

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Cecilval :
Williams, Notice of :
Apparent Violation and : Case No. 17-119-TR-CVF
Intent to Assess :
Forfeiture. :

- - -

PROCEEDINGS

before Mr. James Lynn, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at 10:00
a.m. on Tuesday, May 2, 2017.

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481

- - -

1 APPEARANCES:

2 Mike DeWine, Ohio Attorney General
3 By Mr. John Jones,
4 Assistant Attorney General
5 30 East Broad Street, 16th Floor
6 Columbus, Ohio 43215

7 On behalf of the Staff of the PUCO.

8 Yemc Law Offices
9 By Mr. Michael J. Yemc, Jr.
10 600 Pearl Street
11 Columbus, Ohio 43206

12 On behalf of the Respondent.

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1 Tuesday Morning Session,

2 May 2, 2017.

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4 EXAMINER LYNN: Let's go on the record at
5 this time.

6 The Public Utilities Commission of Ohio
7 has assigned for hearing at this time and place Case
8 No. 17-119-TR-CVF in the Matter of Cecilval Williams,
9 Notice of Apparent Violation and Intent to Assess
10 Forfeiture.

11 I'm Jim Lynn, the Attorney Examiner
12 assigned to hear this case, and at this time we will
13 have the appearances of the parties beginning with
14 the Ohio Attorney General's Office.

15 MR. JONES: Yes. Good morning, your
16 Honor. On behalf of the staff of the Public
17 Utilities Commission of Ohio, Ohio Attorney General
18 Mike DeWine, Assistant Attorney General John Jones,
19 30 East Broad Street, 16th Floor, Columbus, Ohio
20 43215.

21 EXAMINER LYNN: Thank you.

22 And for Mr. Williams.

23 MR. YEMC: Yes. Thank you. Michael
24 Yemc, Supreme Court Number is 0065390, on behalf of
25 Mr. Williams.

1 EXAMINER LYNN: And your address,
2 Mr. Yemc.

3 MR. YEMC: Is 600 South Pearl Street and
4 that's in Columbus, Ohio 43206.

5 EXAMINER LYNN: Thank you.

6 All right. Having had the appearances of
7 the parties entered, we can begin our proceedings --
8 I should say continue our proceedings. We'll first
9 hear from Mr. Jones and his witness.

10 MR. JONES: Thank you, your Honor. Your
11 Honor, staff would call Officer Holzworth to the
12 stand.

13 EXAMINER LYNN: Okay. Please take the
14 stand and if you would raise your right hand.

15 (Witness sworn.)

16 EXAMINER LYNN: Thank you. Please have a
17 seat.

18 And, Mr. Jones, please continue.

19 MR. JONES: Thank you, your Honor.

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JOHN HOLZWORTH

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

DIRECT EXAMINATION

By Mr. Jones:

Q. Can you please state your name for the
record, please.

A. My name is Motor Carrier Enforcement
Officer John Holzworth.

Q. And where are you employed?

A. Employed by the Ohio State Highway Patrol
located at 1653 Marion Road, Bucyrus, Ohio 44820.

Q. What is your job title and
responsibilities?

A. My job title Motor Carrier Supervisor, I
supervise the lower level Motor Carrier guys as well
as do truck inspections, driver inspections myself.

Q. And how long have you been employed
there?

A. 19 years, 20 years this month.

Q. And what training have you had for your
qualifications to do your job?

A. We go through various training. I've got
North American Standard A and B, Hazmat, cargo tank,
bulk, other bulk, commercial vehicles, passenger

1 training, various other training.

2 Q. Do you have updated training on an annual
3 basis?

4 A. Yes. We have in service once a year to
5 update us on all the changes in the TSR and Hazmat
6 regulations.

7 Q. And what equipment is issued to you to do
8 your job?

9 A. We are assigned a Tahoe to make traffic
10 stops with and MCT or laptop computer, Panasonic
11 Tough Book, to enter all the data from our records.

12 Q. And what's your scope of your
13 jurisdiction?

14 A. Throughout the state of Ohio, mainly our
15 District 2 and which is the Bucyrus District. We
16 cover roughly 15 counties.

17 Q. And as a result of conducting inspections
18 as part of your job, what kind of paperwork do you
19 generate from doing that?

20 A. We enter all our data in a program called
21 Aspen and that basically gives us the name of the
22 carrier, the location we are doing the inspection at,
23 the vehicle identification, tractor-trailer, and the
24 driver's information, and any violations we witness
25 during that inspection we document on that Aspen

1 program.

2 Q. Okay. And I want to draw your attention
3 then to Staff Exhibit 1 before you. Would you please
4 identify that document for the record, please.

5 A. Staff Exhibit 1 is the Driver/Vehicle
6 Examination Report that I generate after I complete
7 an inspection printout. We hand this out to every
8 driver after we complete an inspection at the end of
9 the inspection. We go over it with them. We sign
10 it. Just the signature for us is just stating we
11 generated a report, and we ask the driver to sign it
12 only to -- they are not signing it's any guilt or
13 anything. They are just receiving a copy and, you
14 know, the witness that, yes, we explained the
15 document to them and they received it.

16 Q. And as it pertains to Staff Exhibit 1,
17 did you have occasion to conduct an inspection on the
18 Respondent Cecilval Williams in this case?

19 A. Yes, sir.

20 Q. And what date did that occur on?

21 A. September 7, 2016.

22 Q. Okay. And let me ask you what -- I see
23 there is a report number. Where does that come from?

24 A. The report number comes from when we
25 first start off, like if you are a new hire, it goes

1 about -- obviously OH is Ohio, 3291 would be my unit
2 number, and then the 011328 is the number of
3 inspections I have period.

4 Q. Okay. And approximately what time did
5 you have occasion to conduct this inspection and
6 where?

7 A. The inspection was conducted on 71 at the
8 176 mile marker southbound, that's in Richland
9 County, and the time of stop was 7:34 a.m., completed
10 at 8:05.

11 Q. Okay. And so that's Richland County,
12 Ohio; is that correct?

13 A. Mansfield, Ohio, yes.

14 Q. Mansfield, Ohio, okay. And at that time
15 what was your status as far as being on duty?

16 A. I was out patrolling. I was sitting
17 stationary on -- at the 178 mile marker facing
18 southbound traffic, and I observed Mr. Williams pass
19 me in the center lane talking on a handheld cell
20 phone.

21 Q. Okay. And how were you dressed and
22 what -- how was your vehicle marked?

23 A. Vehicle was marked State Highway Patrol
24 Motor Carrier Enforcement on both sides of it, front
25 and back -- sorry, just the back, not the front, and

1 the uniform of the day was my BDU uniforms, not this
2 one, but it's -- I would say it identifies who we are
3 with the same patches.

4 Q. Okay. And then on that date of
5 September 7, 2016, you testified you had occasion
6 then to view Mr. Williams. Would you please give us
7 more detail as to what you observed and how you
8 observed it.

9 A. Sure. I am going to go off my note
10 section here. Like I was sitting staring in a
11 crossover which isn't in the note section, but I was
12 sitting stationary. Mr. Williams passed me traveling
13 in the center lane which is through three lanes of
14 travel. I observed him talking on a large smartphone
15 held in his right hand.

16 Upon contact I asked him, you know, if he
17 was talking on his phone. And first he stated he had
18 a bluetooth in. He wasn't talking on the phone; he
19 was talking on the bluetooth. So I asked him to show
20 me the bluetooth, and he had to pop the center
21 console and overhead compartment and retrieve it from
22 there. And then he showed me it, and then I asked
23 him to pull up his call history. And at the time he
24 complied and showed me the times that he was on the
25 phone, and it shows 7:00 a.m. -- 7:25 a.m. until the

1 time of inspection which was 7:34.

