

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Shawn Kibler:
Notice of Apparent Violation : Case No.
and Intent to Access : 17-1602-TR-CVF
Forfeiture. :

- - -

PROCEEDINGS

Before Jim Lynn, Attorney Examiner, held at the
offices of the Public Utilities Commission of
Ohio, 180 East Broad Street, Hearing Room No.
11-D, Columbus, Ohio, on Tuesday, October 31,
2017, at 10:00 A.M.

- - -

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1 APPEARANCES:

2 Ms. Jodi J. Bair
3 Assistant Attorney General
4 30 East Broad Street, 16th Floor
Columbus, Ohio 43215

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

7
8 Mr. Shawn Kibler
1673 Meriline Avenue
9 Obetz, Ohio 43207

10 Appearing Pro se.

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1 Tuesday Morning,
2 October 31, 2017.
3 10:15 A.M.
4 - - -

5 ATTORNEY EXAMINER: The Public
6 Utilities Commission of Ohio has assigned for
7 hearing at this time and place Case No.
8 17-1602-TR-CVF In the Matter of Shawn Kibler
9 Notice of Apparent Violation and Intent to
10 Assess Forfeiture.

11 I am Jim Lynn, Attorney Examiner
12 assigned to hear this case. And at this time we
13 will have the appearances of the parties. We
14 will begin with the Ohio Attorney General's
15 office. If you would stand and state your name
16 and address and so forth, please.

17 MS. BAIR: Thank you. On behalf of
18 the Staff of the Public Utilities Commission of
19 Ohio, Mike DeWine, Ohio Attorney General, Jodi
20 Bair, Assistant Attorney General, 30 East Broad
21 Street, Columbus, Ohio 43215.

22 ATTORNEY EXAMINER: Thank you. And,
23 Mr. Kibler, your name and address, please.

24 MR. KIBLER: Shawn Kibler. Address
25 is 1673 Meriline Avenue, Obetz, Ohio.

1 ATTORNEY EXAMINER: Thank you. We
2 will begin first with Ms. Bair and with any of
3 the witnesses that she has.

4 MS. BAIR: Thank you, Your Honor.
5 I would like to call Inspector Morgan to the
6 stand, please.

7 (WITNESS SWORN)

8 ATTORNEY EXAMINER: Thank you. Have
9 a seat, please. Ms. Bair.

10 MS. BAIR: Thank you.

11 - - -

12 STEVEN ROBERT MORGAN
13 called as a witness, being first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 By Ms. Bair:

17 Q. Good morning.

18 A. Good morning, ma'am.

19 Q. Could you please state your full
20 name for the record?

21 A. Steven Robert Morgan.

22 Q. By whom are you employed and in what
23 capacity?

24 A. I am employed by the State of Ohio
25 as a Motor Vehicle Inspector.

1 Q. And how long have you been in that
2 position?

3 A. I have been there three years,
4 ma'am.

5 Q. Could you please describe briefly
6 what your duties are in that position?

7 A. My duties are to go out and enforce
8 laws on semis, pull them over, inspect them,
9 make sure they are within compliance.

10 Q. And what type of training do you
11 have in that area?

12 A. We have North American Standard
13 training, ma'am.

14 Q. Do you attend certification classes
15 on an ongoing basis? How do you --

16 A. Yes. We do, we have training all
17 the time. Once we got through our certification
18 we have to keep our certification up year-after-
19 year.

20 Q. How do you maintain the
21 certification?

22 A. Just by doing inspections.

23 Q. And the reason for the motor career
24 inspections is for the safety of the traveling
25 public on the Ohio Highways; is that correct?

