in terms of only reflecting \$100
18 forfeiture for the log book violation.

19 The second charge that appears on
20 Staff Exhibit 2 concerning the medical
21 certificate, that is a charge that the Staff has
22 moved for a motion to dismiss that was filed in
23 this docket on April 1st, 2015. Pursuant to
24 further investigation here, Your Honor, Staff
25 has determined that Mr. Overturf should not have

1 been charged with the medical certificate
2 violation.

3 So, we are renewing that motion here
4 today. We would like to proceed just on the log
5 book violation.

6 And also, like I said, the parties
7 have stipulated as to the calculation of the
8 forfeiture for the log book violation being
9 \$100.

10 And so with that stipulation we
11 would just move for the admission of Staff
12 Exhibit 2 to reflect a \$100 violation, I mean,
13 forfeiture for the log book violation if the
14 Commission were to find that there was a
15 violation of the log book.

16 ATTORNEY EXAMINER: Very good. I
17 will grant you motion at this point to dismiss
18 the one violation, and I would just ask the
19 Respondent, do you agree with the stipulation?

20 MR. OVERTURF: Yes, I do.

21 ATTORNEY EXAMINER: Very good.

22 MR. JONES: Thank you, Your Honor.
23 I just wanted to provide a copy of Staff Exhibit
24 2.

25 ATTORNEY EXAMINER: And I will go

1 ahead and admit Staff Exhibit 2 into evidence.

2 (EXHIBIT ADMITTED INTO EVIDENCE)

3 MR. JONES: Thank you, Your Honor.

4 And with that we will go ahead and proceed.

5 MS. MESSENGER: Your Honor, we would
6 like to call Officer J. D. Hughes to the stand.

7 (WITNESS SWORN)

8 - - -

9 TROOPER JOEL D. HUGHES
10 called as a witness, being first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Messenger:

14 Q. Good morning.

15 A. Good morning.

16 Q. Could you please state your name for
17 the record?

18 A. Trooper Joel D. Hughes.

19 Q. And what is your business address?

20 A. My business address would be the
21 Warren headquarters. It's US 422, Warren, Ohio.

22 Q. Who is your employer?

23 A. I am employed by the State Highway
24 Patrol.

25 Q. What is your position with the State

1 Highway Patrol?

2 A. I am a Trooper with the State
3 Highway Patrol who is assigned to LCS section,
4 which is commercial enforcement section of the
5 State Highway Patrol.

6 Q. What are your duties?

7 A. Primary duties are traffic law
8 enforcement within the State of Ohio. Secondary
9 which is commercial enforcement, enforcing
10 regulations set forth on commercial vehicles in
11 the State of Ohio.

12 Q. How long have you been in this
13 position?

14 A. I have been in the LCS section since
15 2007. And I have been a Trooper since 1997.

16 Q. And do you have any certifications
17 or training as a Trooper?

18 A. The original training would be as a
19 Trooper when I went through the Highway Patrol
20 academy in 1997 and graduated. Just basic
21 commercial training at that point in time. Then
22 once I took, came on in this section in 2007 I
23 then went through the Federal Motor Carrier
24 Safety Administration's North America program to
25 be certified to enforce regulations in the State

1 of Ohio.

2 Particularlly for this particular
3 hearing we have Part A which would be where the
4 log book is addressed. There was a two-week
5 class. The first full week is specifically to
6 this type of violations. Then every year after
7 that we have a one-day in-service where we --
8 any type of changes in the regulations we are
9 updated.

10 We also have a monthly update at the
11 district level. And if anything comes out in
12 between that we are forwarded the training.

13 Q. Were you on duty on October 29th,
14 2014?

15 A. Yes.

16 Q. What was your jurisdiction at that
17 time?

18 A. The State of Ohio is my
19 jurisdiction. I am primarily assigned to
20 northeast Ohio, the counties in northeast Ohio,
21 but my jurisdiction is the entire State of Ohio.

22 Q. And on October 29th, 2014 what was
23 your job assignment?

24 A. I was working in Geauga County that
25 day.

1 Q. What were your hours that day?

2 A. I was working 8 to 4 that day. 7:00
3 A.M. to 4:00 P.M.

4 Q. Okay. Did you inspect a vehicle on
5 that day?

6 A. I inspected several, yes.

7 Q. And were you in uniform?

8 A. Yes.

9 Q. Could you describe your uniform?

10 A. Our uniform when we are working the
11 road is not this gray uniform. When we work the
12 road we have a black TDU-type uniform with
13 the trucks and for the dirt. But it's black
14 TDU. Black pants, black shirt, and a baseball
15 cap with our gun belt. TDU hat does have our
16 badge sewn on and with the flying wheel patch on
17 the sleeves.

18 Q. Were you in a marked vehicle?

19 A. Yes.

20 Q. And are you issued any equipment to
21 make these inspections?

22 A. We are issued several. For this
23 case for the initial stop we are issued
24 obviously with a marked vehicle. We are issued
25 radar unit which was used to make this stop.

1 Then on top of that in order to
2 complete the inspection we are issued all
3 the stuff to do everywhere from a Level 1
4 inspection to a Level 3. We are issued a
5 computer to process the report, and at that time
6 also issued an air card to check a couple
7 things.

8 Q. Do you produce a report for every
9 inspection that you perform?

10 A. Yes.

11 Q. Okay. And did you inspect a vehicle
12 that resulted in your preparing a report No.
13 OH0616002692 that day?

14 A. Yes.

15 Q. And today do you have an independent
16 recollection of that inspection?

17 A. Yes.

18 MS. MESSENGER: Your Honor, I would
19 like to mark the Driver/Vehicle Examination
20 Report as Staff Exhibit 1.

21 ATTORNEY EXAMINER: Very good.

22 MS. MESSENGER: May I approach
23 the witness?

24 ATTORNEY EXAMINER: Yes.

25 (EXHIBIT HEREBY MARKED FOR

1 IDENTIFICATION PURPOSES)

2 Q. Officer Hughes, do you recognize
3 this document?

4 A. Yes. It's the report that was done
5 on that day.

6 Q. Okay.

7 A. It also has my report number on it.

8 Q. Okay. Was this report prepared by
9 you?

10 A. Yes.

11 Q. How did you prepare this report?

12 A. Well, initially when you do
13 the inspection on the vehicle, this was just
14 done on the vehicle and the driver. How it's
15 prepared is after doing the inspection part
16 outside the car I get into my computer and I do
17 enter the information that I have either
18 provided me from the driver, things I see with
19 the vehicle, credentials I check through
20 the computer.

21 I then enter it into the Aspen
22 program, which is the system that is used to
23 collect all this data in the State of Ohio,
24 which is placed in here which produces the --
25 the computer produces this report.