2 Q. Okay. And let me break that down a
3 little bit here. So on -- at that time that date
4 was -- did you have an unobstructed view --

5 A. Absolutely.

6 Q. -- observing Mr. Williams in his truck?

7 A. Yes.

8 Q. Okay. And what were the conditions like?

9 A. There's nothing documented on this
10 documentation like would trigger a citation like
11 saying dry, wet, but it was a decent day. There was
12 no rain. There was no fog. It was daylight.

13 Q. Okay. And so you observed -- you
14 observed what you just testified to. Now, what --
15 what drew your attention to observe this?

16 A. When I am out looking for violations,
17 when I am sitting in a crossover, I can see -- where
18 I am sitting at in the crossover is kind of up, and
19 71 is kind of down, sitting on just a little bit of a
20 hill, and they are coming downhill where I am
21 sitting, so I can see right into their cab.

22 And when they come by and pass me, I got
23 a clear view of no obstruction what -- witnessing
24 what's going on there for a brief 5 seconds, 10
25 seconds, somewhere in that.

1 So that's what I look for is obvious
2 violations and that is an obvious violation. So
3 that's what I stopped him for and that's the
4 enforcement I took.

5 Q. Let me ask you, please describe in more
6 detail how you observed the holding of the handheld
7 device by Mr. Williams.

8 A. This is basically -- the phone he had was
9 pretty large. It was a smartphone and he is holding
10 it in his hand talking and it's probably about --
11 from where I am sitting to the center lane probably
12 around approximately 30 feet, maybe not even that
13 much, somewhere within 25, 30 feet, so I have got a
14 pretty good view in there.

15 And when I see, you know, them driving
16 down, you know, operating a commercial vehicle
17 steering with one hand, holding the cell phone in the
18 other, it's pretty obvious to me, as you can see,
19 they are, you know -- most of the time you can see
20 them talking, their lips are moving as they are going
21 by.

22 EXAMINER LYNN: Question for the officer,
23 did you see Mr. Williams through the windshield or
24 side window or what?

25 THE WITNESS: Through the windshield.

1 EXAMINER LYNN: Through the windshield.
2 And you are indicating that you were in a crossover,
3 and you were at higher -- I will say a higher
4 elevation for lack of a better description.

5 THE WITNESS: Not a whole lot higher but
6 higher.

7 EXAMINER LYNN: You were actually looking
8 down into the -- through the windshield.

9 THE WITNESS: I wouldn't say I am looking
10 down. We are just up a little bit, and they are
11 coming down a hill.

12 EXAMINER LYNN: Oh, you are looking up a
13 little bit.

14 THE WITNESS: When they are coming down,
15 it's a big long hill that comes down and slowly.

16 EXAMINER LYNN: I see, I see. Okay. So
17 the -- he was approaching you, he was initially
18 coming down the hill, and you were in the crossover
19 and you could look up through the windshield and see
20 what he was -- what he was doing while he was
21 driving.

22 THE WITNESS: Yeah. The windshield and
23 side window.

24 EXAMINER LYNN: I see. You were looking
25 through the windshield?

1 THE WITNESS: Both. As he comes, you can
2 see him come. You can see him come this way. I'm
3 parked this way, and they are traveling this way.

4 EXAMINER LYNN: Okay. He was holding it
5 in his right hand steering with his left.

6 THE WITNESS: Yep.

7 EXAMINER LYNN: All right. Thank you.

8 Please continue, Mr. Jones.

9 Q. (By Mr. Jones) Okay. I think you just --
10 you were indicating as you were gesturing how he was
11 driving and holding it, and I think you were saying
12 that he was driving with his left hand and right hand
13 he was holding the device; is that correct?

14 A. Uh-huh, correct.

15 Q. And he was holding the device where in
16 relation to his --

17 A. To his right ear.

18 Q. To his right ear. Okay. And you also
19 observed what appeared that he was talking to the
20 device?

21 A. Yes, sir.

22 Q. And how long would you say you had an
23 opportunity to view that conduct?

24 A. Probably anywhere from 10 seconds,
25 approximately.

1 Q. And that was as --

2 A. As he comes down.

3 Q. -- he approached and passing?

4 A. Uh-huh, that's correct.

5 Q. And what is the speed limit in that area?

6 A. 70 miles per hour.

7 Q. And then so after you observed this, what
8 action did you take then from your location?

9 A. I pulled out and stopped Mr. Williams at
10 the 176 southbound which is approximately 2 miles
11 from where I was sitting stationary and performed
12 what's called a level III inspection which is a
13 driver only inspection.

14 Q. And how did you alert Mr. Williams that
15 he -- for the stop?

16 A. I activated my overheads, red overheads
17 on our vehicles.

18 Q. Okay.

19 A. Red overhead lights.

20 Q. Okay. And then once you made the stop of
21 Mr. Williams and his commercial motor vehicle, walk
22 us through what you did then at that point.

23 A. Once I made contact with him I was
24 getting him stopped in a safe location. I make a
25 passenger side approach, knock on the door, climb up

1 on the side of the vehicle, advise him I stopped him
2 to do a safety inspection. When you passed me, I
3 noticed you were talking on your cell phone. That's
4 a violation of federal law. That's why I stopped
5 you. I am going to be, you know, issuing a violation
6 of that today.

7 Q. Okay.

8 A. And then the rest of it is what I already
9 testified to, basically asked him if he had a phone,
10 if he was talking on his phone. He said no. I was
11 talking on a bluetooth. You were talking on your
12 bluetooth. Where is it? It wasn't on his person at
13 the time of the stop, so to me it would be kind of
14 odd to take a bluetooth out and put it in the
15 compartment, close it within 2 miles of the stop --

16 Q. Okay.

17 A. -- so.

18 Q. All right. And so what -- Mr. Williams,
19 he was cooperating with you?

20 A. Absolutely, very cooperative.

21 Q. Okay. And you had an opportunity to ask
22 to look at the handheld device?

23 A. Yes, sir.

24 Q. And what did you do once you had that
25 handheld device in your hand?

1 A. I had him pull up the call history and
2 show me his call history, and I verified that the
3 call -- his last call made was -- the times of it,
4 and then I just documented it.

5 Q. Okay. And the device itself, what was
6 it?

7 A. The large smartphone I believe he has
8 sitting on the table there.

9 Q. Okay. And let me ask you then as far as
10 making the identification, Mr. Williams and the
11 information you had in the report about the truck and
12 so forth, how did you confirm all that information?

13 A. Are you referring to the registrations
14 and stuff?

15 Q. Yes.

16 A. He gave me the registration for the
17 vehicle. There wasn't one for the trailer. I tried
18 to run the registration but couldn't get any back on
19 it as far as the VIN number comes, but everything on
20 this document is accurate except for the top
21 left-hand corner where it states Public Utilities
22 Commission. Our printout says State of Ohio, State
23 Highway Patrol on it with our address and then our
24 fax number and phone number. But everything else is
25 exactly the same.

1 Q. Okay. And what type of inspection level
2 was involved here for your inspection?

3 A. The level III driver only inspection.

4 Q. What does that mean?

5 A. Basically a level III we stop, we verify
6 their credentials, make sure he is medically
7 certified, he has a valid CDL, he is not impaired or
8 seems impaired, his logbook status is current, he is
9 not operating over 70, 14, 11 hour rules. Basically
10 that's it.

