

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of | : | |
| Phillip Scherer | : | Case No. |
| Notice of Apparent Violation | : | 16-730-TR-CVF |
| and Intent to Assess | : | |
| Forfeiture. | : | |

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PROCEEDINGS

Before Megan Addison, Attorney Examiner, held at the
offices of the Public Utilities Commission of Ohio, 180
East Broad Street, Room 11-D, Columbus, Ohio, on
Wednesday, July 6, 2016, at 10:00 a.m.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-4620
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

1 APPEARANCES:

2 Thomas G. Lindgren
3 Assistant Attorney General
4 30 East Broad Street, 16th Floor
5 Columbus, Ohio 43215

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

8 Phillip Scherer
9 PO Box 18
10 Harlan, Indiana 46743

11 Appearing Pro se.

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1 Wednesday Morning,
2 July 6, 2016.

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4 ATTORNEY EXAMINER: The Public Utilities
5 Commission of Ohio has set for hearing at this time and
6 place Case No. 16-730-TR-CVF being in the matter of
7 Phillip Scherer Notice of Apparent Violation and Intent
8 to Assess Forfeiture.

9 My name is Megan Addison, and I am the Attorney
10 Examiner assigned to preside over this hearing.

11 Let's go ahead and begin by taking appearances
12 of the parties, beginning with Staff.

13 MR. LINDGREN: On behalf of the Commission
14 Staff, the office of Ohio Attorney General Mike DeWine
15 by Thomas G. Lindgren, Assistant Attorney General. The
16 address is 30 East Broad Street, 16th floor, Columbus,
17 Ohio 43215.

18 ATTORNEY EXAMINER: Mr. Scherer, if you'd
19 just like to state your name and address.

20 THE RESPONDENT: My name is Phillip
21 Scherer. My legal mailing address is Post Office Box 18
22 in Harlan, Indiana. ZIP code is 46743.

23 ATTORNEY EXAMINER: Thank you. Before we
24 begin today, I do have some preliminary questions for
25 Mr. Scherer to determine in what capacity he was

1 operating his vehicle at the time of the inspection.

2 Mr. Scherer, by whom are you employed?

3 THE RESPONDENT: I work part-time for a
4 trucking company down in Edinburg, Indiana, Horizon
5 Dedicated Transport.

6 ATTORNEY EXAMINER: And were you operating
7 a vehicle on behalf of Horizon Transport at the time of
8 the inspection?

9 THE RESPONDENT: No, I was not.

10 ATTORNEY EXAMINER: Were you acting in
11 your own independent capacity at the time of the
12 inspection?

13 THE RESPONDENT: That is -- I was driving
14 my own personal pickup truck. Yes.

15 ATTORNEY EXAMINER: And were you receiving
16 any compensation for the work that you were conducting
17 at the time of the inspection?

18 THE RESPONDENT: No.

19 ATTORNEY EXAMINER: And what exactly was
20 the work that you were doing at the time of the
21 inspection?

22 THE RESPONDENT: At the time of the
23 inspection, I was not really doing any work. I was
24 driving my own personal pickup truck down the road.

25 ATTORNEY EXAMINER: Okay. I believe I've

1 heard enough. As Mr. Scherer appears to only be
2 representing himself during this proceeding, I will
3 allow him to ask questions of Staff witnesses today.

4 THE RESPONDENT: Thank you.

5 ATTORNEY EXAMINER: You're very welcome.
6 And Mr. Scherer, I will instruct you as to when that
7 time is appropriate.

8 THE RESPONDENT: Okay. Wonderful.

9 ATTORNEY EXAMINER: Okay. With that being
10 said, is Staff ready to proceed?

11 MR. LINDGREN: Yes, we are, Your Honor.

12 ATTORNEY EXAMINER: You may do so.

13 MR. LINDGREN: Thank you. The Staff calls
14 Melanie Kurtz to the stand.

15 MELANIE KURTZ
16 called as a witness, being first duly sworn, testified
17 as follows:

18 ATTORNEY EXAMINER: Please state your name
19 and business address.

20 THE WITNESS: Melanie Kurtz, 13907 Airport
21 Highway, Swanton, Ohio.

22 ATTORNEY EXAMINER: Please proceed,
23 Mr. Lindgren.

24 DIRECT EXAMINATION

25 BY MR. LINDGREN:

1 Q. Thank you.

2 Good morning. Ms. Kurtz, where are you
3 employed?

4 A. Ohio State Highway Patrol.

5 Q. And what is your position with the State Highway
6 Patrol?

7 A. Motor carrier enforcement.

8 Q. And what are your duties in that position?

9 A. Conducting roadside inspections and enforcing
10 the federal standards.

11 Q. Thank you. How long have you been in that
12 position?

13 A. Seven years.

14 Q. Thank you. And what sort of training have you
15 received in preparation for your duties?

16 A. I completed the North American Standard Level 1
17 inspection, hazardous materials, cargo tank, other bulk
18 packaging inspection, and the passenger vehicle
19 inspection. I completed my initial training inspection
20 certifications with a field training officer. I've
21 maintained the certifications and attended the annual
22 motor carrier enforcement in-service training.

23 Q. Thank you. You mentioned some certifications.
24 Do you hold all of the certifications that are required
25 for your position?