1 Q. Was this report prepared in the
2 ordinary course of your duties?

3 A. Yes.

4 Q. Was it prepared at the time of the
5 inspection then?

6 A. Yes.

7 Q. Is this report a true and accurate
8 representation of the report that you created at
9 the time of the inspection?

10 A. Yes.

11 Q. Can you take a look at the report
12 number at the top? Can you explain what those
13 numbers represent?

14 A. The OH is obviously for Ohio. The
15 0616 is my badge number. And 00 is always there
16 because the 002692 is always there, sequential
17 number that creates from the in time that I
18 started in this section until now. It just
19 continues. It was 00001 all the way. This
20 would have been like 2,692 inspections that I
21 did.

22 Q. So this is the number of inspections
23 that you conducted?

24 A. Right.

25 Q. What time did this inspection take

1 place?

2 A. 1322, which would be about 1:22 P.M.

3 Q. And it ended at?

4 A. 1439 which would be 2:39 P.M.

5 Q. What was the inspection level for
6 this inspection?

7 A. I did a Level 2 inspection, which is
8 the driver credential and the walk around of the
9 vehicle.

10 Q. So you mentioned you prepared a
11 report at the time of the inspection.

12 A. Correct.

13 Q. Is this what the report looks like?

14 A. The report, this is the report that
15 is generated through the PUCO. We have a little
16 different report that shows a little different,
17 but we produce it and hand the defendant at the
18 time of the inspection.

19 Q. So once you have finished putting
20 the information into the computer what do you do
21 with the report?

22 A. I then upload that, and that would
23 be why we have the air card, we upload it to the
24 databank which is the PUCO databank here in
25 Columbus.

1 Q. Do you also sign the report?

2 A. I sign it, and I have the driver,
3 tell him where to sign it and issue it to him
4 there at the scene in order to provide to their
5 company.

6 Q. Okay. Can you tell me who
7 the driver is that is identified on this report?

8 A. It is Mr. Overturf.

9 Q. And the driver is here in this room
10 today?

11 A. Yes.

12 Q. Can you just point him out?

13 A. Yes. Right there (indicating).

14 MS. MESSENGER: Let the record
15 reflect --

16 A. Many discussions at the scene.

17 THE WITNESS: You are a fine
18 officer.

19 A. How did you identify the driver?

20 A. Via his driver's license, photo ID,
21 through the driver's license information
22 provided on the ID.

23 Q. Where did you pull this vehicle
24 over?

25 A. It would have been in Troy Township,

1 US 224 approximately mile post 15, which is Troy
2 Township in Geauga County, State of Ohio.

3 Q. And why did you pull him over?

4 A. The reason for the pull over was for
5 speed. He was westbound on US 422, his speed
6 was checked by radar at 61 miles per hour in a
7 45 mile an hour zone.

8 Q. Okay. What was the origin of his
9 truck?

10 A. The origin was Middlefield, Ohio.

11 Q. And what was the destination?

12 A. Destination was Columbus, Ohio.

13 Q. How did you determine the origin and
14 the destination?

15 A. By contact with the driver where he
16 said he was going that day.

17 Q. Did he tell you that he was assigned
18 to pick up a load in Columbus?

19 A. Yes.

20 Q. And did he give you an exact
21 business or location where he was picking up the
22 load?

23 A. The exact location, he did provide
24 to me, told me what company he was going to, and
25 what he was supposed to be picking up. And I

1 didn't document the exact location on the
2 report, so I couldn't tell you the name of where
3 he was going.

4 Q. Did the driver give you any reason
5 why he was speeding that day?

6 A. He was trying get to there to pick
7 up the load.

8 Q. To Columbus to pick up the load?

9 A. Yes.

10 Q. If you could look down at the
11 vehicle identification section of the report.
12 What information is contained here?

13 A. There is the vehicle information,
14 the vehicles that were stopped that day. There
15 were two vehicles, it's broke down into two
16 different units.

17 Unit 1, which is the tractor, which
18 is TT, tractor-trailer. It says the make, which
19 is a Kenworth, 2004. On that day it was
20 licensed out of Ohio. License PVY1909. It was
21 Unit No. 87. And gives the VIN number and on
22 the side of the truck there is a gross vehicle
23 weight rating, would be the Federal ID sticker
24 for that particular truck was 52,000.

25 Then on the second unit was type

1 would be ST for straight, or semi-trailer. It
 2 would be the WANC stands for Wabash. Ohio
 3 registered TQH5668. Vehicle ID No. RDS5230.
 4 The VIN number and 68,000 would be gross vehicle
 5 rating.

6 Q. How do you acquire this information?

7 A. Through the driver providing it, and
 8 then verifying the VIN when I do my walk-around,
 9 see if the VINs match up, if the license plates
 10 match up to the registration that I was
 11 provided.

12 Q. If you could take a look at the
 13 violation section on the report.

14 A. Yes.

15 Q. What does code under section
 16 provide? What does that represent, the numbers
 17 under --

18 A. Violation code, that would be the
 19 section in the Federal regulations manual,
 20 the log book that we use, that Ohio has adopted
 21 which are the regulations that we enforce
 22 through the PUCO. That would be the specific
 23 different sections of law that they are in
 24 violation of.

25 Q. And under unit, what do the

1 different abbreviations represent?

2 A. The D would be equivalent to the
3 driver. The 1 would be the unit, obviously unit
4 No. 1 and 2 would be Unit No. 2, which is the
5 semi-trailer.

6 Q. And OOS means out of service;
7 correct?

8 A. Yes

9 Q. What does that mean?

10 A. That the vehicle or the driver was
11 placed out of service at the time of the
12 inspection, whether that violation was an out of
13 service violation or not an out of service
14 violation.

15 Q. Okay. And what does verify mean?

16 A. Verify, if it is repaired at the
17 scene, it would be verified, which would have an
18 indication on there. And then if not verified
19 it would be N.

20 Q. What information goes into your
21 violation description on the report?

22 A. When you type a general thing comes
23 up initially. That is there, then it gives us
24 so many characters, general, added, narrative to
25 it.

1 Q. Can you look at the third line down
2 in the violations section?

3 A. Yes.

4 Q. You listed Section 395.8(k)(2).

5 A. Correct.

6 Q. What does that section provide?

7 A. That section states that if a log
8 book is required, the seven previous days of log
9 book would be required to be on the driver and
10 presented at the time of the inspection.

11 Q. How did you determine that the
12 driver was in violation of 395.8(k)(2)?

13 A. Well, under the first part of that
14 specific 395 section, 395.1 it refers to who
15 needs a log book. And based on that the air
16 mile radius, which is over 100 nautical air
17 miles, is required a log book. Okay.

18 At the time of the stop we have our
19 computer, which is called PC Miler, which
20 determines air miles from the destination to the
21 origin. This day it showed that he was over the
22 air miles from where his destination was to his
23 origin, or where his origin was to his
24 destination would be. Therefore, he was
25 required to have a log book and maintain seven

1 consecutive days of log.