11 Q. Okay. And the information here you have
12 it looks like -- a carrier listed on your report, how
13 do they fit to your report here for what's -- what
14 was the relationship here to Mr. Williams?

15 A. Schneider Carriers?

16 Q. Yes.

17 A. That's who he was employed by that day.

18 Q. Okay.

19 A. The day of the stop.

20 Q. So that would have been the carrier he
21 was working with that day for driving his vehicle?

22 A. Yes, sir.

23 Q. Okay. And you also identified then the
24 destination for the trip itself, origin, where it
25 originated, and destination information?

1 A. Yes.

2 Q. What's it indicate?

3 A. The origin East Hartford, Connecticut,
4 and destination was North Vernon, Indiana, and then
5 the shipper Kichler Home Center, and then the bill of
6 lading number's also on there as well.

7 Q. Okay. And then you had the vehicle
8 identification information, and you took that from
9 the truck itself?

10 A. I got the actual registration from the
11 cab, the actual tractor, from Mr. Williams.

12 Q. Okay. And what's the -- in that block of
13 information, GVWR, indicate for us?

14 A. Gross vehicle weight rating.

15 Q. Okay. And then for your violations here,
16 you -- how many did you note for your report?

17 A. Just one, sir.

18 Q. Okay. And would you describe, you know,
19 that code in the description.

20 A. 392.82(a)(1) basically says any driver
21 cannot use a handheld cellular phone while operating
22 a CMV, commercial motor vehicle.

23 Q. And what is OBVI in parentheses?

24 A. Obvious. That's the obvious violation I
25 had. That was my reason for the stop. If you go

1 down to where it says "Locally Defined Fields" where
2 it says "Reason Code: OBVI" it's stated there as
3 well.

4 Q. Oh, okay, okay. Very good. All right.
5 So, now, is all the information that's contained in
6 Staff Exhibit 1, is that accurate to the best of your
7 knowledge with the exception of what you noted in the
8 heading?

9 A. Yes, sir.

10 Q. Okay. And is this a record that's kept
11 in the ordinary course of business for your agency?

12 A. Yes. Our agency retains this as well as
13 the PUCO.

14 Q. And let me ask you when is this report
15 prepared?

16 A. This report is prepared on the day of the
17 inspection.

18 Q. Okay. And tell me then after you have
19 made contact with the driver, Mr. Williams in this
20 case, how soon thereafter do you make up the report?

21 A. Immediately afterward. Go back to my car
22 and begin entering all the information into the Aspen
23 program which is this that we have in front of me.

24 Q. And then after you've loaded that
25 information into your computer, what do you do then?

1 A. Once we get everything entered we print
2 it out. We give a copy to the driver, and then after
3 they get a copy, depending on server availability, we
4 upload it, and then it transfers over to the PUCO.

5 Q. Okay. So you electronically transmit a
6 copy to the Public Utilities Commission of Ohio?

7 A. Yes, sir.

8 Q. And when do you do that?

9 A. Usually at the end of that day.
10 Sometimes the server is down, and we will have to
11 wait until the next day, but it generally depends on
12 the availability of the server.

13 Q. Got you. So after you've inputted your
14 information, you printed out your form, then you make
15 contact with Mr. Williams again and go over that
16 information. What's done then with the report at
17 that point?

18 A. I transfer the copy that I print out to
19 the driver, which in this case is Mr. Williams, and I
20 just go over it with him. Here is the time I stopped
21 you for your logbook, you know, tell him it's going
22 to be on duty not driving, and just go over the where
23 I stopped him at, what the violations were, and ask
24 him if he has any questions.

25 And then I tell him what he needs to do.

1 You need to turn this into your employer, and they
2 need to have it faxed back to the address up here
3 within a certain amount of time, usually 15 days or
4 before you are redispached, and if there is any
5 vehicle violations but obviously there isn't --
6 wasn't because this is a level III which is a driver
7 only.

8 Q. What signatures would have been on the
9 original report?

10 A. My signature and Mr. Williams.

11 Q. Okay. And that report then is given to
12 who? The --

13 A. Mr. Williams.

14 Q. Mr. Williams, okay. And you said that
15 for your identification Mr. Williams confirmed that
16 he was the person that was driving the vehicle, what
17 did you -- how did you confirm that?

18 A. Through his driver's license.

19 Q. Through his driver's license. And is the
20 same Mr. Williams here in the courtroom today that
21 you stopped that day --

22 A. Yes, sir.

23 Q. -- for that inspection?

24 MR. JONES: Your Honor, can the record
25 reflect the witness has identified Mr. Williams in

1 the courtroom here today as the Respondent?

2 EXAMINER LYNN: I will make note of that.

3 Do you have any other questions,

4 Mr. Jones?

5 MR. JONES: I'm sorry?

6 EXAMINER LYNN: Any further questions,

7 Mr. Jones?

8 MR. JONES: Let's see. Just a second,
9 your Honor. See if I have anything else here.

10 Q. I do have one other question for you. So
11 based on your inspection and your report, it's your
12 opinion then Mr. Williams, the code you cited him
13 for, 392.82(a)(1), for safety regulations, you are
14 asking the Commission to find him in violation of
15 that code section?

16 A. Yes, sir.

17 MR. JONES: Your Honor, that's all I
18 would have.

19 EXAMINER LYNN: Thank you.

20 Mr. Yemc, any questions of the witness?

21 MR. YEMC: Yes, thank you.

22 EXAMINER LYNN: Please go ahead.

23 - - -

24

25

CROSS-EXAMINATION

By Mr. Yemc:

Q. Now, Inspector Holzworth, you indicated you approached the vehicle from the passenger side; is that correct?

A. That's correct.

Q. And you stood up on the sideboard of the tractor-trailer; is that correct?

A. That's correct.

Q. Okay. And when you stood up on that sideboard, was Mr. Williams in his seat?

A. He might have been. I can't remember exactly if he got up moving around. But most of the time, yeah, they are sitting in their seat. They will leave their seat belt on to show they had their belt on.

Q. So he would have had his belt on sitting in his seat.

A. He might have been.

Q. Okay. Do you recall him opening up the door for you?

A. No, I don't recall.

Q. Okay. How did you get into the vehicle?

A. I usually knock on the passenger door and ask them -- most of the time the driver rolls down

1 the window, and I can't see so I will ask them to
2 open the door so I can climb up into the cab.

3 Q. Now, whenever you approached the vehicle,
4 do you recall where the cell phone was located?

5 A. In the vehicle at the time of the stop?

6 Q. Correct.

7 A. Not offhand, no. I don't know what he
8 did with it after I passed him.

9 MR. YEMC: Okay. I have no further
10 questions.

11 - - -

12 EXAMINATION

13 By Examiner Lynn:

14 Q. And obviously did you indicate -- did you
15 say that you actually climbed into the cab?

16 A. I will stand on the side rails on the
17 steps on the passenger side. There is two of them.
18 There is one below the tank and one almost on top of
19 the tank but I never get in -- I never get into the
20 vehicle, no. I mean, I open the door, and I am in
21 the doorway, but I don't enter the vehicle.

22 Q. And did you -- let's see, you did check
23 on his cell phone call history, but did you just
24 state a moment ago you weren't sure where the
25 telephone itself -- cell phone was when you first

1 spoke to him?