1 A. Yes.

2 MS. BAIR: Okay. May I approach the
3 witness, Your Honor?

4 ATTORNEY EXAMINER: Yes, you may.

5 (EXHIBIT HEREBY MARKED FOR
6 IDENTIFICATION PURPOSES)

7 Q. And do you have before what has
8 been marked as Staff Exhibit 1?

9 A. Yes.

10 Q. Do you recognize this document?

11 A. Yes, ma'am.

12 Q. Is this document part of
13 the business records that you keep as an
14 inspector of the Patrol?

15 A. Yes, it is.

16 Q. Is this in substantially the same
17 condition as when you prepared it?

18 A. Yes, it is.

19 Q. And was this document prepared by
20 you?

21 A. It was prepared by my coworker. I
22 did the inspection. I was riding with a
23 coworker that day. And I did the inspection, he
24 did the typing, ma'am.

25 Q. So you did the inspection and the

1 Officer that you, or the inspector, that you
2 were riding with actually typed in the --

3 A. Violations.

4 Q. Okay.

5 A. Yes.

6 Q. Do you remember this inspection?

7 A. Yes, I do.

8 Q. What day was the inspection?

9 A. 8-17-2016.

10 Q. And what time?

11 A. 9:02.

12 Q. And is the driver listed in this
13 report?

14 A. Yes.

15 Q. And who is that driver?

16 A. Shawn M. Kibler.

17 Q. Do you see Mr. Kibler here today?

18 A. Yes, I do.

19 Q. At the time of the inspection was
20 Mr. Kibler given a copy of this report?

21 A. Yes, he was.

22 Q. And is there a violation noted in
23 the report?

24 A. Yes, there is.

25 Q. What is that violation?

1 A. Not having lights on the towed
2 vehicle, ma'am.

3 Q. And how did you determine that Mr.
4 Kibler's truck was in violation of this?

5 A. Well, it's a wrecker, and he was
6 towing a vehicle on the back of it. On
7 the wrecker you need a tow light on the back of
8 the upmost vehicle. And there was no lights on
9 that vehicle when we stopped him.

10 Q. Okay. And let's look at the report
11 itself if you would, please. Under the vehicle
12 identification part of the report, do you see
13 that section?

14 A. Yes.

15 Q. And what was the make and the model
16 of the car, truck?

17 A. The make was a Ford, 2014.

18 Q. And further over to the right I see
19 GVWR. Do you see that on the report?

20 A. Yes.

21 Q. And what does that stand for?

22 A. Gross vehicle weight rating.

23 Q. And there I see it's noted it's
24 150,000 pounds. Is that accurate to what was
25 being towed and the vehicle itself?

1 A. We noticed the truck going by with
2 the wrecker and tow vehicle. We knew we were
3 within our inspection limits, so we can inspect
4 over 10,000 pounds for us to inspect.

5 Q. So clearly the tow truck and
6 the vehicle being towed exceeded 10,000 pounds?

7 A. Yes, ma'am.

8 Q. And do you recall where you pulled
9 this vehicle over?

10 A. It was on South, 104 South, right by
11 Frank Road.

12 Q. And would you describe -- how fast
13 were cars traveling that were passing in this
14 area?

15 A. Well, they was making a turn off of
16 Frank Road onto 104 South, so they wasn't going
17 very fast. Then they were coming up to a stop
18 sign before they cross over to go on South 104.

19 Q. Would you describe the area where
20 the truck was pulled over as a safe area for a
21 vehicle to be off to the side of the road?

22 A. Yes, I would. We have stopped
23 trucks there before, yes.

24 Q. And just in a different
25 circumstance, if there were -- on a major

1 highway and you pulled someone over what would
2 be the practice of --

3 A. If we thought it was unsafe we would
4 move them to a safe area to do an inspection.

5 Q. So you would escort the truck to a
6 safer location?

7 A. Yes.

8 Q. Thank you.

9 MS. BAIR: May I approach, Your
10 Honor?

11 ATTORNEY EXAMINER: Yes.

12 (EXHIBIT HEREBY MARKED FOR
13 IDENTIFICATION PURPOSES)