1 A. Yes, I do.

2 Q. Thank you. Ms. Kurtz, do you recall inspecting
3 a vehicle driven by the respondent, Phillip Scherer?

4 A. Yes, I do.

5 Q. Thank you. Do you recall the reason why you
6 inspected his vehicle?

7 A. He appeared to be a commercial vehicle traveling
8 down the roadway. I didn't really have probable cause.
9 I mean, I didn't need probable cause. He was just the
10 next truck that came along.

11 Q. Thank you. And where did this take place?

12 A. US 24. I'm not sure the mile post.

13 Q. Okay. But was it within the state of Ohio?

14 A. Yes.

15 Q. Yes. Thank you. Can you explain what happened
16 during the course of your inspection after you pulled
17 over the vehicle?

18 A. When I walked up to the truck, I asked him where
19 they were heading. They were heading to a construction
20 site on Central Avenue in Toledo. Mr. Scherer was
21 driving, and then there were several Amish gentlemen in
22 the truck with him. He said he was hired by a Dutch
23 Harness company out of Indiana to take them to the job
24 site.

25 Q. He said he was hired by Dutch Harness?

1 A. Yes.

2 Q. Do you recall how many passengers were in the
3 vehicle?

4 A. Three to four. I'm not sure.

5 Q. Did you speak to any of them?

6 A. I asked the gentleman sitting in the passenger
7 seat a couple questions. Yes.

8 Q. Thank you. So did you find any violations of
9 the federal motor carrier safety regulations during this
10 inspection?

11 A. He had no markings, no authority to be outside
12 of Indiana for for-hire transportation.

13 Q. Thank you. Did you prepare a report at the time
14 or shortly after your inspection?

15 A. Yes, I did.

16 Q. Thank you.

17 MR. LINDGREN: May I approach the witness?

18 ATTORNEY EXAMINER: You may.

19 MR. LINDGREN: Let the record reflect that
20 I'm handing the witness what I have marked for
21 identification purposes as Staff Exhibit 1.

22 ATTORNEY EXAMINER: So marked.

23 (Staff Exhibit 1 was marked for identification.)

24 BY MR. LINDGREN:

25 Q. Ms. Kurtz, do you recognize this document?

1 A. Yes.

2 Q. Can you explain what it is?

3 A. This is the inspection I typed on Aspen on
4 January 29th when I inspected Mr. Scherer.

5 Q. And what is Aspen?

6 A. The program that's in our computers that we type
7 inspections on.

8 Q. Thank you. Does this report accurately reflect
9 the results of your inspection?

10 A. Yes.

11 Q. And does anything in it appear to have been
12 altered since the time you entered the information?

13 A. No, it has not.

14 Q. And does this report explain the violations that
15 you found?

16 A. Yes, it does.

17 Q. And it appears there are two violations there;
18 is that correct?

19 A. Right.

20 Q. And can you briefly explain what those are?

21 A. The first one's authority. He didn't have any
22 commercial authority to be in Ohio from Indiana for
23 hire. And then the next is he wasn't displaying his
24 name or DOT number on the vehicle.

25 Q. And how did you determine that he was operating

1 for hire?

2 A. He told me he was hired by this company to take
3 these Amish gentlemen to the construction site.

4 Q. Thank you. And then what happened after you had
5 completed your inspection?

6 A. When you're dealing with passengers in the
7 vehicle, there's not, you know -- you can't really take
8 them to a ramp and leave people there. And he was out
9 of service, so I took them directly to the job site up
10 on Central Avenue.

11 Q. Okay.

12 A. And placed him out of service there.

13 Q. So he was not permitted to drive anywhere else
14 after that?

15 A. Right.

16 Q. Thank you. Did you speak to the driver any more
17 after you got to the job site?

18 A. After he was informed he was out of service and
19 after the passengers had dispersed, he came up and
20 restated the answers to the questions, you know, that I
21 had asked, and they had all changed. But that's very
22 common once you place someone -- once someone knows
23 they're going to be placed out of service, that's very
24 common.

25 Q. So he changed his answers at that point?

1 A. Yes.

2 Q. Thank you. Ms. Kurtz, did you take any pictures
3 in the course of your inspection?

4 A. Yes, I did.

5 MR. LINDGREN: May I approach the witness?

6 ATTORNEY EXAMINER: You may.

7 MR. LINDGREN: Thank you. Let the record
8 reflect that I am handing the witness what I have marked
9 for identification purposes as Staff Exhibit 2.

10 ATTORNEY EXAMINER: It will be so marked.

11 (Staff Exhibit 2 was marked for identification.)

12 MR. LINDGREN: Thank you.

13 BY MR. LINDGREN:

14 Q. Ms. Kurtz, do you recognize Staff Exhibit 2?

15 A. Yes.

16 Q. And can you explain what it is?

17 A. This is a photo of the truck with the trailer
18 with the ladders or -- it's materials of a construction
19 trade hanging on the outside of the trailer. This is
20 the job site I took them to.

21 Q. So this picture was taken at the job site?

22 A. Yes.

23 Q. Thank you. And this was the vehicle operated by
24 Mr. Scherer?

25 A. Yes.

1 Q. Thank you. Does this photo appear to have been
2 altered in any way since you took the picture?

3 A. No, it does not.

4 Q. Thank you.

5 MR. LINDGREN: May I approach the witness
6 again?

7 ATTORNEY EXAMINER: You may.

8 MR. LINDGREN: Thank you. Let the record
9 reflect that I am now handing the witness what I have
10 marked for identification purposes as Staff Exhibit 3.