2 A. He was asking was it in his lap, in his
3 pocket. What he did from the time I pulled out to
4 the time I stopped him, I couldn't tell you that --

5 Q. Okay.

6 A. -- because I couldn't see it.

7 Q. Okay. But when you did ask Mr. Williams
8 to show you the call history, he was able to --

9 A. He complied.

10 Q. -- produce it immediately?

11 A. Yes, sir.

12 EXAMINER LYNN: All right. Thank you.
13 Mr. Williams -- or Mr. Jones.

14 MR. JONES: Yeah. I couldn't hear your
15 question, your Honor.

16 EXAMINER LYNN: I'm sorry.

17 - - -

18 REDIRECT EXAMINATION

19 By Mr. Jones:

20 Q. You asked him to -- he immediately
21 produced his phone upon --

22 A. He did.

23 Q. -- asking him for it?

24 A. Yes, sir.

25 MR. JONES: That's all I have, your

1 Honor. I would move for the admission of Staff
2 Exhibit 1.

3 EXAMINER LYNN: Okay. Mr. Yemc, any
4 objections to -- any objections to admitting Staff
5 Exhibit 1 into evidence?

6 MR. YEMC: No objections.

7 EXAMINER LYNN: All right. Thank you.
8 That will be admitted into evidence then.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 EXAMINER LYNN: That's the Driver/Vehicle
11 Examination Report.

12 And, Mr. Jones, do you have additional
13 witnesses?

14 MR. JONES: Your Honor, the parties have
15 stipulated here to the testimony of Staff Witness Rod
16 Moser and the testimony he would have given on Staff
17 Exhibit 2, being the Notice of Preliminary
18 Determination that was sent to the Respondent --
19 actually the Respondent's counsel, and indicating the
20 calculation for the violation and that calculation
21 being \$250 for using a handheld mobile telephone
22 while operating a commercial motor vehicle. It's a
23 Group 4 violation, and we would ask if the Commission
24 were to find that Mr. Williams has violated that code
25 section, we would ask the Commission to assess a

1 forfeiture of \$250 as calculated by the staff in this
2 exhibit.

3 EXAMINER LYNN: Thank you, Mr. Jones.

4 MR. JONES: Thank you, your Honor.

5 EXAMINER LYNN: I assume then --

6 MR. JONES: I would move for the
7 admission of Staff Exhibit 2, your Honor.

8 EXAMINER LYNN: Mr. Yemc, any objections
9 to admitting Staff Exhibit 2 into evidence?

10 MR. YEMC: No, no, your Honor. And that
11 is an accurate stipulation. If there is a violation
12 found, that the \$250 is the accurate amount.

13 EXAMINER LYNN: All right. Thank you.

14 And with that being said, Staff Exhibit
15 2, the Notice of Preliminary Determination, will also
16 be admitted into evidence.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER LYNN: And, Mr. Jones, any
19 further questions at this time?

20 MR. JONES: No, your Honor.

21 EXAMINER LYNN: Thank you.

22 Officer, you can take your seat. Thank
23 you.

24 Mr. Yemc, it's your opportunity with your
25 witness.

1 So, Mr. Williams, if you would like to
2 take the stand, please.

3 MR. YEMC: Yes, thank you.

4 EXAMINER LYNN: Mr. Williams, if you
5 would raise your right hand.

6 (Witness sworn.)

7 EXAMINER LYNN: Thank you. Please have a
8 seat.

9 And, Mr. Yemc, please continue when you
10 are ready.

11 MR. YEMC: Thank you, your Honor.

12 - - -

13 CECILVAL WILLIAMS

14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Yemc:

18 Q. Could you please state your name and
19 address for the record.

20 A. It's Cecilval Williams, 122-124 Adams
21 Street. That's Hartford, Connecticut 06112,
22 Hartford, Connecticut.

23 Q. And, sir, what is your occupation?

24 A. I'm a driver, trailer driver.

25 Q. Okay. How long have you been driving a

1 commercial vehicle?

2 A. Maybe 22, 23 years. Well, outside --
3 different countries but here in the states, I mean,
4 here in the states over four, almost five years.

5 Q. Okay. And, sir, on September 7 of 2016,
6 did you happen to be driving a commercial
7 tractor-trailer in the state of Ohio, county of
8 Richland, around Mansfield?

9 A. Yes, sir, I know I was passing through
10 Ohio to my -- from Hartford to Indianapolis.

11 Q. Okay. And on that date did you get
12 stopped by Inspector Holzworth?

13 A. Yes, sir.

14 Q. Now, you heard testimony from Inspector
15 Holzworth that indicates that you were speaking on
16 the cell phone just prior to him stopping you.

17 A. Yes, sir.

18 Q. Okay. Were you on the phone that day?

19 A. Yes, sir.

20 Q. Okay. And could you describe for the
21 court or for this hearing what exactly you were doing
22 on the phone that day.

23 A. Well, just before moving out in the
24 morning, which was about like maybe within 2, 3 miles
25 of where I was stopped, I was just moving just

1 leaving from the rest stop heading out on the road.
 2 I was talking to my wife just before leaving out
 3 going down the road. All right. When I say talking
 4 to my wife, I was using the phone number, holding the
 5 phone. I have a small earpiece --

6 Q. Okay.

7 A. -- I use, this little earpiece. So I had
 8 this on heading down the road.

9 Q. And is that the earpiece you had the day
 10 in question when you got stopped?

11 A. Yes, sir.

12 Q. So when Inspector Holzworth pulled you
 13 over and asked you if you were speaking on the phone,
 14 you told him that you were.

15 A. Yes. First, I said I were -- I am -- I
 16 was speaking on the phone but then that comes quickly
 17 you were holding, you know, holding your phone, so it
 18 was like yes, sir; no, sir. So, yes, I was using the
 19 phone. Were you on it? No, sir. So that was like
 20 that.

21 EXAMINER LYNN: Just to clarify for the
 22 court, I think, Mr. Williams, you are saying that you
 23 stated to the Inspector that you were using the
 24 telephone or using the -- using a cell phone, but
 25 then it sounds as though you were saying you were not

1 holding one in your hand.

2 THE WITNESS: Because the question from
3 him was that you were using the phone as a handheld
4 device.

5 EXAMINER LYNN: I see.

6 THE WITNESS: That was --

7 EXAMINER LYNN: So you stated you were
8 using the phone but not using a handheld.

9 THE WITNESS: Yes, sir.

10 Q. (By Mr. Yemc) You were using your
11 bluetooth device to talk to your wife.

12 A. Yes, sir.

13 Q. Okay. Now, whenever the Inspector
14 approached your vehicle, where was that device, that
15 handheld device?

16 A. Well, it was -- there is a little --

17 Q. Not the earpiece. Where was your
18 handheld cell phone?

19 A. Oh, okay. In the sleeper berth that's
20 behind my seat. There is a little place there I keep
21 my books and have it plugged in behind the seat, you
22 know, in the berth behind the seat close to my bed.

23 MR. YEMC: If I may approach the witness?

24 EXAMINER LYNN: Yes.

25 Q. Mr. Williams, what is that a copy of?

1 A. This is a picture in my bunk. There is a
2 little area where I keep my books and all my reading
3 stuff right here. This is actually behind my seat.
4 My seat would be here. This is the bed right here.

5 Q. And that photograph, who took that
6 photograph?

7 A. I took it.

8 Q. Okay. Mr. Williams, on the day in
9 question, is that where you are describing your phone
10 was located?

11 A. Yes, sir, right in the small blue book,
12 blue book you are looking at, right.

13 Q. There's a what?

14 A. I am saying small blue book. It was
15 sitting right on top of that.

16 Q. Sitting on top of the blue book.

17 A. Right, yes, sir.

18 Q. Is that where you plug your cell phone in
19 to charge?

20 A. Yes, sir, because right here is that CPU
21 or what do they call APU that gives current, I mean,
22 electricity. This is it right here. This is the
23 plug that I plug my phone in to charge.