2 Q. Did the driver have a log book?

3 A. He did not have a log book.

4 Q. Did he have one for any previous
5 time periods?

6 A. He could not provide me with
7 anything.

8 Q. So did you calculate the mileage
9 between his origin, Middlefield, Ohio and
10 the destination, Columbus, Ohio, at the time of
11 the inspection?

12 A. Correct.

13 Q. And what was the mileage?

14 A. The exact miles, right now I don't
15 have it. I know it was over a hundred air miles
16 approximately because I can tell you I checked
17 it today just to verify. It was 168 when I
18 checked it today just to refresh my mind. But I
19 don't have it documented on the report.

20 Q. Did you show the calculated mileage
21 to the driver at the time?

22 A. Yes. I showed him on the computer
23 where I was looking at the PC air miles.

24 Q. And you calculated the mileage by
25 using PC Miler you say?

1 A. Yes.

2 Q. Can you explain what that is?

3 A. It's a system that the State has put
4 on our computers. What it does is we put in any
5 city origin, we put it in by zip code, however
6 we want to enter it. Different origins and
7 destinations.

8 We start off, we enter it, the
9 information, then the first city, which would be
10 the origin, second city, which is the
11 destination. And you put it in there.

12 What happens is it's basically a
13 mapping system that puts out a number, which is
14 the air miles, because obviously road miles can
15 be a lot longer than, but it actually does it
16 based on air miles. So, what the air miles are.

17 Q. Are you aware of any device that the
18 driver would have, that the driver had with him
19 at the time, to calculate air miles while he is
20 on the road?

21 A. No.

22 Q. Did you speak to anyone else during
23 the time of the inspection?

24 A. Yes. I spoke to the owner of the
25 company several times throughout the inspection.

1 Q. Can you go over to the inspection
2 section of the report?

3 A. Yes.

4 Q. Top of the second page

5 A. Yes.

6 Q. Can you read your inspection notes?

7 A. My inspection note says "Owner
8 (Antonio R. Dejesus) talked to me on the phone
9 and wanted me to let the driver get a log book
10 and fill it out and continue on his way. Owner
11 told the driver also he was going to fill out a
12 log book and bring it to him and he was to tell
13 me he forget it in his vehicle."

14 Q. Who was the driver, or who was the
15 driver working for that day? Who was the
16 carrier that he was driver for?

17 A. The carrier was -- well, there were
18 several things. On the side of the truck it
19 said Stanley Trucking. And that is all it said
20 on the side of the truck.

21 The registration said it was an Arms
22 truck, Arms Trucking, which is out of Concord,
23 Ohio, with the address.

24 But when I did talk to that Andrew
25 he said he wished to use this Double A Warehouse

1 as the DOT and carrier of the day for that.
 2 On all three different companies he is the owner
 3 and operator of the company.

4 Q. When you spoke to the owner,
 5 Antonio?

6 A. Yes. Sorry.

7 Q. Okay. And he told you to process it
 8 as Double A Warehouse?

9 A. Yes.

10 MS. MESSENGER: Okay. No further
 11 questions at this time, Your Honor.

12 ATTORNEY EXAMINER: Mr. Overturf, do
 13 you have any questions on cross-examination?

14 MR. OVERTURF: Sure.

15 CROSS-EXAMINATION

16 By Mr. Overturf:

17 Q. You say you pulled me over for --

18 ATTORNEY EXAMINER: Excuse me. I
 19 have got to ask that you speak up now as well as
 20 when you testify on the stand. Go ahead.

21 Q. You say that you stopped me and
 22 charged me with under the statute of 395.8?

23 A. Correct.

24 Q. You also say there is no exact
 25 location, isn't it true, because I had no exact

1 location?

2 A. The destination is Columbus. Yes,
3 Columbus, Ohio.

4 Q. But did I have any address, any
5 specific location I was going to?

6 A. You said --

7 Q. Do you have one?

8 A. Not written down here, no, I do not.

9 Q. Wasn't it true I was empty?

10 A. You were empty.

11 Q. I was empty. So I had no specific
12 location as far as paperwork telling me I was
13 going any certain place; is that correct?

14 A. You had no paperwork, correct.

15 Q. Okay. I went to Columbus the
16 previous day; is that correct? I said I was.
17 Isn't that why you got me for seven days? Seven
18 days --

19 ATTORNEY EXAMINER: You have to ask
20 a question now.

21 Q. Isn't it true that the 7-day
22 requirement only falls under 395.8?

23 A. That is the only thing that is
24 required, seven days prior.

25 Q. Are you aware of the exemptions to

1 395.1?

2 A. I don't know 395.1. Can you --

3 Q. Can you state the --

4 A. I have to look because we have --

5 Q. Are you aware that 395.1 exempts me
6 from 395.8?

7 A. No.

8 Q. You are not?

9 A. No.

10 Q. Would you like me to read you the
11 law?

12 A. Okay.

13 MR. JONES: Your Honor, maybe Mr.
14 Overturf could show the witness what he is
15 referring to.

16 MR. OVERTURF: Sure.

17 Q. You can read it for me.

18 ATTORNEY EXAMINER: Let's show what
19 you are going to read.

20 MR. JONES: Can I see that first,
21 Mr. Overturf?

22 MR. OVERTURF: Sure.

23 MR. JONES: Thank you. Okay.

24 ATTORNEY EXAMINER: Go ahead. Read
25 it into the record.

1 Q. Okay. These are the exempt
2 requirements for 395.1 that exempt me from
3 395.8. Could you read them? Just the
4 highlighted ones are fine.

5 A. I want to read the whole thing
6 before I read it. All right.

7 "You are exempt if the driver is
8 under 100 air-mile radius," which you were not
9 at the time.

10 Q. Correct. Wait. When you pulled me
11 over I was not within my 100 mile radius?

12 A. This talks about your origin and
13 destination.

14 Q. Okay. My origin. When you pulled
15 me over was I well within my 100 mile radius?

16 A. Of your origin?

17 Q. Of my origin.

18 A. You were within it, but that wasn't
19 your final destination.

20 Q. That's not what I asked you. Was I
21 within it?

22 A. You were --

23 Q. When you pulled me over?

24 A. You were within the origin, yes,
25 when I pulled you over.

1 Q. Okay. That is what I asked.

2 A. That would be the section of this
3 that is in play, you don't meet that section,
4 is the reason why you are not under the
5 exemptions. Because your origin was not -- or
6 destination was not within 100 air miles. So
7 you don't --

8 Q. I asked if when you pulled me over
9 was I within my 100 mile air radius?

10 A. I said yes.

11 Q. That is all I asked. You may now
12 read --

13 A. It doesn't really come into play.

14 Q. That is the statute?

15 A. "Short haul operation. You are
16 exempt if you are within 100 air miles -- driver
17 is exempt from the requirements of 395.8 if
18 driver operates within a 100 air mile radius of
19 normal work reporting location."