11 ATTORNEY EXAMINER: It will be so marked.

12 (Staff Exhibit 3 was marked for identification.)

13 MR. LINDGREN: Thank you.

14 BY MR. LINDGREN:

15 Q. Ms. Kurtz, do you recognize this document?

16 A. Yes.

17 Q. And can you explain what it is?

18 A. Same truck and trailer at the job site that I
19 took them to on that day.

20 Q. This is just a rear view of the same vehicle?

21 A. Yeah. I wanted to get the job site kind of in
22 the photo.

23 Q. Yeah. Thank you. And, again, does it show the
24 construction equipment there?

25 A. Yes.

1 Q. Thank you. Ms. Kurtz, do you recall anything
2 else about this inspection that you wish to bring to the
3 Commission's attention?

4 A. No, I do not.

5 Q. Thank you.

6 MR. LINDGREN: I have no further questions
7 at this time.

8 ATTORNEY EXAMINER: Thank you,
9 Mr. Lindgren.

10 Mr. Scherer, do you have any questions for
11 Ms. Kurtz?

12 THE RESPONDENT: Yes, I do.

13 ATTORNEY EXAMINER: Please proceed.

14 CROSS-EXAMINATION

15 BY THE RESPONDENT:

16 Q. Is it Officer Kurtz? Is that correct?

17 A. That's fine.

18 Q. Okay. You stated priorly that you have been
19 employed with the Department of Transportation for
20 approximately 11 years?

21 A. 11?

22 Q. Somewhere in that?

23 A. No, seven. I've done this job for seven --

24 Q. Seven. Okay. I'm sorry, my hearing is --

25 A. I'm employed by the State Highway Patrol. I've

1 done this job for seven years. I've been --

2 Q. Okay. My -- sorry, my --

3 ATTORNEY EXAMINER: Let her finish her
4 question. It's just for the court reporter's sake that
5 we let the witness finish her answer to the question,
6 and then we ask another one.

7 Have you finished your answer?

8 THE WITNESS: I've been employed for
9 11 years by the State Highway Patrol. I've done this
10 job for seven.

11 BY THE RESPONDENT:

12 Q. Okay. And obviously that entails a tremendous
13 amount of report writing and obviously picture taking
14 and things like that, correct?

15 A. Yes.

16 Q. And you obviously can read and comprehend the
17 English language?

18 A. Yes.

19 Q. Okay. So someone that is in a capacity of
20 yours, can you explain why you would have a 12,000 pound
21 gross vehicle weight rating on this single axle trailer?

22 A. I asked the gentleman in the passenger seat.
23 That's what he said.

24 Q. Can you provide a name for that individual?

25 A. I'm pretty sure they changed it to 7, too.

1 Q. Okay. So obviously -- your report is incorrect
2 is what you're saying.

3 A. As long as you're not over 26,000, it had no
4 bearing on the outcome.

5 Q. I see.

6 A. And this was not.

7 Q. Okay.

8 A. It wasn't anything to get real stirred up about
9 as long as it wasn't -- if it put you over 26,000,
10 there'd be a lot more meat to this inspection. This did
11 not.

12 Q. Okay.

13 A. I looked for a mark on the trailer, a plate.
14 There was none.

15 Q. Well, there was certainly -- every trailer plate
16 has a sticker on it for weight.

17 A. That's plated weight. I mean, Michigan trucks
18 are plated 160,000. I can't -- we don't go by plated
19 weight.

20 Q. Okay. We'll play this. This Staff Exhibit 3 is
21 a photo of this alleged job site?

22 A. Yes.

23 Q. With a truck and a trailer?

24 A. Yes.

25 Q. Can you state for the Court what job site this

1 is? It looks like it's all finished, including --

2 A. It was a construction site. You can see right
3 there behind the truck there's a little lift thing for
4 the -- it was a construction site.

5 Q. I see a piece of equipment. I don't see
6 anything being done, including the grass is even
7 finished.

8 A. I don't see that. Behind the truck right there,
9 you can see that blue piece of machinery. That's for
10 lifting shingles up onto roofs. This was a
11 construction --

12 Q. But the shingles are on the roof --

13 ATTORNEY EXAMINER: Mr. Scherer, let her
14 finish her answer.

15 THE WITNESS: If you look where I think
16 you and the Amish gentleman are standing, there's dirt
17 in the background there. That's where they were
18 working. The one we were directly parked at, yes, was
19 complete. The one next to it, which would have been to
20 the east, is not.

21 BY THE RESPONDENT:

22 Q. So do you have dash cameras and that kind of
23 thing for your equipment?

24 A. No, I do not.

25 Q. So you do not have body cameras or audio?

1 A. No, we do not.

2 Q. Convenient. Well, I am for the record that
3 myself nor anyone else ever stated that I work for a
4 Dutch Harness. And furthermore, do you --

5 I probably need to give these people a copy of
6 this PUCO's request for additional information?

7 ATTORNEY EXAMINER: Let's go off the
8 record for a moment.

9 (Discussion off the record.)

10 ATTORNEY EXAMINER: All right. Let's go
11 back on the record. Mr. Scherer?

12 THE RESPONDENT: Okay. Well, I have this
13 Exhibit 1 here, and in it, it basically -- should I give
14 this to Ms. Kurtz here to read so everyone is on the
15 same page here?