24 EXAMINER LYNN: Let's try to clarify
25 things for our court reporter here. Mr. Williams,

1 could you -- I will approach the witness and if you
2 could point out to me exactly -- and then we will get
3 into words exactly where you are saying your cell
4 phone was.

5 MR. JONES: Can I see that too?

6 EXAMINER LYNN: Mr. Jones. Mr. Yemc.

7 MR. YEMC: I don't need to approach. I'm
8 good.

9 THE WITNESS: See this wire here, this is
10 a telephone plug. This is APU which I plug my phone,
11 my --

12 EXAMINER LYNN: So the witness is
13 pointing to like the --

14 THE WITNESS: So the phone was right
15 here.

16 EXAMINER LYNN: I see. What the witness
17 is pointing to is that -- is that he is saying the
18 phone itself, which apparently was black, was -- it's
19 right in the center of the picture and --

20 THE WITNESS: It's not here now.

21 EXAMINER LYNN: Well --

22 THE WITNESS: This is a blue book.

23 EXAMINER LYNN: Blue, okay. This is a
24 black and white photograph.

25 THE WITNESS: Blue book.

1 EXAMINER LYNN: Off the record for a
2 minute, Karen.

3 (Discussion off the record.)

4 EXAMINER LYNN: We will go back on the
5 record.

6 What the witness was pointing to this
7 little apparently sort of like a table or compartment
8 behind his sleeper -- behind his chair, driver's
9 seat, there was a -- there is a sleeper berth and
10 also a little area where he can lay various things,
11 place them, for, you know, books and other materials,
12 and he is showing me where there is a cord that has a
13 charger for the phone.

14 THE WITNESS: Yes, sir.

15 EXAMINER LYNN: And he is saying that the
16 phone was in that location apparently while you were
17 driving the vehicle.

18 THE WITNESS: Yes, sir.

19 EXAMINER LYNN: And the reason the phone
20 is not on that location now is he used the phone to
21 actually take this photograph which is -- we will
22 call this Yemc Exhibit A -- or Williams Exhibit A.

23 MR. YEMC: Okay.

24 EXAMINER LYNN: Okay? Mr. Jones, any
25 questions?

1 MR. JONES: I'll let Mr. Yemc.

2 EXAMINER LYNN: Mr. Yemc.

3 MR. YEMC: Thank you.

4 Q. (By Mr. Yemc) I am going to hand you
5 what's going to be marked as Respondent's Exhibit B,
6 Mr. Williams. And could you describe what this
7 picture is.

8 A. This is my bluetooth earpiece.

9 Q. Okay. And is that the same earpiece you
10 were using the day that you got stopped?

11 A. Yes, sir.

12 Q. Did you take that photograph?

13 A. Yes, sir.

14 Q. Okay. When you got pulled over, what did
15 you do in preparation for the officer approaching
16 your vehicle? What occurred?

17 A. Well, I'm driving. I see the car, what I
18 call the car, or police vehicle, and I pull off to
19 the right. I took the earpiece out and sitting there
20 just waiting for the officer to come by. So I am
21 there. I'm looking for the officer to come, you
22 know, on my side of the vehicle, on the left.

23 EXAMINER LYNN: On the driver's side.

24 THE WITNESS: On the driver's side. But
25 for a little while then I heard a call -- somebody

1 yells or makes a sound on the right side of the -- of
2 the vehicle, of my vehicle.

3 EXAMINER LYNN: On the passenger side.

4 THE WITNESS: On the passenger side,
5 right, of the vehicle.

6 Q. Okay. Let me stop you right there. What
7 did you do with the -- the bluetooth device once you
8 took it off your ear?

9 A. Well, I -- first, I had it -- first, I
10 had it in my hand. I first had it in my hand.

11 Q. And then what did you do with it?

12 A. Well, the officer called out on the
13 passenger side of the vehicle, and I put the earpiece
14 on a little place that I normally keep it. It's like
15 a mesh with an opening area, so I just normally stick
16 it over. There, that's where I keep it if I am not
17 using it.

18 Q. I just handed you what's marked as
19 Respondent's Exhibit C. Is that the mesh area that
20 you are referencing where you put the earpiece?

21 A. Yes, sir; yes, sir, just right above the
22 sun visor, the little area.

23 EXAMINER LYNN: Just above the sun visor
24 where you sit.

25 THE WITNESS: Yes, sir.

1 Q. Now, Mr. Williams, after you heard the
2 inspector at your passenger side door or window, what
3 did you do?

4 A. I put the -- this, upon this area here.
5 I pulled my seat back.

6 EXAMINER LYNN: And, Mr. Williams, when
7 you put "this," he is referring to the --

8 THE WITNESS: Sorry, earpiece.

9 EXAMINER LYNN: The earpiece. Please
10 continue.

11 A. So I stick it up in this area.

12 EXAMINER LYNN: He puts it up in this
13 mesh area that was earlier referred to.

14 A. And I pull my seat back.

15 Q. You unlatch your seat belt.

16 A. Unlatch my seat belt, yes. I stretch
17 across because the passenger side door was locked,
18 right? So I put the thing up, stretch across, pull
19 the door, and let the officer in so the officer was
20 able to come in the truck.

21 Q. Okay. Now, did he actually enter the
22 truck, or was he standing in the truck?

23 A. Come in the truck, into the truck, right
24 into the truck.

25 Q. Okay. Did he sit in the seat?

1 A. No. He stand.

2 Q. He stood.

3 A. Stood.

4 Q. Was he leaning in the truck then?

5 A. No. He really stand right between the
6 right -- the passenger seat right in the area right
7 there, standing right there. That's where he was.

8 Q. Okay. And then what occurs after he
9 enters the vehicle?

10 A. He asked me to, you know, show me -- I'm
11 not sure of the order right now, but your documents,
12 you know, show me, you know, your documents.

13 Q. So your bill of lading, what you are
14 hauling, things like that?

15 A. Bill of lading, truck like my
16 registration or, you know, those documents.

17 Q. Okay.

18 A. And I think he did ask about my -- was it
19 paper log I am using or electronic log, that's, you
20 know. And I gave him what he asked for, and he go
21 through all of those, said everything was okay, it
22 was fine.

23 Q. Okay. And at some point he asks you
24 about using a handheld cell phone device.

25 A. Yes. Then he proceeds to say that's why

1 he stopped me, because I was using my -- my phone,
2 handheld device. That's what he says.

3 Q. Okay. And did he ask to see that device?

4 A. Yes, sir.

5 Q. Okay. And where was that device?

6 A. In the -- right in the spot here in the
7 sleeper berth in the same area.

8 Q. On what is marked as Respondent's Exhibit
9 A?

10 A. It's -- yes, sir. That's where I took it
11 from with the wire, just the same everything, took it
12 from and I think I hand it to him, but he never
13 really -- if I am remembering right, he never really
14 take it but, you know, he asked me to show him.

15 Q. Okay. Did you have to get out of your
16 seat to get the handheld device?

17 A. Yes. I have to ease up, you know, maybe
18 not fully but I have to ease up to get around there
19 to retrieve the phone.

20 Q. Can you access that phone while sitting
21 in the seat with your seat belt on?

22 A. No, sir; no, sir.

23 Q. Okay. Now, after the Inspector asks you
24 to see your handheld device, you show it to him.

25 A. Yes, sir.

1 Q. He issues you a citation.

2 A. Yes, sir. I wasn't sure at first. He
3 explained to me that it was, you know, inspection,
4 showing the inspection, and then proceed to say it
5 has this violation on it too for me using a handheld,
6 yes, sir.