20 Q. Let me stop you right there. So I
21 was within my 100 mile radius of my work
22 location when you pulled me over?

23 A. When I pulled you over you were.

24 Q. Okay. When you pulled me over, that
25 is what I asked.

1 A. Yes. Do you want me to continue?

2 Q. Yes.

3 A. "Except when the driver/salesman
4 returns to the work reporting location and is
5 released from work within 12 consecutive hours."

6 "The property carrying commercial
7 motor vehicle driver has at least ten
8 consecutive hours off duty separating each 12
9 hours on duty."

10 "The property carrying commercial
11 motor vehicle driver does not exceed the maximum
12 driving time in 395.3 followed by ten
13 consecutive hours off duty."

14 "The motor carrier driver retains
15 the period of six months accurate and true time
16 records showing time the driver reports for duty
17 each day, the total number of hours the driver
18 is on duty each day, the time the driver is
19 released from duty each day."

20 Q. Okay. Are you aware that DOT
21 interpretation of the seven-day exemption, since
22 you cited me under 398.2, and I am exempt and
23 run under the 395.1 exemption, that means that
24 398 I would be exempt from if I fill the
25 requirements of 391, which I have?

1 Here is one of the interpretations
2 of the DOT --

3 MS. MESSENGER: Please show an
4 objection that --

5 MR. JONES: There was an objection,
6 Your Honor, to the form of the question.

7 MS. MESSENGER: There was no
8 question.

9 Q. Are you aware of the
10 interpretations of the DOT under 395.1 which
11 exempts me from 395.8?

12 MS. MESSENGER: Objection, Your
13 Honor. That is argumentative. That's been
14 asked and answered many times.

15 ATTORNEY EXAMINER: You have got to
16 stick with questions.

17 MS. OVERTURF: I asked if he was
18 aware of the interpretations, not the law.

19 ATTORNEY EXAMINER: And that is your
20 question?

21 A. I am aware of the interpretations in
22 the regulations, yes.

23 Q. This is from the DOT's website.
24 Could you read this --

25 ATTORNEY EXAMINER: Show that to

1 Staff.

2 MR. JONES: Can we see that first,
3 Mr. Overturf?

4 MR. OVERTURF: Sure. There is the
5 answer. That is the question, the one at the
6 bottom, that is the interpretation from the DOT
7 and the Federal Motor Carrier Safety
8 Association.

9 MR. JONES: Thank you.

10 MR. OVERTURF: All right.

11 ATTORNEY EXAMINER: Now.

12 Q. If you read the yellow highlighted
13 at the bottom, please.

14 ATTORNEY EXAMINER: What is he
15 reading now?

16 MR. OVERTURF: The interpretations
17 from the DOT of their law of 395.1.

18 ATTORNEY EXAMINER: Do you intend to
19 have this marked as an exhibit?

20 MR. OVERTURF: Yes.

21 ATTORNEY EXAMINER: We will mark
22 that as Respondent's Exhibit 1.

23 (EXHIBIT HEREBY MARKED FOR
24 IDENTIFICATION PURPOSES)

25 ATTORNEY EXAMINER: Do you have

1 copies of that?

2 MR. OVERTURF: I may have. I will
3 have to check.

4 ATTORNEY EXAMINER: Make sure the
5 court reporter gets that.

6 MR. OVERTURF: Gets a copy. Okay.
7 And I will mark the answer to this question that
8 the DOT answers as Exhibit 2.

9 ATTORNEY EXAMINER: It comes in two
10 pages?

11 MR. OVERTURF: Yes. It's only one
12 question, but it's on two pages because that is
13 the way it was printed out.

14 ATTORNEY EXAMINER: Put a page
15 number on each.

16 MR. OVERTURF: Exhibit 1, page 1.
17 I will put Exhibit 1, Page 2. Okay.

18 Q. Would you read the yellow
19 highlighted, please?

20 A. "When a driver fails to meet the
21 provisions of the 100 air mile radius exemption
22 (Section 395.1) is the driver required to have
23 copies of his or her records of duty status for
24 the previous seven days? Must the driver
25 prepare daily records of duty status for

1 the next seven days?"

2 "The driver must only have in his
3 possession a record of duty status for the day
4 he or she does not qualify for the exemption.
5 The record of duty status must cover the entire
6 day even if the driver has to record
7 retroactively changes in status that occurred
8 between the time that the driver reported to
9 duty and the time in which the driver is no
10 longer qualified for the 100 air mile radius
11 exemption. This is the only way to ensure that
12 a driver does not claim the right to drive 10
13 hours after leaving his or her exemption status,
14 in addition to the hours already driven under
15 100 air mile exemption."

16 MR. OVERTURF: Okay. I am going to
17 mark this Exhibit 2.

18 (EXHIBIT MARKED FOR THE PURPOSE OF
19 IDENTIFICATION)

20 ATTORNEY EXAMINER: Show it to
21 Staff's attorney, please.

22 MR. OVERTURF: Okay. It's an answer
23 from a DOT officer on the exemption of 395.1 of
24 what I need to have with me.

25 In fact, I have another one that I

1 can find.

2 MS. MESSENGER: Your Honor, we are
3 going to object to this exhibit. There is no
4 foundation.

5 ATTORNEY EXAMINER: Speak up a
6 little bit, please.

7 MS. MESSENGER: There is no
8 foundation for this document. We don't know who
9 the officer is. And it's also hearsay.

10 MR. OVERTURF: Okay.

11 ATTORNEY EXAMINER: Go ahead.

12 MR. OVERTURF: I will mark this
13 Exhibit 3 and this will be Exhibit 4.

14 ATTORNEY EXAMINER: The objection
15 was to Exhibit 2.

16 MR. OVERTURF: Correct.

17 ATTORNEY EXAMINER: And he objected
18 because it's not labeled, is that --

19 MS. MESSENGER: There is no
20 foundation for it, the exhibit, and it's
21 hearsay.

22 ATTORNEY EXAMINER: For now I think
23 we will just take it as he represents it, and I
24 will overrule your objection. That is Exhibit 3
25 you have in your hand?

1 MR. OVERTURF: Yes. Are you
2 overruling their objection to Exhibit 2?

3 ATTORNEY EXAMINER: Yes, at this
4 point.

5 MR. JONES: I didn't see Exhibit 3.

6 ATTORNEY EXAMINER: What is Exhibit
7 3? Respondent's Exhibit 3?

8 MR. OVERTURF: Actual
9 interpretations from the DOT side of their log.

10 ATTORNEY EXAMINER: Answer the
11 question. What is Respondent's Exhibit 3?

12 MR. OVERTURF: Exhibit 3 is more
13 interpretations from the DOT of their statutes.

14 ATTORNEY EXAMINER: And you obtained
15 these from where, sir?

16 MR. OVERTURF: From the DOT and
17 Federal Motor Carrier Safety Administration's
18 website.

19 ATTORNEY EXAMINER: Could you give
20 us the --

21 MS. MESSENGER: Your Honor, we are
22 going to make the same objection. There is no
23 foundation here. We are not sure where the
24 document came from.