16 ATTORNEY EXAMINER: Well, certainly. If
17 you could just describe the document just for the
18 transcript.

19 BY THE RESPONDENT:

20 Q. Okay. This is an inspection. "Today's date:
21 3-11-16." A request for additional information.

22 It says, "Response: Change CARGO to PASSENGER.
23 No change to anything else on inspection. Photos are
24 below.

25 "Per the inspector: This gentleman (Phillip

1 Scherer) was hired by the company called Dutch Harness
2 to take Amish people and their tools to a job site in
3 Toledo from Indiana. One of the Amish men told me that
4 he contracts and sets up the truck and driver, but the
5 company pays the driver. The trailer was loaded with
6 tools and ladders, no building material. I took them to
7 the job site.

8 "The trailer itself was the load along with five
9 passengers in the truck. As for the gross vehicle
10 weight rating, I asked the Amish man, who said it
11 belongs to him, and he told me 12,000 pounds. No sicker
12 located on trailer.

13 "The questions I asked Mr. Scherer in front of
14 passengers were accurate. As soon as we got to the job
15 site and the Amish gentleman got out of the truck, all
16 the answers changed.

17 "I see five to ten of these a day coming from
18 Indiana, more in the summer. They are hired by the
19 construction company or by the Amish to get people and
20 tools to the job sites. The trailer always belongs to
21 the Amish. Most of the them drive 15-passenger vans
22 with no markings."

23 Ms. Kurtz, is that something that sounds like --
24 that you authored?

25 A. Yes.

1 Q. Okay. Would you like to see that it is
2 accurate? Or --

3 A. I mean, I remember that, yes.

4 THE RESPONDENT: Okay. Should I --

5 ATTORNEY EXAMINER: You can approach.

6 THE RESPONDENT: Okay.

7 ATTORNEY EXAMINER: And just for the
8 record, this will be marked as Respondent Exhibit 1.

9 (Respondent Exhibit 1 was marked for
10 identification.)

11 BY THE RESPONDENT:

12 Q. Okay. Anything underneath 15 passengers, is it
13 even regulated?

14 A. Yes.

15 Q. And can you explain how exactly that regulation
16 entails?

17 A. If it's over 10,000 pounds when you're outside
18 of Indiana, yes, you are subject to regulations.

19 Q. That's not quite the conversation that I had
20 with Mr. Hines, the compliance officer, but . . .

21 Why -- I guess my question is, and I'm sure you
22 cannot answer it, why anyone would say, myself included,
23 that I work for this Dutch Harness when that is
24 inaccurate, and why Dutch Harness would possibly have a
25 very expensive truck like that when underneath --

1 A. You stated it was your truck.

2 Q. Yes. Exactly. My truck --

3 A. It's --

4 ATTORNEY EXAMINER: I'm going to
5 interject.

6 THE WITNESS: Sorry.

7 ATTORNEY EXAMINER: That's fine. We'll
8 wait for all questions and all responses to be finished
9 before we answer.

10 THE WITNESS: Yes.

11 THE RESPONDENT: I'll try to do better
12 here.

13 ATTORNEY EXAMINER: Thank you.

14 BY THE RESPONDENT:

15 Q. Yes. I stated that exactly. My personal truck.
16 Exactly.

17 A. Yes.

18 Q. Not Dutch Harness, not some --

19 A. Yes.

20 Q. -- weird construction company or anything.

21 A. There's lots of owner-operators out there. Yes.

22 Q. It would be -- it would be inaccurate and
23 grossly misleading to write something to that effect of
24 what's on that exhibit when Dutch Harness actually has
25 three full-sized vans and a one-ton pickup truck

1 underneath the Indiana Bureau of Motor Vehicles licensed
2 and insured.

3 A. I didn't know what Dutch Harness was until you
4 told me. I don't know. This is what you stated. I
5 don't know what you want me to say.

6 Q. Well, once again, I am on my personal time, on
7 my own personal business, and if there are such things
8 as tools and going to the job site, it seems to me that
9 you would see pictures of the tools. I mean, this
10 ladder and this brick here is nothing. You can't do
11 anything with that.

12 ATTORNEY EXAMINER: Mr. Scherer, if you do
13 have questions, I would just ask that you phrase them in
14 a way that she can answer yes, no, or explain it more
15 thoroughly. You will have the opportunity to take the
16 stand and explain any discrepancies you find with the
17 report or the photographs taken.

18 BY THE RESPONDENT:

19 Q. Do you have any pictures of these alleged tools
20 that are in this trailer?

21 A. Just what's hanging on the outside of the
22 trailer. No. They did open the trailer while I was
23 sitting there, but I didn't take any picture.

24 Q. That's because, I'm going to allege in this
25 Court, that the trailer was empty. As I had stated to

1 Ms. Kurtz and as she has inaccurately portrayed it, this
2 trailer was getting --

3 MR. LINDGREN: Objection. He's not asking
4 a question now.

5 ATTORNEY EXAMINER: Sustained.

6 You'll have the opportunity to state your side
7 of the story, Mr. Scherer. Right now is just asking
8 the witness questions.

9 BY THE RESPONDENT:

10 Q. Okay. So you have no pictures of even -- even a
11 lunch pail?

12 A. I have what's on the outside of the trailer,
13 which is tools of construction trade. And the actual
14 trailer itself was part of the load.