7 Q. Now, that morning right around breakfast
8 time, you had just left the rest area; is that
9 correct?

10 A. Yes, sir.

11 Q. Okay. I am going to hand you what's
12 marked as Respondent's Exhibit D. Could you describe
13 what that exhibit is.

14 A. It's a small box of milk, sir, box of
15 milk.

16 Q. Okay. And did you take a photo of that
17 milk?

18 A. Yes, sir.

19 Q. And why is this photograph even
20 significant?

21 A. Well, at first after getting that pull
22 over, that ticket, it had me wondering why would --
23 what caused the officer to think that I really had,
24 you know, something in my hand. Why -- I am trying
25 to figure out why would he come up with such a, you

1 know, a thing, right?

2 Q. Because he sees you talking.

3 A. Yes, he see me talking because I see the
4 officer, but I know that using your handheld, I mean,
5 your bluetooth, is not, you know, a violation. It's
6 definitely no problem, so I was literally talking, I
7 see the policeman maybe from about almost a mile or
8 so, you know, while heading towards him because it's
9 clear distance.

10 Q. Okay. And you are coming down a hill
11 like the Inspector indicated.

12 A. The grade is a good distance over; but,
13 yeah, you are coming down a grade and you are
14 going -- could be coming up a slight.

15 Q. So you have clear --

16 A. Very good distance away still but, yes,
17 it was there.

18 Q. But you had clear --

19 A. It was very clear distance, so I saw him
20 from a good, you know, distance over on the left in
21 the median, you know, parked there. You have time to
22 see very clear, very, you know, very clear.

23 So then I start to think, look around. I
24 realize that this box of milk when the officer was
25 there was right at the seat, I mean, on the ground

1 beside my seat, right, because I was drinking the
2 milk after leaving the truck stop, right?

3 So I'm saying only thing -- I am trying
4 to figure out if -- wonder if I was drinking the milk
5 while coming down or he happens to see because even
6 then the time when I was stopped, I didn't have the
7 milk but that's the only thing that was there right
8 beside my seat and that's the only thing I was doing
9 in the morning, drinking the milk, and then, you
10 know, continue on my journey when I was stopped.

11 Q. So it's your theory since you aren't
12 using a handheld device, you were on your
13 bluetooth --

14 A. Yes, sir.

15 Q. -- that the only thing you could come up
16 with is that you were drinking the milk.

17 A. That's the only thing might could be the
18 fact that he said I have something in my hand could
19 only be that milk. That's the only thing it could
20 be. That's the only thing that was in the seat right
21 beside me I know I was drinking in the morning or
22 using in the morning.

23 MR. YEMC: Thank you, Mr. Williams.

24 EXAMINER LYNN: No further questions?

25 MR. YEMC: No further questions.

1 EXAMINER LYNN: Thank you.

2 Mr. Jones.

3 MR. JONES: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Jones:

7 Q. Mr. Williams, when did you initiate your
8 call to your wife? Was that after you were driving?

9 A. No. A little bit before I leave the
10 truck stop, I was already talking to her just before
11 I leave out and continue to talk as I.

12 Q. What device did you initiate the call on?

13 A. At the time I think I made the call with
14 the phone. Sometimes I use this, but sometimes I use
15 the phone, you know, like if maybe I am not driving
16 at the time. I use the phone, from the phone or from
17 that.

18 Q. On that day you initiated the call on
19 your phone to your wife?

20 A. It could have been, could have been, sir,
21 but that's before because I was talking to her while
22 doing -- finishing up my pretrip. That's when I
23 started talking with her.

24 Q. Okay. And that conversation continued
25 until such time as you were stopped.

1 A. Yeah, maybe a few minutes or so, yes,
2 because I said I was talking to my wife, and when I
3 realized the police, you know, came out and I end the
4 call to her. I would call her back.

5 Q. And the call ended with you were pulled
6 over when you saw the lights behind you to pull you
7 over.

8 A. Yes, sir; basically, yes, sir.

9 EXAMINER LYNN: And, Mr. Williams, you
10 stated you initiated the call when you were at a rest
11 area and before you began driving?

12 THE WITNESS: Yes, sir.

13 EXAMINER LYNN: And you are unsure
14 whether you initiated it on your handheld or on your
15 bluetooth?

16 THE WITNESS: No. At the time -- at the
17 time when I know that once I park so I will do things
18 from my phone.

19 EXAMINER LYNN: From the handheld.

20 THE WITNESS: Yes, sir.

21 EXAMINER LYNN: Okay.

22 THE WITNESS: But if I am driving, I need
23 to make a call.

24 EXAMINER LYNN: And then I believe you
25 stated earlier, and help me make sure I am correct on

1 this, when you actually were driving, that your
2 handheld was plugged in for charging.

3 THE WITNESS: Yes, sir.

4 EXAMINER LYNN: I see.

5 THE WITNESS: It wasn't charged
6 overnight. It was in the sleeper charging.

7 EXAMINER LYNN: All right.

8 Mr. Jones.

9 Q. (By Mr. Jones) But it's possible you
10 initiated that call on your handheld phone, right?

11 A. Yes, yes.

12 Q. Okay.

13 A. It's possible, yes.

14 EXAMINER LYNN: But, Mr. Williams, you
15 are not really sure whether you initiated it on the
16 handheld or not.

17 THE WITNESS: No, no, sir.

18 EXAMINER LYNN: I see.

19 THE WITNESS: Because I said most of the
20 time if I am like, you know, in the rest stop, it can
21 be possible. I wouldn't say I use this. Once I am
22 doing what I am doing I might use that, you know,
23 just do it on the handheld.

24 EXAMINER LYNN: On the bluetooth.

25 THE WITNESS: No.

1 EXAMINER LYNN: On the handheld.

2 THE WITNESS: Yes.

3 EXAMINER LYNN: So you are indicating,
4 say, while you were doing a pretrip or doing any
5 paperwork before you start to drive, you might have
6 used the handheld to initiate the call, but you
7 really don't remember for sure.

8 THE WITNESS: Well, at that time I
9 don't -- not sure which way.

10 EXAMINER LYNN: Not sure.

11 THE WITNESS: Not sure, not going to say
12 yes.

13 EXAMINER LYNN: Okay.

14 Mr. Jones.

15 MR. JONES: Thank you, your Honor.

16 Q. (By Mr. Jones) Mr. Williams, you are not
17 disputing that the length of time that you are on the
18 phone was approximately 9 minutes, from like 7:25
19 a.m. to 7:34 a.m.? You are not contesting that?

20 A. No, no. I wouldn't say that. I just
21 recently started, as I said, just, I mean 2, 3 miles
22 from where I was stopped.

23 Q. Okay. And you are not contesting the
24 fact that when you were asked to show your phone,
25 your mobile device, phone --

1 A. Yes, sir.

2 Q. -- iPhone, whatever it is, you showed it
3 to the officer and displayed the screen for him, he
4 was able to see that, confirm that, the duration?

5 A. One call, yes.

6 Q. The phone conversation you had was for
7 that time period, 9 minutes, from 7:25 to 7:34? You
8 don't contest that, right?

9 A. No, I don't. I don't contest the time,
10 whatever the time was there. I didn't -- I am not
11 sure the exact time, how long it was, but I'm not
12 disputing the call.

13 Q. And that's showing on your display for
14 your phone.

15 A. I'm not disputing that.

16 Q. Okay. How many -- how many -- let me ask
17 you how many phones do you have?

18 A. One.

19 Q. How many bluetooths do you have?

20 A. This would make one that is working.
21 This would be the second bluetooth. I have a small
22 one just that was already not working so this
23 replaced it.