25 MR. OVERTURF: It says right at the

1 top where it was --

2 MS. MESSENGER: There is no website
3 or --

4 ATTORNEY EXAMINER: Can you state
5 the web address that you got these off of?

6 MR. OVERTURF: Sure. That one came
7 from <http://www.fmcsa.dot.gov>.

8 ATTORNEY EXAMINER: Thank you. Now,
9 you had questions about Respondent's Exhibit 3.
10 I will overrule that objection on Respondent's
11 Exhibit 3 at this time.

12 Q. Okay. He has overruled this
13 objection. Can you read the highlighted section
14 there?

15 A. "You need to fill out log book on
16 the day you do not meet the exemption. The ones
17 where you go outside the 100 air mile circle for
18 work more than 12 hours on the days you meet the
19 exemption you do not need to carry a log book."

20 Q. Thank you. Now, I submit Exhibit 3,
21 which they objected to and you overruled, I
22 would like you to read Question 13 and the
23 guidance answer.

24 ATTORNEY EXAMINER: That is still
25 Exhibit 3?

1 MR. OVERTURF: Yes, it's still
2 Exhibit 3.

3 MR. JONES: Your Honor, at this
4 point in time given the Bench's rulings on Mr.
5 Overturf being able to proceed with examination,
6 cross-examination, with these documents, can we
7 at least take a break and have copies made of
8 these documents so we can have the benefit of
9 having copies in our possession during his
10 examination?

11 ATTORNEY EXAMINER: Let's take a
12 break. How long, 15 minutes?

13 MR. JONES: Ten minutes probably.

14 ATTORNEY EXAMINER: Ten minutes.

15 MR. JONES: Thank you, Your Honor.

16 (RECESS TAKEN)

17 ATTORNEY EXAMINER: We will go back
18 on the record. You are in the middle of
19 cross-examination of this witness, Mr. Overturf.

20 Q. Officer, you say when you pulled me
21 over I was within my 100 mile radius.

22 A. The stop was made within 100 miles,
23 air miles, of your origin, correct.

24 Q. Approximately how many miles from my
25 origin? Would you know?

1 A. I did not look at that. I cannot
2 say how many miles from your origin

3 Q. You can't tell me that, but -- and
4 you can't tell me the destination to where I was
5 going, yet you claim I was going to Columbus.

6 MS. MESSENGER: Objection. Form.
7 There was no question.

8 Q. You say I was going to Columbus; is
9 that true?

10 A. That is based on your statement at
11 the time of the traffic stop where you were
12 going.

13 Q. Do you have a destination in
14 Columbus? Any paperwork. I am sorry, a
15 destination in Columbus?

16 A. You didn't have any paperwork. You
17 were there the day before, as you stated.

18 Q. So if I had no paperwork then I had
19 nowhere to deliver; did I?

20 A. You weren't making a delivery, you
21 were making a pickup.

22 Q. I was empty though; wasn't I?

23 A. At the time of the stop, yes.

24 Q. And I was well within my 100 mile
25 radius; correct?

1 MS. MESSENGER: Objection, Your
2 Honor. This question has been asked.

3 MR. OVERTURF: It's been asked.

4 Q. Under 395.1 being within my 100 mile
5 radius, from the law and the interpretations
6 that you have read here today, do you still say
7 I am guilty of 395.8 which 395.1 exempts me
8 from?

9 A. Based on today, yes, I definitely
10 say that you are -- you should be charged with
11 that violation.

12 Q. Even after reading the
13 interpretations of the DOT that say I am not?

14 MS. MESSENGER: Objection, Your
15 Honor. This question has been asked
16 and answered.

17 Q. Do I have to go back to my Exhibit
18 3? Exhibit 3 from the DOT website, Question 13
19 and the guidance answer. Can you read it?

20 MR. JONES: I am sorry. We have an
21 objection. Can the Bench rule on the objection
22 from Staff?

23 ATTORNEY EXAMINER: Okay. Restate
24 your objection.

25 MS. MESSENGER: Just that the

1 question was asked and answered whether based on
2 the guidance that the officer read whether he
3 thought that he was in violation of 395.8.

4 Q. So you think --

5 MR. JONES: Wait. There is an
6 objection pending.

7 ATTORNEY EXAMINER: Let me rule on
8 the objection. Okay.

9 MR. OVERTURF: I am sorry. I am not
10 an attorney.

11 ATTORNEY EXAMINER: I am going to
12 overrule the objection and let you go ahead and
13 answer the question. Go ahead.

14 Q. So it's your believe I am guilty of
15 violating 395.8?

16 A. Correct.

17 Q. Now, is it true that 395.1 exempts
18 me from 395.8? Yes or no?

19 A. No.

20 Q. No? And why not?

21 A. Because the destination was not
22 within 100 radius, and the previous day you were
23 over 100 air mile radius, also, so you should of
24 had that day's log book on you too.

25 Q. But isn't it proof, I mean, isn't it

1 true, that according to the United States
2 Department of Transportation guidelines say I do
3 not have to have a log book except for the day
4 that, on me, except for the day I leave my 100
5 mile radius?

6 A. Yes, which you did not have any log
7 book on you for any day you --

8 Q. Does the guidance say that I do not,
9 under 395.1, does it or does it not say I do not
10 have to have a log book except for the day I go
11 out of the 100 mile radius?

12 A. Yes. If you meet that exemption,
13 yes.

14 Q. Okay. Was I out of my radius
15 the day you pulled me over?

16 A. You were --

17 Q. Yes or no?

18 MS. MESSENGER: Objection, Your
19 Honor.

20 ATTORNEY EXAMINER: Let's let him
21 answer the question.

22 A. The answer to that, the destination
23 was over 100 air miles, therefore, yes, you did
24 need a log book.

25 Q. So it's your contention that whether

1 or not I am out of my 100 mile air radius I need
2 a seven-day history as said under 395.8 even
3 though 395.1 exempts me, and there is an
4 exemption for when you go out of your 100 mile
5 radius as a local driver?

6 A. You did not meet the exemption.

7 Q. How did I not meet the exemption,
8 sir?

9 A. Destination is over 100 air miles.

10 Q. Again, I have asked you to read
11 this before, but you must have a bad memory.

12 ATTORNEY EXAMINER: No. Didn't we
13 already go through this?

14 MR. OVERTURF: Yes, but I would like
15 to have him re-read Exhibit 1 since he just
16 stated no to the answer.

17 MS. MESSENGER: We are going to
18 object to that, Your Honor. The Officer has
19 read --

20 ATTORNEY EXAMINER: I think we have
21 been through this before, we don't need to go
22 through it again.

23 Q. But isn't it true --

24 ATTORNEY EXAMINER: You need to move
25 to another line of questioning.

1 Q. Okay. Isn't it true that when I
2 failed to meet that 100 air mile radius
3 exemption I only have to have a log book in
4 my -- a log page in my possession, a record of
5 duty status, for the day that I passed my 100
6 miles, not for the day I haven't left my 100
7 mile radius?

