

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF WILLIAM B.
KETCHUM, NOTICE OF APPARENT
VIOLATION AND INTENT TO ASSESS
FORFEITURE.

CASE NO. 17-591-TR-CVF
(OH3281014391D)

OPINION AND ORDER

Entered in the Journal on October 11, 2017

I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that William B. Ketchum violated the Commission's transportation rules by not wearing a seat belt while operating a commercial motor vehicle.

II. PROCEDURAL HISTORY

{¶ 2} Following an inspection of a commercial motor vehicle (CMV) operated by Murray Trucking, Inc. and driven by William B. Ketchum (Mr. Ketchum or Respondent), Respondent was timely served with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12, notifying him that Staff intended to assess a \$100 civil monetary forfeiture for violating 49 C.F.R. 392.16 by not wearing a seat belt while operating a CMV. A prehearing conference was conducted on March 28, 2017, and a hearing was held on August 15, 2017. At hearing, Inspector Glen L. Maffitt and Rod A. Moser appeared as witnesses for Staff, and Mr. Ketchum appeared on his own behalf.

III. LAW

{¶ 3} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations, 49 C.F.R. Sections 40, 42, 383, 387, and 390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. Ohio Adm.Code 4901:2-5-03(B) and (C) require all motor carriers engaged in intrastate and interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission. Ohio Adm.Code 4901:2-7-20(A)

requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence. As relevant to this case, 49 C.F.R. 392.16 provides that a CMV which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly.

IV. ISSUE

{¶ 4} The issue is whether Staff satisfied its burden to show, by a preponderance of the evidence, that Respondent was not wearing a seat belt properly while operating a CMV in violation of 49 C.F.R. 392.16. Staff maintains that Inspector Maffitt observed Mr. Ketchum driving without wearing the shoulder strap of his seat belt, and correctly cited him for the violation. Mr. Ketchum denies committing the violation.

V. SUMMARY OF THE EVIDENCE

{¶ 5} Inspector Maffitt identified the inspection report in this matter, Staff Exhibit 1, and testified that on the day of the inspection, October 10, 2016, he observed Mr. Ketchum driving eastbound on Interstate 80 without wearing the shoulder strap of his seat belt over his shoulder. Inspector Holzworth stated that his patrol car was stationed in the highway crossover and that he had a clear, unobstructed view into the cab of Mr. Ketchum's truck. (Tr. at 7-10, 13-14; Staff Ex. 1.)

{¶ 6} Inspector Maffitt stated that Mr. Ketchum was wearing a teal shirt at the time, with the seat belt being grey in color, and that, when he observed Mr. Ketchum, he saw Mr. Ketchum's teal shirt, but no contrasting color across the chest area of the shirt. Inspector Maffitt testified that, from his vehicle, he was able to see Mr. Ketchum clearly without the shoulder strap of the one-piece seat belt assembly over his shoulder. Further, Inspector Maffitt testified that when he approached Mr. Ketchum's truck and opened the door, Mr. Ketchum still had the shoulder strap of the seat belt under his arm. Inspector Maffitt stated that, when asked why he did not have his seat belt on, Mr. Ketchum replied that he had the lap belt part of the seat belt on, but the shoulder strap was under his arm because he is short

and it rubs his neck. Inspector Maffitt stated that Mr. Ketchum's wearing of the shoulder strap of the seat belt under his arm was a violation because, in his professional opinion, and according to the wording of the regulation, it is not the proper way to use the seat belt assembly. (Tr. at 10-16; Staff Ex. 1.)

{¶ 7} On cross examination, Inspector Maffitt testified that the reason he drove his patrol car beside Mr. Ketchum's truck was that, when his car was in position, slightly past the truck cab, he could look back diagonally to his right and clearly see the driver's shoulder without any obstructions. Inspector Maffitt testified that, when he does this, he can see whether the driver has the seat belt shoulder strap in the right location or not. (Tr. at 19.)

{¶ 8} Mr. Rod A. Moser, Chief of the Commission's Civil Forfeiture Compliance Division, testified that the Commission determines the amounts of civil forfeitures by an automated process utilizing the Commission's computer system. He explained that inspection reports come in and, if the violation carries a fine or a forfeiture amount, the system will generate a letter advising the respondent of the violation and what the amount of the forfeiture will be. Mr. Moser also noted that the Commission applies this process uniformly to everyone – carriers, shippers, and drivers – with no human intervention in its automated system. (Tr. at 26-28.)