14 Q. Do you have before you what has
15 been marked as Staff Exhibit 2?

16 A. Yes, ma'am.

17 Q. Do you recognize that document?

18 A. Yes, ma'am, I do.

19 Q. And is that kept in the ordinary
20 course of inspecting on behalf of the Patrol?

21 A. Yes.

22 Q. And is this document in the same
23 condition that, essentially, that it was when
24 you created the document?

25 A. Yes, it is.

1 Q. And do you remember this inspection?

2 A. Yes.

3 Q. What day was this inspection done?

4 A. 8-17-2016.

5 Q. What time of the day?

6 A. 10:56 A.M.

7 Q. Was this examination report prepared
8 by you?

9 A. Yes, it was.

10 Q. Was there a driver listed in that
11 report?

12 A. Yes, ma'am.

13 Q. And what's the driver's name?

14 A. Shawn M. Kibler.

15 Q. Mr. Kibler as you have stated is
16 here today; is that correct?

17 A. Yes.

18 Q. Okay. And at the time of the
19 inspection did the driver receive a copy of this
20 report?

21 A. Yes, he did.

22 Q. And I would like to ask you, going
23 back to Staff Exhibit No. 1, inoperable brake
24 lights. I see it noted on the report that
25 placed the vehicle out of service; is that

1 correct?

2 A. Yes. Brake lights and turn signals
3 will place the vehicle out of service.

4 Q. So, how is that communicated to the
5 driver that he is out of service?

6 A. By voice. I verbally tell him and
7 give him the inspection report. We go over the
8 inspection report and let him know that he is
9 out of service for the reasons.

10 Q. So, in other words the lights needed
11 to be repaired before the vehicle was to be
12 placed back in service?

13 A. Yes, ma'am.

14 Q. Okay. Thank you. And I direct you
15 back to Staff Exhibit No. 2, where you have
16 indicated a violation there. What is the
17 violation on this report?

18 A. Operating a vehicle after the driver
19 was declared out of service. What it was, I
20 declared the driver out of service on the first
21 inspection, then he was driving after I took him
22 out of service so I gave him a violation for
23 driving after being placed out of service.

24 Q. How did you determine that the
25 vehicle had moved after it had been placed out

1 of service?

2 A. The partner I work with, he stopped
3 one of their other trucks on 104 South, and he
4 called me on the radio and told me that this
5 trucked had moved.

6 So, I went down there and I found
7 the truck where he was parked at. And it had
8 been moved from where I previously stopped him
9 to where he is now. So, and the lights had not
10 been repaired.

11 Q. Thank you. And in this report,
12 Staff Exhibit 2, if we were to go to the vehicle
13 identification section of the report, again we
14 have the GVWR.

15 A. Yes, ma'am.

16 Q. And that indicates 150,000, but you
17 indicated that would not be the weight?

18 A. No, ma'am. When we passed, when we
19 stopped him the first time we observed, it was
20 big enough for to us to stop, which it was over
21 10,000 pounds. So, that is why we did the
22 inspection.

23 Q. Okay. You noted that the vehicle
24 was moved from where you originally issued
25 the violation for inoperable brake lights, and

1 then it had moved.

2 Is there any reason why the vehicle
3 would have moved?

4 A. No, ma'am. Where it was placed out
5 of service, we do inspections there periodically
6 and it's a safe -- we thought it was a safe
7 place to stop.

8 MS. BAIR: Thank you. I have no
9 further questions.

10 ATTORNEY EXAMINER: Okay. I have a
11 few questions for you, Inspector Morgan.

12 THE WITNESS: Yes, sir.

13 EXAMINATION

14 By the Attorney Examiner:

15 Q. I am trying to picture in my mind
16 the vehicle that you stopped. You said this was
17 a wrecker?

18 A. Yes.

19 Q. Does that mean the type of vehicle,
20 what I would loosely call a tow truck where
21 there is a vehicle that's disabled, this wrecker
22 would lift up the front end of the disabled
23 vehicle and tow it on the rear wheels?

24 A. Correct, sir.

25 Q. I see. Now, this part on the

1 inspection report, or Staff Exhibit 1, about the
2 tail lamps not operating, turn signal not
3 operating and so on, is this on the wrecker
4 itself?