8 A. Not for the day, but every day that
9 you have left you do need it for it, which would
10 be wherein the last seven days.

11 Q. Is it your contention that I need to
12 have this on my person?

13 A. Yes.

14 MR. OVERTURF: No further questions,
15 sir.

16 ATTORNEY EXAMINER: Do you have any
17 other redirect?

18 MS. MESSENGER: Yes.

19 REDIRECT EXAMINATION

20 By Ms. Messenger:

21 Q. Officer, when you pulled Mr.
22 Overturf over and you asked him his origin and
23 his destination; is that correct?

24 A. Yes.

25 Q. And what was Mr. Overturf's response

1 to what --

2 A. He was coming from Middlefield and
3 headed to Columbus.

4 Q. You mentioned before that he was
5 picking up a load in Columbus.

6 A. Correct.

7 Q. And that he was speeding at the
8 time?

9 A. At the time, that is the reason why
10 I made the traffic stop, correct.

11 Q. And what reason did he give you for
12 speeding?

13 A. That he was in a hurry to get down
14 and get the load and get back.

15 Q. In Columbus?

16 A. Correct.

17 Q. Can you explain to us one more time
18 how you calculated the mileage from Middlefield
19 to Columbus?

20 A. The PC Miler, which is the program
21 the State has purchased and placed on our
22 computer in order to determine air miles between
23 two locations. It is based off of -- ways that
24 we can verify the locations that we are using is
25 address, as far as street address, city, or zip

1 code.

2 Okay? So, for this entered in here
3 when I come up with this, because we didn't have
4 a specific address, I put Middlefield and
5 Columbus, and when I do that it comes up with
6 168 air mile, which is over your 100 air mile
7 radius.

8 Q. And did you show that calculation to
9 the driver at the time?

10 A. Correct. I showed him on the PC
11 Miler because he was asking about that.

12 Q. The driver did not have a log book
13 on him at the time?

14 A. He had no log book.

15 Q. For any previous time period or for
16 that day?

17 A. Correct.

18 Q. Is it clear to you that it was Mr.
19 Overturf's intention to go to Columbus that day?

20 A. Correct.

21 MS. MESSENGER: No further
22 questions, Your Honor.

23 ATTORNEY EXAMINER: Do you have any
24 on recross, Mr. Overturf?

25 MR. OVERTURF: No. Thank you, sir.

1 ATTORNEY EXAMINER: You are excused.

2 MS. MESSENGER: Your Honor, at this
3 time I would like to move for the admission of
4 Staff Exhibit 1 and 2 into evidence.

5 ATTORNEY EXAMINER: I will admit
6 those into evidence.

7 (EXHIBITS ADMITTED INTO EVIDENCE)

8 MS. MESSENGER: I would also like to
9 reserve Officer Hughes as a rebuttal witness.

10 ATTORNEY EXAMINER: You may.

11 MS. MESSENGER: We have no further
12 witnesses at this time.

13 ATTORNEY EXAMINER: Okay. Mr.
14 Overturf.

15 MR. OVERTURF: Do they want to
16 examine me, I mean?

17 ATTORNEY EXAMINER: Yes. Go ahead.

18 (WITNESS SWORN)

19 - - -

20 THOMAS OVERTURF

21 being first duly sworn, testified as follows:

22 ATTORNEY EXAMINER: State your name
23 and address.

24 MR. OVERTURF: My name is Thomas
25 Overturf, 5162 East 112th Street, Garfield

1 Heights, Ohio.

2 ATTORNEY EXAMINER: Go ahead and
3 tell your story now in a narrative fashion.

4 MR. OVERTURE: I had just left my
5 home domicile, I punched into the time clock,
6 that is my record of duty status.

7 I don't use a log book, I use a
8 punch clock because I usually stay in the 100
9 mile radius. Sometimes I do go out of the
10 radius, when I do I make out a log book for that
11 day and that day only as stipulated by law.

12 Then when I get back to my home
13 domicile, which I come to every day, I leave and
14 come back to the same place every day, I then
15 turn in the one sheet of log which under law I
16 am not require to make a copy of or not required
17 to retain in the truck with me.

18 I then punch out, attach the log
19 sheet to the time card and leave. The next
20 morning when I come the time or log sheet is
21 gone and I again punch in my time card.

22 Well, I had punched in my time card,
23 got into the truck, got maybe 15 miles from my
24 home domicile, well within the 100 mile radius
25 that I have to stay in when the Officer pulled

1 me over.

2 The Officer then gave me two
3 citations. One was for of having no physical
4 card, and under the law my physical card is
5 registered with the Department of Motor
6 Vehicles, which exempts me from having to carry
7 my medical card. Yet, the Officer did write me
8 up for it and a motion has been made to dismiss
9 that, by the prosecutor or whoever he is, I
10 don't know. I am sorry, I don't know your exact
11 term.

12 ATTORNEY EXAMINER: It's subject to
13 motion.

14 MR. OVERTURF: Correct. The second
15 citation he gave me was for not having a log
16 book and being out -- not having a log book for
17 the last seven days.

18 Now, under the law I do not have to
19 have a log book for the last seven days because
20 I drive locally, which is under 395.1 which
21 specifically exempts me from 395.8 which I am
22 charged with.

23 So, he pulled me over well within my
24 circle and demanded logs for the past seven
25 days, which under the law I do not have to carry

1 with me or provide or make out for that matter.

2 And that is it. And I wound up
3 here.

4 ATTORNEY EXAMINER: Does that
5 conclude your statement?

6 MR. OVERTURF: Yes. That concludes
7 my statement.

8 ATTORNEY EXAMINER: Do you have any
9 cross-examination?

10 MR. JONES: Yes.

11 CROSS-EXAMINATION

12 By Mr. Jones:

13 Q. Now, the day of the inspection,
14 which was on October 29th, 2014, you told
15 Inspector Hughes at the time of the inspection
16 that your destination was Columbus, Ohio;
17 correct?

18 A. No.

19 Q. That is not correct?

20 A. No.

21 MR. JONES: Your Honor, may I
22 approach the witness?

23 ATTORNEY EXAMINER: You may.

24 Q. Mr. Overturf, I am handing you what
25 is marked as Staff Exhibit 1.

1 A. Yes.

2 Q. And if you would see there near
3 the top of the page there it has origin and
4 destination. Do you see where I am referring
5 to?

6 A. Yes, I do.

7 Q. And do you see the destination that
8 is recorded as Columbus, Ohio for your
9 destination?

10 A. Yes, I do.

11 Q. And that information was recorded as
12 a result of a communication that you had with
13 Inspector Hughes at the time of the inspection?

14 A. Correct.

15 Q. Okay. And isn't it true, Mr.
16 Overturf, that you had previously transported,
17 or picked up a load in Columbus, Ohio that week?