15 Q. Okay. That's all. Thank you.

16 ATTORNEY EXAMINER: Thank you.

17 EXAMINATION

18 BY THE ATTORNEY EXAMINER:

19 Q. Ms. Kurtz, you earlier stated that you do not go
20 by a plated weight?

21 A. No.

22 Q. Can you explain for the record what exactly this
23 gross vehicle weight rating means and how you come to
24 those numbers?

25 A. All we really use it for is to give you an idea

1 of what size trailer it was. When you plate a vehicle
2 with your state, you plate it at a certain weight. Ohio
3 gives stickers. Indiana, I'm not sure if it's a sticker
4 or if it's on the plate. I think this one said 8,000,
5 but we don't really pay a lot of attention to that
6 because they may have plated it at 8,000, but the actual
7 GVWR may be something completely different.

8 I knew he wasn't going to be over 26,000 GVWR
9 total gross combined weight rating. It just didn't -- I
10 could have made that 4,000. It would have no bearing on
11 this inspection.

12 Q. And in your opinion, as an experienced officer
13 with seven years of experience, you do not believe that
14 that would have exceeded the 26,000? That's why you --

15 A. Oh, I know it wouldn't have. No.

16 Q. Okay. And what would have been the consequences
17 had it been over 26-?

18 A. It would have went into licensing and all that
19 stuff. It would have just been -- once he's outside of
20 Indiana, I mean, it's kind of all the same anyways, but
21 there would have been more to it.

22 Q. Okay. So for purposes of this inspection alone,
23 that would make no difference if that had been 7-, 8-,
24 or 12,000 --

25 A. Correct.

1 Q. -- for the trailer rating.

2 A. Correct.

3 Q. Thank you.

4 A. That's why it's nothing to get stirred up about.

5 Q. Thank you.

6 A. Thank you.

7 ATTORNEY EXAMINER: One moment.

8 Mr. Lindgren, do you have any redirect?

9 MR. LINDGREN: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. LINDGREN:

12 Q. Ms. Kurtz, I believe you stated that the trailer
13 itself was part of the load; is that right?

14 A. Yes.

15 Q. And can you explain why that is?

16 A. It didn't belong to Mr. Scherer.

17 Q. And how did you make that determination?

18 A. Asking.

19 Q. Asking Mr. Scherer?

20 A. It belonged -- the Amish gentleman said it was
21 his.

22 Q. Thank you.

23 MR. LINDGREN: No further questions.

24 ATTORNEY EXAMINER: Thank you,

25 Mr. Lindgren.

1 One moment Ms. Kurtz, sorry.

2 THE WITNESS: Sorry.

3 ATTORNEY EXAMINER: Mr. Scherer, you can
4 ask questions just on the limited questions that
5 Mr. Lindgren just asked. Did you have any follow-up
6 questions for those?

7 THE RESPONDENT: I will -- just for the
8 record, I will provide a -- may I show you this? -- a
9 plate on the trailer that is 3,000 pounds and also a
10 close-up view of the single axle, 15-inch, five-lug
11 trailer tire which claims that it is not an issue, but
12 it also claims that it is -- the 12,000 pound gross
13 vehicle weight rating --

14 If you would like -- should she see this also?

15 ATTORNEY EXAMINER: You may.

16 THE RESPONDENT: -- is just grossly
17 misstated.

18 ATTORNEY EXAMINER: For the record, we
19 will be marking this as Respondent Exhibit 2.

20 (Respondent Exhibit 2 was marked for
21 identification.)

22 ATTORNEY EXAMINER: And it seems to be a
23 picture of a license plate from Indiana as well as a
24 wheel from the truck.

25 THE RESPONDENT: The trailer.

1 ATTORNEY EXAMINER: The trailer. Thank
2 you for that clarification. And did you have any
3 follow-up questions as to these two pictures,
4 Mr. Scherer?

5 THE RESPONDENT: No.

6 ATTORNEY EXAMINER: Okay. Thank you.

7 I have no further questions. You are excused,
8 Ms. Kurtz. Thank you very much.

9 Mr. Lindgren.

10 MR. LINDGREN: Thank you, Your Honor. The
11 Staff next calls Jonathan Frye to the stand.

12 JONATHAN FRYE
13 called as a witness, being first duly sworn, testified
14 as follows:

15 ATTORNEY EXAMINER: Please state your name
16 and address.

17 THE WITNESS: Jonathan Frye, F-R-Y-E, 180
18 East Broad Street, Columbus, Ohio, 42315.

19 DIRECT EXAMINATION

20 BY MR. LINDGREN:

21 Q. Good morning, Mr. Frye.

22 A. Good morning.

23 Q. Sir, where are you employed?

24 A. The Public Utilities Commission of Ohio
25 Transportation Department.

1 Q. And what are your duties there?

2 A. I'm the chief of the compliance department. I
3 review the fines that are assessed against carriers,
4 shippers, and drivers.

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

6 A. Approximately 15 years.

7 Q. What sort of training have you received for your
8 position?

9 A. I've gone through the North American
10 out-of-service training, bulk packages training,
11 supervisory training as well.

12 Q. Thank you. Are you familiar with the facts
13 related to the case we're here for today?

14 A. Yes.

15 Q. Thank you. And are you familiar with the
16 forfeiture that was assessed in this case?

17 A. Yes.

18 Q. Thank you. Can you just briefly explain to us
19 how you go about assessing forfeitures?

20 A. Yes. The violations are broken up into one of
21 four categories -- Category 1, 2, 3, and 4. Based upon
22 the type of violation and the severity of the violation,
23 they're categorized and put into various categories.