5 A. No, it is not.

6 Q. Go ahead.

7 A. It's on the vehicle that's being
8 towed.

9 Q. On the vehicle that's being towed.

10 A. Yes.

11 Q. So, this is for the record and to
12 better inform me, so if there is a disabled
13 vehicle being towed by what you are calling
14 a wrecker, there has to be some sort of a I
15 guess an electrical connection or some way to
16 make the tail lamps on the towed vehicle work;
17 am I right?

18 A. Yes, sir. What it is, they got it
19 hard wired or like plug in lights on the back of
20 the vehicle, that way they work in conjunction
21 with the wrecker, left turn on, right turn on.

22 Q. So, therefore, if the wrecker makes
23 a stop the tail lamps on the wrecker would glow
24 red, but also on the towed vehicle would glow
25 red as well similar to the turn signals?

1 A. Yes, sir.

2 Q. Okay. So they work in conjunction
3 with each other, they work together basically.

4 A. Yes.

5 Q. The tail lamps and turn signals on
6 both vehicles?

7 A. Yes, sir.

8 Q. I see. And when the vehicle was
9 moved, or when the wrecker was moved, was
10 the towed vehicle still attached to it? I
11 guess, help me out on that.

12 A. Yes, sir, it was.

13 Q. Still attached. Okay.

14 A. When my other inspector called me it
15 was going down the road, and going to another
16 place to park.

17 Q. Okay. So, really aside from the
18 movement of the wrecker and the towed vehicle,
19 nothing had changed?

20 A. Nothing has changed.

21 ATTORNEY EXAMINER: Thank you. No
22 other questions. Mr. Kibler, do you have any
23 questions for the witness?

24 MR. KIBLER: No, I don't, Your
25 Honor.

1 ATTORNEY EXAMINER: Thank you. Mr.
2 Morgan, or Inspector Morgan, you can take your
3 seat for the time being. Thank you.

4 And, Ms. Bair, do you have any
5 further witnesses?

6 MS. BAIR: Yes, Your Honor. I
7 would like to call Inspector Irmscher to the
8 stand if you would, please.

9 (WITNESS SWORN)

10 - - -

11 MARK IRMSCHER
12 called as a witness, being first duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 By Ms. Bair:

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

18 A. Mark Irmscher.

19 Q. By who are you employed and in what
20 capacity?

21 A. I am employed by the State Highway
22 Patrol, Motor Carrier Enforcement division.

23 Q. And what is your position?

24 A. Motor Care Enforcement.

25 Q. Okay. And how long have you been in

1 that position?

2 A. Since 2000.

3 Q. And how would you characterize your
4 job duties in that position?

5 A. I am a safety motor carrier
6 enforcement. I try to enforce safety
7 regulations out on the highway, promote safety.

8 Q. What training do you have in that
9 area?

10 A. That would be North American
11 Standards.

12 Q. What do you mean? Have you been
13 trained under the North American Standards for
14 commercial motor vehicles?

15 A. Yes. Yes

16 Q. And that is a certification?

17 A. Yes.

18 Q. Okay. Do you have before you what
19 has been marked as Staff Exhibit 1 and Staff
20 Exhibit 2?

21 A. Yes, ma'am.

22 Q. Are you familiar with those
23 documents?

24 A. Yes.

25 Q. And on the day that the vehicle was

1 expected on August 17th, 2016, were you with
2 Inspector Morgan at that time?

3 A. That's correct. He was riding in my
4 vehicle with me on the first stop.

5 Q. Could you explain what happened on
6 the first stop, please?

7 A. We were sitting on Frank Road and
8 close to Harmon, and observing the wrecker going
9 by. We noticed right away there was no tow
10 lights on the vehicle being towed, which give us
11 obvious reason for making the stop.

12 ATTORNEY EXAMINER: I would like to
13 step in for a minute here, Inspector. You said
14 you were sitting on the road. Were you parked
15 alongside of the road or something?

16 A. Yes. On the berm.

17 ATTORNEY EXAMINER: Okay. And how
18 was it that you noticed the tail lights were not
19 working? Was it stopped at a stop light or
20 something?