18 A. No. I had transported a load to
19 Columbus that week.

20 Q. Would that be October 28th, 2014?

21 A. What was the date of this? Yes, it
22 would be the 28th.

23 Q. So, on October 28th, 2014 you took a
24 load from Middlefield, Ohio to Columbus, Ohio?

25 A. Correct.

1 Q. And what was the destination in
2 Columbus, Ohio on October 28th, 2014?

3 A. I don't remember.

4 Q. You don't remember who you were
5 transporting to?

6 A. No. The boss just gave me
7 directions. He didn't tell me the name of
8 the company or anything. He told me to get off
9 at a certain exit, make a left, then make
10 another left at the next light, then stop at the
11 first building with a red roof. I don't recall
12 the exit, the street, or what the name of the
13 place was.

14 Q. You don't remember the name of
15 the business?

16 A. No. I only went there once and it's
17 been over six months.

18 Q. And what was the cargo?

19 A. I don't even know that.

20 Q. What business did you pick up from
21 in Middlefield that you were transporting?

22 A. The truck was loaded when I picked
23 it up. My employer would go load it and then
24 park it and then I would just punch in, drop off
25 or pick up my paperwork, whichever I needed to

1 do, get in the truck and drive off.

2 This day the truck was empty and he
3 didn't know what I was going to do. He said
4 head towards Columbus, which is what I said to
5 the Officer. I have no destination, no address,
6 no paperwork. My boss called me, said head
7 towards to Columbus; that he would call me and
8 tell me where I was going on the way.

9 It could have been Columbus, and
10 even if it was Columbus I would have still been
11 legal under the 395.1 exemption until I got
12 there, until I got to the 100 mile radius, then
13 I would have to make out a log book, not until.
14 Because my destination could have changed. I
15 had no destination.

16 MR. JONES: Your Honor, I am going
17 to ask to strike all that beyond when he
18 answered my question. He had a long narration
19 then following his answer. I would ask to
20 strike.

21 ATTORNEY EXAMINER: I will let the
22 answer stand.

23 Q. Mr. Overturf, at the time of the
24 stop or inspection on October 28th, 2014, you
25 had no log book with you; did you?

1 A. I had a log book, but it wasn't
2 filled out. It was completely empty except for
3 two pages torn out of it. He didn't want to see
4 that. He wanted to see a filled out log book
5 for the last seven days, and according to 395.8,
6 which is what I am exempt from since I was not
7 out of my 100 mile circle.

8 Q. You had nothing to show for any
9 entries in a log book to Trooper Hughes on
10 October 29th, 2014 at the time of the
11 inspection.

12 A. No. If you go back to my Exhibit 2,
13 which stated that no paperwork whatever was
14 needed under the law.

15 MR. JONES: Your Honor, I am going
16 to ask to strike everything after "no".

17 ATTORNEY EXAMINER: I will let that
18 stand too. Go ahead.

19 Q. So, Mr. Overturf, you had no entry
20 in any log book for the previous day's trip to
21 Columbus; did you?

22 A. Not in the log book, but under the
23 law I don't have to make a copy. I merely have
24 to turn it in at the end of the day. Have it on
25 me the day that I go out of my 100 mile circle.

1 Q. So your answer is, no; is that
2 correct?

3 A. Yes. No.

4 Q. No. Okay. So, on the date of
5 the inspection where was the limit of the 100
6 air mile radius for your trip?

7 A. Well, it's a big radius. If I go
8 like 20 miles past Mansfield that would probably
9 be -- I would start to leave my radius. I can
10 go as far as Michigan, even parts of Canada, I
11 can even go as far as West Virginia to the
12 south.

13 But 20 miles past Mansfield I would
14 say is about 100 miles. I usually like to fill
15 out a log book when I reach the 100 mile limit,
16 although under the law I can go 115 miles
17 because the air radius is measured in nautical
18 miles, and nautical miles are 1.15 land miles,
19 which means 100 nautical miles, or air miles, is
20 115 land miles.

21 Q. Mr. Overturf, you were on duty
22 working that day of the inspection on October
23 29th, 2014; were you not?

24 A. Yes, I have.

25 Q. You were working for the carrier

1 Double A Warehouse?

2 A. Yes, I was.

3 Q. And the carrier provided you with
4 directions to go to a place in Columbus on that
5 date?

6 A. I don't know as a carrier. Antonio
7 Dejesus did. The owner of the truck, he was my
8 only contact. He was the one that paid me, the
9 only one I had to do any business with. I never
10 knew anything about any other people, just him
11 was the only one I had any contact with at all.

12 Q. So your answer is yes to that
13 question?

14 A. Yes.

15 Q. And isn't it true that the owner,
16 Mr. Dejesus, was going to fill out a log book
17 and bring it to you for purposes of you making
18 this trip as a result of this inspection?

19 A. He thought he would. I told him I
20 would not fill one out because I would be
21 illegal. But he thought if they would let me
22 take -- if they would let me take the load that
23 day that he will bring me a log book. However,
24 he put me out of service and then Mr. Dejesus
25 still asked me to take the load and I refused

1 because it was illegal.

2 Q. But the bottom line is he was
3 willing to bring you a log book; is that
4 correct?

5 A. Sure, he was. He wanted someone to
6 drive the truck.

7 MR. JONES: No further questions,
8 Your Honor.

9 ATTORNEY EXAMINER: Mr. Overturf, do
10 you have any response to the questions?

11 MR. OVERTURF: No.

12 ATTORNEY EXAMINER: You are excused.

13 MR. OVERTURF: Thank you, sir.

14 ATTORNEY EXAMINER: Do you have
15 anything further?

16 MS. MESSENGER: We would like to
17 recall Officer Hughes back to the stand.

18 ATTORNEY EXAMINER: Yes. You are
19 still under oath. Go ahead and be seated.

20 - - -

21 TROOPER JOEL D. HUGHES
22 recalled as a witness, being previously duly
23 sworn, testified as follows:

24 REDIRECT EXAMINATION

25 By Ms. Messenger:

1 Q. Officer Hughes, Mr. Overturf
2 previously stated that he drove to Columbus the
3 previous day. Can you explain why a log book is
4 required on October 29th when you pulled him
5 over for his previous trip to Columbus?

6 A. For the seven previous days, any
7 time that you would go out of or not meet that
8 exemption you would be required to fill out a
9 log book and log it.

10 Therefore, when asked to produce it
11 it needs to be produced. If there is days in
12 that time period where he did not go over and
13 exceed that air mile radius, then he wouldn't
14 need to fill it out for that day and the log
15 book could say local or whatever. I have seen
16 numerous things that are accepted.

17 When you do go over that air miles
18 though you do need to provide a log book for
19 that day that you go over the air miles, which
20 would have been the previous day also.

21 Q. So if Mr. Overturf went over the 100
22 air mile radius for any previous seven days to
23 October 29th he would have needed a log book on
24 his person?

25 A. He needed to provide that

1 documentation to me out of that log book.

2 Q. So based on his trip to Columbus on
3 October 28th, 2014 and his trip to Columbus that
4 day on October 29th, 2014 he would have needed
5 to fill out a log book for those two days; is
6 that correct?