24 Q. Thank you. Was the respondent in this case sent
25 a notice that informed him of the forfeiture that was

1 being assessed?

2 A. Yes.

3 Q. Thank you.

4 MR. LINDGREN: May I approach the witness?

5 ATTORNEY EXAMINER: You may.

6 MR. LINDGREN: Let the record reflect that
7 I am handing the witness what I have marked as Staff
8 Exhibit 4.

9 ATTORNEY EXAMINER: It will be so marked.

10 (Staff Exhibit 4 was marked for
11 identification.)

12 BY MR. LINDGREN:

13 Q. Mr. Frye, do you recognize this document?

14 A. Yes.

15 Q. And can you explain what it is?

16 A. It's a notice of preliminary determination
17 letter. And what that letter is -- once there's a
18 conference that's held to try to resolve the violations,
19 if we are unable to resolve the violations, we will
20 issue this document, this letter of preliminary
21 determination, advising the respondent of the process --
22 that he could either pay the violations or fines or make
23 a request for an administrative hearing to contest the
24 violations through the administrative hearing process.

25 Q. Thank you. And what forfeiture is recommended

1 in this case?

2 A. For failure to display the USDOT number is a
3 \$100 forfeiture, and operating a commercial vehicle in
4 interstate commerce without the required registration, a
5 \$500 forfeiture.

6 Q. Thank you. And would these amounts be typical
7 for a carrier in a similar case?

8 A. Yes, that's correct. The violations are uniform
9 from one carrier to another based upon the facts of the
10 case.

11 Q. Thank you. So would this be the amount you'd
12 recommend that the Commission assess the respondent for
13 if they should find he committed these violations?

14 A. That's correct.

15 Q. Thank you.

16 MR. LINDGREN: I have no further
17 questions.

18 ATTORNEY EXAMINER: Thank you,
19 Mr. Lindgren.

20 Mr. Scherer, do you have any questions for the
21 witness?

22 THE RESPONDENT: No, I do not.

23 ATTORNEY EXAMINER: Thank you.

24 I have no questions, Mr. Frye. You are excused.

25 Staff, does that conclude the presentation of

1 your case?

2 MR. LINDGREN: Yes, it does, Your Honor.

3 At this time, I would like to move for the admission of
4 Staff Exhibits 1, 2, 3 and 4.

5 ATTORNEY EXAMINER: Mr. Scherer, do you
6 have any objection to the admission of these exhibits?

7 THE RESPONDENT: No, I do not.

8 ATTORNEY EXAMINER: Thank you.

9 They will be admitted.

10 (Staff Exhibits 1-4 were admitted.)

11 ATTORNEY EXAMINER: Mr. Scherer, if you'd
12 like, you can take the stand. I would, again, advise if
13 there's any other documents that you'd like to
14 reference, please bring those with you.

15 Let's go off the record for a moment.

16 (Discussion off the record.)

17 ATTORNEY EXAMINER: Let's go back on the
18 record.

19 PHILLIP SCHERER

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

22 ATTORNEY EXAMINER: Thank you. You may be
23 seated. And Mr. Scherer, when you are on the stand, you
24 can state your side of the story however you would like.
25 I might have some follow-up questions, and, as I

1 explained before we went on the record this morning,
2 Mr. Lindgren may also have some questions after you've
3 finished.

4 Okay. You may begin whenever you're ready.

5 THE RESPONDENT: Well, I guess we should
6 start from the inception of this alleged commercial
7 motor vehicle, which it is not, once again. I've had a
8 discussion with numerous people that do DOT inspections,
9 that provide DOT numbers, insurance agencies, et cetera,
10 et cetera, et cetera.

11 Once again, I will state for the record that
12 this is my personal truck. It is not made to be
13 anybody's hauler or any other thing like that. It just
14 so happens this is the type of vehicle I choose to go
15 get my groceries with.

16 As for the problem with the trailer being out of
17 my name, I did own that trailer for approximately ten
18 years, and I sold it to what later became Dutch Harness.
19 And any time that I want to borrow it, that is not an
20 issue at all. There is no problem whatsoever with that.

21 This pickup truck, when it was pulled over,
22 actually still had the paper tag on it because it was
23 just purchased. If someone -- if you would like to see
24 the paper tag for what it's worth -- so you don't even
25 know how it's going to be plated for sure. This was

1 actually the first day out for this pickup truck.

2 And these people were coming over to Ohio to
3 some of their friends, and they were going to buy
4 some -- I don't know. Evidently, there's another Amish
5 community close by that they were going go buy some
6 furniture and use the trailer to transport it back.

7 So this was not a construction crew. This was
8 not a doggoned -- some type of a work deal. Like I
9 said, they didn't even have a lunch pail. Ms. Kurtz has
10 made a nice story, but that's exactly what it is.

11 EXAMINATION

12 BY THE ATTORNEY EXAMINER:

13 Q. So you were simply providing them
14 transportation? Is that what you're --

15 A. I was doing them a favor. I had some business
16 up in the Detroit area, and Toledo from Fort Wayne is
17 not very far outside of the general area.

18 Q. You said you had some business in the Detroit
19 area?

20 A. Yes.

21 Q. Were you transporting them on your way to
22 Detroit?

23 A. Yes. As I had stated, my original statement to
24 Officer Kurtz was that all I was doing was dropping them
25 off in the Central -- she called it a job site. They

1 have acquaintances that happened to move there.