21 A. There is a traffic light right in
22 front of us at Harmon, but when the wrecker
23 drove by he is going by our -- my left side.
24 There is no lights on the car being towed. They
25 were completely gone.

1 ATTORNEY EXAMINER: You mean there
2 weren't any? When you say they were gone you
3 mean you didn't see them working, or there
4 weren't any lights at all?

5 A. There was no lights. There is a
6 light bar on the back that they had put on the
7 towed car. It's removable. And it's either
8 wireless or hard wired.

9 ATTORNEY EXAMINER: Keep going.

10 A. And they just normally are held
11 on by a magnet. Now, if the vehicle had
12 plastic or fiberglass obviously magnets wouldn't
13 work. So they have to take like a bungie strap
14 and fix it to the rear of the car that they are
15 towing that is on the ground.

16 ATTORNEY EXAMINER: You are calling
17 it a light bar or something. You are
18 saying there was nothing of that type on the
19 towed vehicle?

20 A. That's correct. It's quite often we
21 see those.

22 ATTORNEY EXAMINER: So, the towed
23 vehicle then did not have any -- there was no
24 light bars you are indicating on the vehicle
25 itself, didn't even have the tail lights and

1 turn signals that the manufacturer would put on
2 there?

3 A. Well, on the wrecker.

4 ATTORNEY EXAMINER: On the wrecker,
5 but on the towed vehicle?

6 A. There is nothing.

7 ATTORNEY EXAMINER: There was
8 nothing.

9 A. And the reason for making that stop
10 is, you know, it's very dangerous if they were
11 to hit the brakes suddenly, you know, the cars
12 behind are not going to know they are stopping.

13 ATTORNEY EXAMINER: Just so I can
14 understand this again, so you are saying that
15 the vehicle that was being towed had no tail
16 lamps, turn signals at all that the manufacturer
17 would put on there. Am I right about that?

18 A. It's not actually a manufacturer,
19 but it's a tow bar is what they call it or tow
20 lamps for wreckers to use.

21 ATTORNEY EXAMINER: And that is what
22 they would put on the back of a towed vehicle?

23 A. That's correct.

24 ATTORNEY EXAMINER: I see. Okay.
25 Because when I was asking questions earlier I

1 was thinking of, you know, I was speaking to
2 Inspector Morgan and saying you want tail lights
3 and turn signals to work together with what's on
4 the tow truck.

5 I was thinking of the tail lights
6 and turn signals, that if the vehicle being
7 towed was a Chevrolet that Chevrolet would put
8 on the towed vehicle at the factory.

9 A. They could actually hard wire that
10 if they wanted to go through the time, but that
11 would take too much time to do that. So, they
12 have what's called a hard wire. They just plug
13 it into the back of the wrecker, then wrap it
14 around the mirror, put the lights on the rear of
15 the vehicle that they are towing, or they have
16 the wireless. They just plug the transmitter
17 into the back of the wrecker, which has the
18 antenna, and transmits a signal to the light bar,
19 left turn, right turn, brake, if their battery
20 is fully charged.

21 ATTORNEY EXAMINER: So, on the
22 vehicle that is being towed, the issue is there
23 was no light bar?

24 A. That's correct.

25 ATTORNEY EXAMINER: How about the

1 lights, as I said like Chevrolet would put on
2 the vehicle?

3 A. Right. All those lights are there,
4 but they are not being operated through the
5 wrecker.

6 ATTORNEY EXAMINER: I see. Okay.
7 I think I follow this then. Thank you. All
8 right. Go ahead.

9 MS. BAIR: Thank you, Your Honor. I
10 just want to clear that up, I think you did in
11 the last questioning.

12 Q. But you are not saying that the
13 vehicle that was being towed didn't have tail
14 lights on as part of that vehicle coming from
15 the factory?

16 A. It had the factory mounted lights,
17 but they were disabled, so to speak. They are
18 not being used.

19 Q. So, in order to comply with the
20 federal regulations there would need to be this
21 additional apparatus placed on there, and that
22 is what we are referring to as the light bar?