{¶ 9} Mr. Moser identified Staff Exhibit 2, the NPD, which was sent to Mr. Ketchum notifying him of the violation, and testified that the NPD reflects the \$100 forfeiture assessed in this matter. Further, with regard to how the forfeiture was derived, Mr. Moser explained that all violations are divided into groups depending on the severity of the violation and who committed the violation, and a dollar amount is assigned. He then confirmed that the forfeiture is based on the recommended fine schedule and civil penalty procedure of the Commercial Vehicle Safety Alliance. Finally, Mr. Moser testified that the amount of the forfeiture is correct and that he would recommend that amount to the Commission as the forfeiture in this case. (Tr. at 28-30.)

{¶ 10} Mr. Ketchum testified that he was wearing his seat belt correctly when he was stopped by Inspector Maffitt. Mr. Ketchum also stated that, soon after the stop for the inspection, he informed Inspector Maffitt about receiving a previous violation for not wearing a seat belt correctly, but that he was wearing his seat belt correctly when he was stopped this time by Inspector Maffitt. (Tr. at 32-33.)

{¶ 11} Mr. Ketchum testified that, if not for the principle of the matter, he would not have driven three hours to contest a \$100 fine for the violation at hearing – because he knows that he was wearing his seat belt. Mr. Ketchum testified that the violation would be listed on his PSP (Pre-Employment Screening Program) score and that makes it harder to apply for a job. Further, Mr. Ketchum stated that he does not need the violation on his record, especially knowing that he had his seat belt on. (Tr. at 33.)

{¶ 12} On cross examination, Mr. Ketchum verified that he was wearing a blue shirt on the day of the inspection. He noted, however, that the seat belts in his truck are black, not grey, in color. (Tr. at 34.)

{¶ 13} Mr. Ketchum further testified that, just before Inspector Maffitt initiated the stop for the inspection, he drove beside Mr. Ketchum's truck for perhaps a mile, with the passenger-side window of his patrol car rolled down, and looked up at Mr. Ketchum in the cab of his truck. Mr. Ketchum stated that, because the supporting post in the window of his International truck blocks the view, there is no way one can look in and see the shoulder strap of his seat belt and determine whether he had it on or not. (Tr. at 31, 38.)

VI. COMMISSION CONCLUSION

{¶ 14} The Commission observes that, as noted previously under 49 C.F.R. 392.16, a CMV with a driver's-side seat belt shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly (emphasis added). Further, we believe the word "properly" in the context of this C.F.R. section refers to the correct way to wear a combination lap belt and shoulder strap seat belt, i.e., with the shoulder strap over

the driver's shoulder and across his or her chest. Therefore, a driver operating a CMV with the lap belt of the seat belt assembly buckled, but with the shoulder strap worn incorrectly, would be in violation of 49 C.F.R. 392.16.

{¶ 15} The Commission observes that the inspection report in this matter, Staff Exhibit 1, contains two notes that were recorded by Inspector Maffitt at the time of the inspection. These notes are as follows: 1) "Driver had a teal shirt and truck had a grey seat belt" and 2) "Driver was eastbound on I-80, and I was stopped in the crossover and watched the driver driving without his seat belt on. When stopped and asked why he was driving without his seat belt on, driver said he was adamant about wearing his seat belt and wears the shoulder strap under his left arm because he is short and it rubs his neck." (Staff Ex. 1.)

{¶ 16} The inspection notes, according to Inspector Maffitt, are his observations and what was reported to him by Mr. Ketchum at the time of the inspection (Tr. at 10-12). Considering that the inspection report was prepared, and the inspection notes recorded, contemporaneously with the inspection of the CMV driven by Mr. Ketchum, we find that the inspection notes corroborate Inspector Maffitt's testimony pertaining to the seat belt violation.

{¶ 17} In this case, we note that the testimony of the parties differed with regard to two issues that were brought up during the course of the hearing. The first issue concerns the color of Mr. Ketchum's seat belt, with Inspector Maffitt stating that the color was grey (Tr. at 12; Staff Ex.1), and Mr. Ketchum maintaining that the seat belts in his truck are black (Tr. at 34). The second issue relates to the period of time Inspector Maffitt drove his patrol car beside Mr. Ketchum's truck and observed Mr. Ketchum through the open passenger-side window of the patrol car. Mr. Ketchum's argument on this point is that, based on the fact that the driver-side window of his truck is configured with a supporting post, which would have obscured Inspector Maffitt's vision, it was not possible for Inspector Maffitt to have seen whether he was wearing the shoulder strap of his seat belt correctly or not (Tr. at 38). Therefore, according to Mr. Ketchum, Inspector Maffitt's testimony does not support

Staff's contention that he was not wearing his seat belt properly. Inspector Maffitt, on the other hand, verified that he could see no seat belt strap over Mr. Ketchum's shoulder while driving his patrol car beside Mr. Ketchum's truck (Tr. at 19-20).