24 Q. Okay. And you do have an overhead
25 compartment, right, that you have to open up to

1 retrieve things out of; is that correct?

2 A. That's a little more ways over in the
3 center of the truck up at the top and that's normally
4 locked. I would have to use a key to pull that.

5 Q. And like what type of things do you keep
6 in your compartment?

7 A. Which of them?

8 Q. Your compartment.

9 A. Which of them? There is two. There is
10 one that this was -- this was and then there is that
11 other.

12 EXAMINER LYNN: So for our court reporter
13 Mr. Williams is indicating there are two
14 compartments.

15 THE WITNESS: Really three in the truck.

16 EXAMINER LYNN: Three. He is indicating
17 there was a compartment where he had his bluetooth
18 apparently after the stop.

19 THE WITNESS: Yes, sir.

20 EXAMINER LYNN: And, Mr. Jones, I believe
21 you were asking about a separate compartment, one
22 that maybe was locked or something?

23 MR. JONES: Well, let me ask, your Honor.

24 Q. (By Mr. Jones) So there is at least two
25 compartments within your reach, right, from your

1 driver's seat?

2 A. Yes, yes, yes.

3 Q. And one is where it's secured, I guess,
4 with a door, and the other one is open with a mesh?

5 A. Yes, sir.

6 Q. And they are both like right over right
7 and left of where your head would be?

8 A. One is definitely before me center and
9 then the other is in the middle.

10 Q. Which one is right in front of you?

11 A. The mesh one, the one with the mesh I
12 have like my eyeglasses, you know, pens and all that
13 stuff I normally use every day, right. That's the
14 one right before me.

15 Q. Let me ask you since you testified that
16 you knew it was legal to use a bluetooth, why did you
17 remove the bluetooth when the officer approached the
18 vehicle?

19 A. For the respect of the officer.

20 Q. Respect?

21 A. Out of -- that's what I call it. What
22 you call it, out of respect, I am going to be talking
23 to a law officer. And not only that, I mean, I
24 normally do it for normal persons. You know, if I am
25 going to be talking to you, then I want to be talking

1 to you. Now, this is a police officer. I am not
2 going to be talking to a police officer with that on,
3 you know. That's just me. Out of respect I remove
4 it, out of respect to the officer, to talk to the
5 officer.

6 Q. So let me ask you at the time that the
7 inspection, the contact was made by the officer to
8 you, and he's informing you why he's stopped you, and
9 then he informs you that you've committed a violation
10 of the Federal Motor Vehicle Safety Regulations, he
11 informs you that he believes you violated the code by
12 using a handheld device, at no time did you say, oh,
13 but actually I was holding this box of milk and
14 you've confused that with that. At no time you told
15 him that, did you?

16 A. My main thought at the time was, no, I
17 was not -- I was not using a handheld device. I keep
18 repeating that over and over. I keep telling the
19 officers that -- the officer that. But then it was
20 at the point where no matter what you say this is
21 what I am saying, so I stopped talking. I stop, say
22 it that way.

23 Q. At no time --

24 A. No, I didn't. I didn't remember that I
25 was -- that was there. I honestly didn't remember

1 that.

2 Q. Mr. Williams, when did you take a picture
3 of Exhibit -- your Exhibit D?

4 A. Right as I am going down the road and
5 realize that why -- why would this policeman say
6 that. And then, oh, I pull over. I think I pull
7 over either there or down at the next -- I don't
8 remember, but it's the same day, the very same day.
9 The very same day, about maybe -- within maybe -- I
10 think I took it -- I am not sure -- I don't take it
11 same time when I realize but very same day. I said,
12 okay, this is the reason why he stopped me so or
13 could have been what he saw talking on the phone.

14 Q. Did you take all these pictures the same
15 day, A, B, C, and D?

16 A. Except the one -- one with this on the
17 counter.

18 Q. B?

19 A. Which is --

20 Q. Exhibit B?

21 A. Which is B.

22 Q. Okay. Why was that taken a different
23 day?

24 A. Because after I was sent the letter, you
25 know, saying sending any -- any information or so you

1 have to be with the case, that's the letter that they
2 normally send you saying if you want to proceed to a
3 hearing or, you know, whatever it is, so I said okay.
4 Let me take a clearer shot of the bluetooth because
5 here it doesn't show that that well.

6 EXAMINER LYNN: So, Mr. Jones, you were
7 referring to Exhibit C?

8 MR. YEMC: No, I think B.

9 MR. JONES: B, your Honor.

10 MR. YEMC: B as in boy.

11 EXAMINER LYNN: Oh, I see. So Mr. Jones
12 was asking why Exhibit B which is just simply a
13 photograph of the bluetooth --

14 THE WITNESS: Yes.

15 EXAMINER LYNN: -- why it was not taken
16 on the day --

17 THE WITNESS: On the day, yes.

18 EXAMINER LYNN: -- of the inspection.

19 THE WITNESS: Because C wasn't that
20 clear. I realize C doesn't show that clear, so I
21 took a clearer shot of that.

22 EXAMINER LYNN: I see.

23 Q. (By Mr. Jones) So Exhibit B was taken
24 after you received notice of the violation; is that
25 what you are saying? Is that your testimony?

1 A. Yeah. After they send me that letter,
2 you know, fax anything you have to put in or to
3 explain your case.

4 Q. But you took A, Exhibits -- pictures A,
5 C, and D the day of September 7, 2016?

6 A. Yeah.

7 Q. The same day of the violation inspection?

8 A. I think those are the same day, yeah. I
9 think I took these the same day, all of these. I
10 think there was some after.

11 Q. And were all these exhibits, A, B, C, and
12 D, taken with the same phone?

13 A. Yes, sir.

14 Q. And have you had -- have you had the same
15 phone since that time?

16 A. Yes, sir.

17 Q. And do you have that phone with you
18 today?

19 A. Yes, sir.

20 Q. And are those pictures still on your
21 phone?

22 A. Yes, sir.

23 Q. Can we see the pictures on your phone to
24 verify the dates the pictures were taken?

25 A. Yes, I should be able to, yes.

1 MR. JONES: Could we do that?

2 EXAMINER LYNN: Let's go off the record
3 for a minute.

4 (Discussion off the record.)

5 EXAMINER LYNN: Back on the record.

6 And I just wanted to mention to our
7 reporter and for the record that the break was -- was
8 for the following reason: Mr. Williams had indicated
9 that he had taken the photographs of Exhibits A, C,
10 and D on the day of the inspection, and we were
11 attempting to check on his cell phone if there was a
12 date, a date and day, or at least date indicating
13 when he took those photos. We did find some of the
14 photos, A, C, and D, on his -- on his cell phone, but
15 we were unable to determine from those photos a date
16 of when the photographs were actually taken.

17 Mr. Jones.

18 MR. JONES: Thank you, your Honor.

19 Q. (By Mr. Jones) Mr. Williams, since you
20 have your phone with you, can you describe the
21 dimensions or the size of your phone for the record,
22 please.

23 A. I'm not sure of the size. Not sure of
24 the size. It's a big phone. Phone is a little bit
25 smaller, but it is in a solid case.

1 Q. Well, and the case, is everything, is it
2 as big as your hand? Put it against your hand. Is
3 it about the size of your hand --

4 A. Yes.

5 Q. -- with the palm included?

6 MR. JONES: Your Honor, would the record
7 reflect that he is demonstrating that the phone
8 itself is the size of his -- from his fingertips to
9 the base of his palm?