7 A. Should have been a log book for
8 those two days, correct.

9 Q. And had them on his person?

10 A. Correct.

11 MS. MESSENGER: Your Honor, may I
12 approach the witness?

13 ATTORNEY EXAMINER: You may.

14 Q. Officer Hughes, I am showing you a
15 copy of the Federal Motor Carrier Safety
16 Regulations, Section 395.8 (k)(2). Can you read
17 that out loud, please?

18 A. "The driver shall retain a copy of
19 each record of duty status for the previous
20 seven consecutive days which shall be in his or
21 her possession and available for inspection
22 while on duty."

23 MS. MESSENGER: Okay. We have
24 nothing further, Your Honor.

25 ATTORNEY EXAMINER: Mr. Overturf, do

1 you have any questions?

2 MR. OVERTURF: Yes, I do.

3 ATTORNEY EXAMINER: This is on
4 cross-examination.

5 RECROSS-EXAMINATION

6 By Mr. Overturf:

7 Q. Officer, you just testified that I
8 should have a log for the two days that I was on
9 duty.

10 A. Whenever you are on duty --

11 Q. But you just testified --

12 MS. MESSENGER: Objection, Your
13 Honor. The Officer was answering.

14 ATTORNEY EXAMINER: Answer the
15 question.

16 A. I said the days that you are on duty
17 any for the previous seven days that you exceed
18 that radius.

19 MR. OVERTURF: Is there a way to
20 have that read back? Because his statement was
21 that I needed to have a log book for those two
22 days that I said I drove, yet I am being
23 cited --

24 ATTORNEY EXAMINER: You have got to
25 ask a question.

1 MR. OVERTURF: Okay.

2 ATTORNEY EXAMINER: We already have
3 the answer on the record.

4 Q. Didn't you just testify two minutes
5 ago that I needed to have a log book for those
6 two days?

7 A. I answered the question.

8 ATTORNEY EXAMINER: We have an
9 answer.

10 Q. Okay. Yet now -- I thought you were
11 finished.

12 A. I answered the question that I was
13 asked there, which I was asked for those days
14 given specific days.

15 Q. Right.

16 A. So I said for those specific days,
17 correct.

18 Q. For those two days. But, and that
19 is true, while I was out of the circle if you
20 had pulled me over I would have my log.

21 ATTORNEY EXAMINER: Ask a question.

22 Q. Okay. Well, you just testified
23 that I have to have a log for those two days.
24 But isn't it true that you charged me with not
25 having a log for the past seven days?

1 A. If you read the law it says you must
2 retain records for the past seven days, and any
3 days within there --

4 Q. What is that section that you just
5 cited from? What statute?

6 A. The 395.8.

7 Q. Haven't we established that I run
8 under 395.1?

9 A. No.

10 Q. No? I meet all the criteria for
11 395.1.

12 A. Not on those days you don't

13 Q. Yes, I do. It says I can go out of
14 my circle as long as I make out a log book -- I
15 am sorry. I will make it a question.

16 395.1 specifically, specifically
17 exempts you from 395.8; is that true?

18 A. If you --

19 ATTORNEY EXAMINER: Let him answer.

20 A. If you meet the requirements you
21 are exempt, but if you do not you are not
22 exempt.

23 Q. So you are saying -- are you saying
24 that if any time I go out of my 100 mile radius
25 I have -- I then am -- I then have to be liable

1 for statute 395.8?

2 A. If it is -- well, there is a couple
3 different sections of that. But, yes, you are
4 required to fill it out if you don't meet the
5 exemption. If it's over the last seven days
6 the company needs to keep a record for six
7 months at the office. If you are within that
8 seven days you did you should have those in your
9 possession.

10 Q. Okay. You cited me under 395.8
11 (k)(2), failing to retain a seven-day record.

12 A. Yes.

13 Q. Okay. Now like I said, if I run
14 under 395.1 which exempts me from 395.8, you are
15 saying it doesn't exempt me?

16 A. Well, as you had stated a couple of
17 minutes ago when you were on the stand is that
18 the day before you did travel down here over
19 those air miles, so you are required to have
20 the log book in your possession of the previous
21 seven days that at least shows that date you
22 traveled over the distance, which you did not,
23 so you are in violation of it.

24 Q. But isn't it true that the law
25 states I only have to have that log book on

1 the day I am out of my 100 mile circle, not when
2 I do not go out of my 100 mile circle?

3 A. If you read what I just read out
4 loud to the Court it says you must have it in
5 your possession.

6 Q. What you just read, isn't it true
7 you just read 395.8 which I stated I am exempt
8 from?

9 MS. MESSENGER: Objection, Your
10 Honor, to the form of the question.

11 ATTORNEY EXAMINER: I think we have
12 an answer to that question. Let's proceed on
13 another line of questioning.

14 Q. So it's your personal opinion that I
15 am guilty of violating the statute 395.8; is
16 that true?

17 A. Not a personal opinion, it is the
18 facts.

19 Q. I don't think it's the facts shown
20 here, but --

21 MS. MESSENGER: Objection, Your
22 Honor. That is not a question.

23 ATTORNEY EXAMINER: Let's proceed.

24 MR. OVERTURF: Okay. All right. No
25 more of this witness.

1 ATTORNEY EXAMINER: Any on redirect?

2 MR. JONES: We are done.

3 ATTORNEY EXAMINER: Done? Okay.
4 Anything further?

5 MR. JONES: Nothing further, Your
6 Honor.

7 ATTORNEY EXAMINER: Do you want to
8 get on the stand and say something else?

9 MR. OVERTURF: No, sir

10 ATTORNEY EXAMINER: Okay. You are
11 done. And at this time I would admit all
12 exhibit into evidence. And let's go off the
13 record here.

14 (DISCUSSION OFF THE RECORD)

15 ATTORNEY EXAMINER: We have agreed
16 that simultaneous briefs will be due June 26th.
17 And with that stated I would thank you all for
18 coming.

19 And I believe we have admitted all
20 the exhibits. And the case will be submitted on
21 the record.

22 MR. JONES: Your Honor, I guess
23 there is one -- I wasn't aware that Mr. Overturf
24 had moved for admission of his exhibits and that
25 the Court had admitted them. Was that done?

1 ATTORNEY EXAMINER: We will consider
2 I am going to admit them anyway into the record.

3 MR. JONES: Okay. We still want to
4 preserve our objections for the record too, Your
5 Honor.

6 ATTORNEY EXAMINER: I will consider
7 them offered and that he did move. He is not an
8 attorney, so I will grant him that leeway.

9 MR. JONES: Thank you, Your Honor.

10 ATTORNEY EXAMINER: Thank you all.

11 (At 11:30 A.M. the hearing was
12 concluded)

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on May 7,
2015, and carefully compared with my original
stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

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Summary: Transcript in the matter of Thomas Overturf hearing held on 05/07/15 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.