2 This was a finished product. I don't know, you
3 know -- I don't know how you can do anything without a
4 hammer, an air compressor. I mean, just because there's
5 some stuff on the side of a trailer, well, if there
6 isn't anything in it, you're not going to do anything
7 with it.

8 But once again, this is my personal truck to do
9 what I feel as my personal business.

10 Q. And Mr. Scherer, did you go out of your way in
11 order to take them to this location?

12 A. Just as far off of 75 as what Central is. I
13 mean, just a matter of a couple miles. Certainly
14 nothing to speak of.

15 Excuse me. Let me clarify that. 475.

16 Q. Thank you.

17 A. That has been a discussion for several months is
18 just this particular issue, to make sure that since I am
19 a valid commercial driver and hold a valid CDL with all
20 the endorsements, that I protect my livelihood. And
21 considering that I work for a carrier on a part-time
22 basis, that it would be foolish for me to attempt to
23 mess that license up with my personal vehicle.

24 Q. Have you ever used your truck and trailer for
25 non-personal use?

1 A. No. I mean, like I said, just in January, I
2 just purchased the truck.

3 Q. And you said the passengers were going to that
4 location to meet with acquaintances?

5 A. Yes, ma'am.

6 Q. Is that correct? Is there any way that they
7 were actually on their way to a work site and you were
8 unaware of that? Or --

9 A. Not to my knowledge. I mean, I know that, you
10 know, they didn't have anything with them. They weren't
11 going to be gone anywhere near that length of time. I
12 mean, the inside of the trailer may have had a couple
13 little knickknacks in it, but it was essentially empty.

14 They said something about some furniture place
15 up around that area, that their wives had gone shopping
16 and they got something and they were going to bring it
17 back. I don't know. Table, chairs, some type of, you
18 know -- you just can't fit just in anything. And they
19 said something about a trailer because they didn't want
20 the thing out. They couldn't fit it in a van, and they
21 didn't want it out just in an open pickup truck to be
22 rained on or snowed on or whatever.

23 Q. How often do you borrow the trailer? You said
24 you borrow it from Dutch Harness occasionally?

25 A. Yes. Like I said, I had owned it for ten years,

1 since it was new. And it got sold to them. I think
2 it's like a 2000 or something like that. The
3 registration's in this mess if you really, really want
4 to be that particular with it.

5 But I sold it to them after I really didn't have
6 any use for it. And part of the selling agreement was
7 that any time I want to use it, hey -- the exact words
8 were, and I quote, "You know where it's at, so come get
9 it."

10 Q. And do they typically have the ladder and the
11 other equipment that Ms. Kurtz referred to in Staff
12 Exhibit 2 and 3 attached to the side of the trailer?

13 A. I was there probably a month ago and yes, it was
14 still hanging in that same position. As I stated
15 earlier, it would be completely wrong of anyone even to
16 insinuate that this truck was purchased by them for work
17 because, like I said, they have four other full-sized
18 vehicles registered with the state of Indiana.

19 Q. Do you know if they have any trailers such as
20 the one in this proceeding? Any similar trailers?

21 A. They had a similar trailer. The one in
22 particular that we're talking about is 12 foot in
23 length. They have another one just like it that's 10
24 foot in length, a little newer, but same configuration.
25 And by the way, that one, I don't borrow.

1 Q. Thank you for that. I don't believe I have any
2 further questions. Is there anything else that you'd
3 like to add, Mr. Scherer?

4 A. Well, looking at the report from a seasoned
5 officer, the fact that the 12,000-pound gross vehicle
6 weight rating, which she has stated does not matter, is
7 grossly inaccurate. The fact that there's supposedly
8 tools inside this trailer and there's no picture is,
9 once again, grossly inaccurate. The job site looks to
10 me like it is finished, which it is. Even the grass is
11 in. So that job site really isn't a job site according
12 to her own pictures.

13 To come and state something, like I said, as
14 ridiculous as these people bought the truck to have
15 someone haul them around, considering that they have
16 four other vehicles licensed, is ridiculous.

17 Taken separately, they could be construed as a
18 mistake. Taking the whole thing into context in
19 complete -- in this single case, I have no other thing
20 other than to, unfortunately -- I hate to be rude -- but
21 to call Officer Kurtz a liar.

22 ATTORNEY EXAMINER: Thank you,
23 Mr. Scherer.

24 Mr. Lindgren, did you have any questions?

25 MR. LINDGREN: Yes. Thank you, Your

1 Honor.

2 CROSS-EXAMINATION

3 BY MR. LINDGREN:

4 Q. Mr. Scherer, you stated that you do occasionally
5 drive commercially for Horizon Transport; is that right?

6 A. Dedicated Transport. Yes.

7 Q. And do you drive your own personal vehicle when
8 working for them?

9 A. No.

10 Q. What do you drive?

11 A. A semi. A Class A truck.

12 Q. So you never drive your own personal vehicle
13 while being compensated?

14 A. No. I drive down to their lot down in Edinburg,
15 Indiana, but, I mean, that's no different than you
16 driving here. I hop in one of their trucks and hook
17 onto one of their trailers and, you know, it's a semi.
18 I don't know if you're familiar with Horizon Dedicated,
19 the black and white internationals?

20 Q. I believe I've seen them. Thank you,
21 Mr. Scherer. How did you happen to find out that these
22 passengers were looking for a ride to Toledo?