10 EXAMINER LYNN: Yes, yes. We can make
11 note of that.

12 Mr. Williams, again for the record, this
13 may help as far as determination of any
14 responsibility here, does that actually fit into your
15 shirt pocket?

16 THE WITNESS: I'm not sure. I think if
17 you try, it might.

18 EXAMINER LYNN: The answer is it does not
19 go fully into his shirt pocket. It appears to be a
20 little larger than some of the mobile phones that are
21 out there on the market.

22 Q. (By Mr. Jones) So, Mr. Williams, you
23 didn't have to leave your seat to give the officer
24 your phone, did you?

25 A. Yes, I leave the seat, yes. Finally get

1 it -- I have to get almost completely up to get
2 around behind the seat to get it for him.

3 EXAMINER LYNN: You had to unbuckle your
4 seat belt to do that.

5 THE WITNESS: Yes. I did unbuckle it to
6 let him in, and so I was already up.

7 Q. (By Mr. Jones) So let me understand
8 better about where -- where picture Exhibit A is in
9 the berth. It's in the berth area?

10 A. Yeah, sleeper berth.

11 Q. Sleeper berth?

12 A. Yes, sir.

13 Q. So okay. So describe for me how you get
14 back to this location in your sleeper berth. Do you
15 have to get up out of your seat all the way?

16 A. And walk, yes. There is a curtain there
17 so I have to get up out of my seat and go through the
18 curtain.

19 Q. And you have to walk back into the
20 compartment itself.

21 A. Yes, sir.

22 Q. And then to the right or?

23 A. Well, it's definitely behind the seat,
24 you know. So it's there is a curtain -- like a
25 curtain behind that's really the driver's side, you

1 know, from the sleeper side. So normally get up and
2 go around.

3 Q. So it's basically doing a whole like a U
4 or something going around, right?

5 A. Yeah.

6 Q. Almost a circle but not quite.

7 A. Yeah, getting up, going around.

8 EXAMINER LYNN: So you are indicating you
9 would unbuckle the seat belt, get out of the seat,
10 and walk around to an area that's behind the seat,
11 behind this curtain, and basically this is directly
12 behind your driver's seat.

13 THE WITNESS: Yeah. That's what I said,
14 behind the driver's seat.

15 EXAMINER LYNN: And that is, based on
16 Mr. Jones's question, a description of where the
17 photograph in Exhibit A was taken, this area behind
18 the driver's seat, behind this curtain, and so on --

19 THE WITNESS: Yes, sir.

20 EXAMINER LYNN: -- and location where you
21 are saying that you had been charging your mobile
22 phone.

23 THE WITNESS: Yes, sir.

24 EXAMINER LYNN: But you unplugged it to
25 take these photographs.

1 THE WITNESS: No. Yes, yes, because
2 after that, the officer already, you know.

3 EXAMINER LYNN: After the inspection was
4 over and so on.

5 THE WITNESS: Same day I take pictures.

6 EXAMINER LYNN: All right. Thank you.

7 Q. (By Mr. Jones) So, now, in comparison
8 here, the -- you don't have the carton of milk here,
9 do you?

10 A. I did not bring it. It's in my truck. I
11 didn't. I have it in my truck. It's over at the
12 truck stop. I think I keep it. I think I did. But
13 I know I did have the box, saved the box.

14 Q. Is this your hand in the picture with the
15 box?

16 A. Yeah. Yes, I hold it now to take the
17 picture.

18 EXAMINER LYNN: And you had indicated in
19 earlier testimony this milk carton was -- at the time
20 of the inspection began it was down between --

21 THE WITNESS: It was right here.

22 EXAMINER LYNN: Between the driver and
23 passenger seat.

24 THE WITNESS: Yes, yes, right beside.

25 Q. So is this the size of a regular milk

1 carton then, one you would see at the grocery store
2 milk carton?

3 A. Yeah. They are in the -- what those
4 stores I bought it?

5 EXAMINER LYNN: Convenient store?

6 THE WITNESS: Yeah, those stores.

7 EXAMINER LYNN: Maybe I better clarify
8 Mr. Jones's question. You had asked about was this
9 the size of a regular milk carton. Mr. Williams, was
10 the kind of carton that you are indicating you
11 purchased it like at a convenient store --

12 THE WITNESS: Yes, sir.

13 EXAMINER LYNN: -- or something? And it
14 appears to be the kind where you would poke a straw
15 through the top of it and so forth?

16 THE WITNESS: Yes, sir. Well, this one
17 carry a cork at the top.

18 EXAMINER LYNN: Oh, I see. It had a
19 little top you can unscrew, okay.

20 THE WITNESS: It's like, sorry, one of
21 those soy milk, small.

22 EXAMINER LYNN: Yeah. It indicates -- in
23 Exhibit D it does indicate it is a 1 quart size.

24 Q. (By Mr. Jones) Mr. Williams, what color
25 is the milk carton? Do you know?

1 A. The milk? Sorry.

2 Q. The milk carton itself.

3 EXAMINER LYNN: Color of the carton.

4 A. It is kind of bluish, blue, some part a
5 little blue with gray, or white.

6 MR. JONES: If I could just have a
7 minute, your Honor.

8 EXAMINER LYNN: Sure. We will go off the
9 record for a minute.

10 (Discussion off the record.)

11 Q. (By Mr. Jones) Mr. Williams, you said you
12 initiated the call while you were at the rest stop.
13 Are you saying that the rest stop was within that
14 10-minute drive from your -- where you are stopped?

15 A. It wasn't that far from where I was
16 stopped. There is -- what was it? I go to Pilot
17 or -- either Pilot or Flying J or something like that
18 in that area, but I just came from the rest stop that
19 I spent the night.

20 Q. When you say rest stop, you mean like a
21 Flying J or one of those?

22 A. Yeah, one of those, you know, truck stop,
23 rest stop. Yeah, I think it was one of those -- I
24 don't think it was a rest stop. I think it was one
25 of those truck stops.

1 MR. JONES: I have no further questions,
2 your Honor.

3 EXAMINER LYNN: Thank you, Mr. Jones.
4 Mr. Yemc, anything additional from you?

5 MR. YEMC: No redirect, your Honor. I
6 will just move to have Respondent's Exhibits A
7 through D admitted.

8 EXAMINER LYNN: All right. Mr. Jones,
9 any objections to that?

10 MR. JONES: No objection, your Honor.

11 EXAMINER LYNN: Okay. We will admit
12 Exhibits A through D for Mr. Williams and admit into
13 evidence.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 MR. YEMC: Okay. Thank you, your Honor.
16 And there is no further witnesses on the part of the
17 Respondent.

18 EXAMINER LYNN: All right. Thank you.
19 Do either parties have any additional -- oh, I can
20 ask this question, it's not critical this be done,
21 does either party want to submit a brief,
22 post-hearing brief?

23 MR. YEMC: No.

24 EXAMINER LYNN: No. Okay.

25 MR. JONES: No, your Honor.

1 EXAMINER LYNN: That resolves that issue.

2 Having said that I believe that will wrap
3 up our proceedings for today and thank you all for
4 being in attendance.

5 (Thereupon, at 11:13 a.m., the hearing
6 was concluded.)

7 - - -

8 CERTIFICATE

9 I do hereby certify that the foregoing is
10 a true and correct transcript of the proceedings
11 taken by me in this matter on Tuesday, May 2, 2017,
12 and carefully compared with my original stenographic
13 notes.

14

15

16 Karen Sue Gibson, Registered
17 Merit Reporter.

18 (KSG-6356)

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Summary: Transcript In the Matter of Cecilval Williams, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on May 2, 2017. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.