{¶ 18} Despite the disagreement of the parties on these issues, we believe that the record is clear regarding a violation of 49 C.F.R. 392.16. The record shows that Inspector Maffitt twice observed Mr. Ketchum committing the violation, once when Mr. Ketchum's truck passed Inspector Maffitt's position in the crossover of the highway median, and again when Inspector Maffitt observed Mr. Ketchum in the cab of his truck after the stop, still without wearing the shoulder strap of his seat belt in the correct position (Tr. at 10, 15-16). Mr. Ketchum offered no testimony at hearing that would rebut these two direct observations by Inspector Maffitt, of him driving his truck without his seat belt shoulder strap properly positioned. Nor did Mr. Ketchum present any argument that would refute the particular inspection note, which was recorded soon after he was stopped, about wearing the seat belt shoulder strap under his arm because it chafes his neck. We, therefore, conclude that Mr. Ketchum's arguments at hearing were not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for a violation of 49 C.F.R. 392.16. Accordingly, based on a preponderance of the evidence, the Commission finds that Mr. Ketchum was in violation of 49 C.F.R. 392.16.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 19} On October 10, 2016, Inspector Maffitt stopped, and subsequently inspected, a CMV driven by Mr. Ketchum because of an alleged violation of the Commission's transportation regulations: failing to use a seat belt while operating a CMV, in violation of 49 C.F.R. 392.16.

{¶ 20} Mr. Ketchum was timely served with an NPD listing a civil forfeiture of \$100 for violation of 49 C.F.R. 392.16.

{¶ 21} A prehearing conference was conducted on March 28, 2017, and a hearing was held on August 15, 2017.

{¶ 22} Ohio Adm.Code 4901:2-7-20 requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 23} Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Ketchum violated 49 C.F.R. 392.16 by failing to use a seat belt properly while operating a CMV.

{¶ 24} The civil forfeiture assessed for violation of 49 C.F.R. 392.16 is consistent with the standards of the Commercial Vehicle Safety Alliance and is reasonable.

{¶ 25} Mr. Ketchum's arguments at hearing were not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violation of 49 C.F.R. 392.16.

{¶ 26} Pursuant to R.C. 4905.83, Mr. Ketchum must pay the state of Ohio the civil forfeiture assessed for violation of 49 C.F.R. 392.16. Mr. Ketchum shall have 30 days from the date of this Opinion and Order to pay the assessed forfeiture of \$100.

{¶ 27} Payment of the forfeiture must be made by certified check or money order made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793.

VIII. ORDER

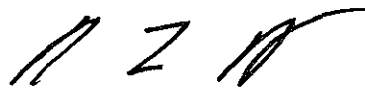
{¶ 28} It is, therefore,

{¶ 29} ORDERED, That Mr. Ketchum pay the assessed amount of \$100 for violation of 49 C.F.R. Section 392.16, as set forth in Paragraphs (26) and (27). Payment should be made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio

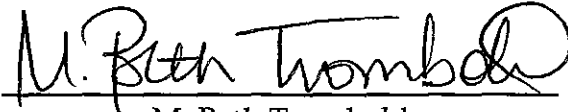
43215-3793. In order to assure proper credit, Mr. Ketchum is directed to write the case number, 17-591-TR-CVF, and inspection report number, OH3281014391D, on the face of the check or money order. It is, further,

{¶ 30} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

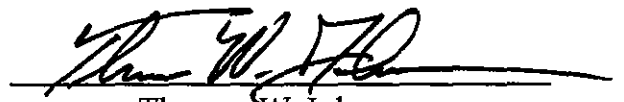
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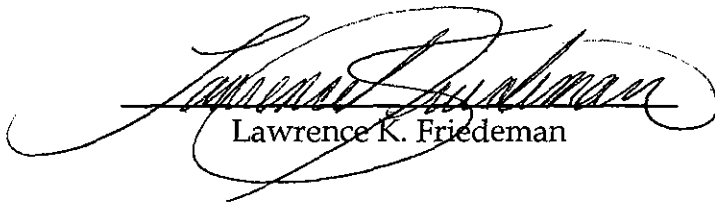
Asim Z. Haque, Chairman



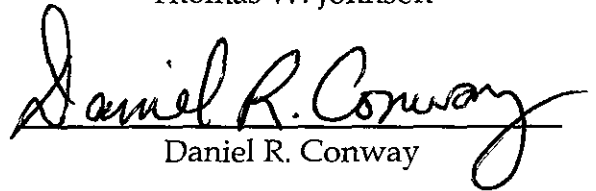
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

KKS/vrm

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OCT 11 2017



Barcy F. McNeal
Secretary