23 A. They are -- I use a term loosely -- neighbors.
24 Obviously, they live several miles away, but we have
25 kept in contact through the years. I used to be

1 employed by their father or grandfather, and he's been
2 dead close to 20 years. And occasionally I will help
3 them out and do something, but as a rule, I don't have
4 the time, and it's just not my line of work. It's too
5 hard, sorry.

6 Q. So did they come to your home and ask you to
7 drive them? Or how did you find out they needed a ride?

8 A. No. They called me and they asked if I happened
9 to be around because, like I said, I am in and out
10 driving a truck part-time. So sometimes I'm home and
11 sometimes I'm not.

12 Q. So these were Amish people and they used a phone
13 to call you?

14 A. Yes.

15 Q. That's not typical, is it?

16 A. Nowadays, it is quite typical. They are not any
17 different than you or I. They have computers, faxes,
18 iPads, whatever you want to have.

19 Q. So these passengers were going to Toledo to pick
20 up furniture? Was that your statement?

21 A. That's what they told me, yeah. After the fact.

22 Q. So they were going to new homes in a newly
23 built -- to a newly-built group of homes to pick up
24 furniture?

25 A. Well, evidently one of their acquaintances lived

1 at this particular apartment complex there, and they
2 were going to go with them to some place right around
3 that generalized area. There's obviously some Amish
4 that do some furniture work, like a cabinet-type shop.
5 I really wasn't too concerned with it.

6 Q. So why did you take them to this site, then,
7 instead of to this shop where they were going to pick up
8 the furniture?

9 A. Because they said that the person they were
10 going with lives there, and they were going to take care
11 of it from there. They knew that I had some business up
12 in Detroit and, you know, I wasn't -- I'm not for hire.
13 I'm not here to just haul somebody around and be a taxi
14 cab or anything else. If it's not out of my way and I
15 can help someone out, I'm happy to do it.

16 Q. Okay. But you were going up to Detroit to do
17 business, you testified?

18 A. That's correct.

19 Q. Were you going to be paid to do that?

20 A. No. I was actually out filling out a couple
21 applications.

22 Q. You weren't going to be hauling anything back?

23 A. No. As I said, and here's the temporary tag
24 that was on the truck being pulled over, it was a
25 brand -- it was a two-year-old truck, but that was

1 actually the first day that I had it back from the shop
2 to actually have it out and drive.

3 MR. LINDGREN: Thank you. I have no
4 further questions.

5 ATTORNEY EXAMINER: Thank you. I don't
6 believe I have any further questions either,
7 Mr. Scherer. You are excused.

8 Okay. At this time, I will provide each party a
9 brief opportunity to make a closing statement
10 summarizing their position based on the evidence
11 submitted in this case.

12 Mr. Lindgren?

13 MR. LINDGREN: Yes, thank you, Your Honor.
14 The evidence shows that the respondent, Mr. Scherer,
15 drove from the state of Indiana into the state of Ohio.
16 The evidence shows that he was operating a vehicle for
17 hire. He was being paid to transport some passengers
18 and their equipment to a job site. The evidence shows
19 this was not a personal trip as he would have this
20 Commission believe.

21 So the Commission should find him liable for
22 these violations and assess the forfeiture. Thank you.

23 ATTORNEY EXAMINER: Thank you.

24 Mr. Scherer?

25 THE RESPONDENT: Once again, my personal

1 vehicle on my personal business and my personal time,
2 not being compensated. And you have an extremely
3 overzealous officer that harassed professional drivers.

4 Upon being pulled over and seeing a Class A CDL,
5 she was so irate, she forgot to even ask for the
6 insurance card. All she could say was, "Where's your
7 medical certificate?" and "Where's your log book?"

8 And I said, "Ma'am, this is my own personal
9 vehicle, and I don't need any of those."

10 Obviously, with her report, if you look at it,
11 you can see gross discrepancies with it. Nothing proved
12 any type of money being changed hands, working for
13 anyone, or anything of such, you know -- this is
14 personal time, a personal truck. And while it's a
15 little bit large to go get groceries with, it just so
16 happens that's what I like. That's all.

17 ATTORNEY EXAMINER: Thank you,
18 Mr. Scherer.

19 I will review the record and draft a
20 recommendation for the commission in the form of what is
21 called an opinion and order. Once the commission issues
22 its opinion and order, a party will have 30 days from
23 the date that the order is issued to file an application
24 for rehearing if the party does not agree with the
25 decision. Please note that the 30-day time frame is set

by statute and cannot be extended.

Is there anything else that we need to discuss today?

MR. LINDGREN: No, thank you, Your Honor.

THE RESPONDENT: The only question is -- the Court does have my correct mailing dress as the Post Office Box 18?

ATTORNEY EXAMINER: Yes, we have noted that, Mr. Scherer.

THE RESPONDENT: Good.

ATTORNEY EXAMINER: Thank you. If there's nothing else, this case is submitted on the record, and we are adjourned.

(At 11:00 a.m. the hearing was concluded.)

- - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings taken
by me in this matter on Wednesday, July 6, 2016, and
carefully compared with my original stenographic notes.

Heather A. Piper,
Registered Professional
Reporter.

- - -

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Case No(s). 16-0730-TR-CVF

Summary: Transcript In the Matter of Phillip Scherer Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on July 6, 2016. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Ms. Heather A. Piper