23 A. Light bar, or some kind of
24 functioning lights for turn signals, that would
25 operate in conjunction with the wrecker turn

1 signal, brake lights.

2 Q. Separate and apart from the car
3 itself?

4 A. Well, it could be the car lights if
5 they want to take the time to wire it that way,
6 but --

7 Q. And that did not happen here?

8 A. No.

9 Q. Nor was there a light bar attached?

10 A. That's correct.

11 Q. Neither of those?

12 A. Neither one.

13 Q. Thank you. So we have gone through
14 Staff Exhibit 1 regarding the light bar. If you
15 could please take a look at Staff Exhibit 2.

16 And this is the violation for
17 operating the vehicle while it was placed out of
18 service. Do you see that?

19 A. Yes.

20 Q. Okay. And it's my understanding
21 that you were -- you had another driver pulled
22 over in that location at that time. Could you
23 tell me what happened then?

24 A. Right. It was basically the same
25 thing, sitting on Frank Road, observed another

1 wrecker. And it just happened to be the same
2 company, but a different wrecker towing another
3 vehicle. No light bar on the rear of the car
4 being towed.

5 So I proceeded to follow him. And
6 we made the right turn onto I call it Jackson
7 Pike, and that is where the first vehicle was
8 placed out of service. And while I was stopping
9 this driver I noticed that the one that
10 Inspector Morgan inspected was rolling.

11 So, when I stopped the second one,
12 Mr. Kibler in the first one, he pulled over
13 also. So that is when I called Inspector Morgan
14 to come and have a talk with Mr. Kibler why he
15 is moving because I observed no lights on his
16 vehicle also.

17 Q. Thank you. So, you saw Mr. Kibler
18 actually moving the car out on to the road after
19 he had been placed out of service?

20 A. Yes, ma'am.

21 MS. BAIR: Thank you. I have no
22 further questions of this witness.

23 ATTORNEY EXAMINER: Mr. Kibler, do
24 you have any questions for the witness?

25 CROSS-EXAMINATION

1 By Mr. Kibler:

2 Q. On the towed vehicle, was there any
3 kind of lights at all?

4 A. On the vehicle being towed?

5 Q. Yes.

6 A. My best recollection, no, there was
7 none on there.

8 Q. Okay. The vehicle had four-ways on
9 my -- the Trooper explained that four-ways were
10 not enough for the situation.

11 A. It didn't have functioning turn
12 signals or brake lights.

13 Q. Yes. Trooper Morgan explained that
14 four-ways weren't sufficient.

15 A. That's correct.

16 Q. But, four-ways, they indicate what
17 on a vehicle when you see it on the road?

18 A. That is your hazards normally for
19 people broke down is why we would turn them on.

20 ATTORNEY EXAMINER: Mr. Kibler, you
21 say the four-ways, you are referring to what we
22 call like the lights --

23 MR. KIBLER: Flashers

24 ATTORNEY EXAMINER: It's standard on
25 every vehicle, you press a bottom and the tail

1 lights go on and off.

2 MR. KIBLER: Yes.

3 ATTORNEY EXAMINER: Okay. Inspector
4 Irmscher, you were saying, his question about
5 the four-ways again, you were saying you didn't
6 see any working or something to that affect?

7 A. Well, he was saying that Inspector
8 Morgan noticed that the four-ways, that's all
9 that was going, that was functioning, on the car
10 being towed. Some of the wrecker operators,
11 they think it's okay just to turn the four-ways
12 on and tow and not have functioning turn
13 signals, separate turns and brake lights.

14 ATTORNEY EXAMINER: Thank you.
15 Okay. Mr. Kibler, any other questions?

16 MR. KIBLER: No, sir.

17 ATTORNEY EXAMINER: Thank you.
18 Inspector, you can take your seat for the time
19 being. Thank you.

20 Ms. Bair, any additional witnesses?

21 MS. BAIR: Yes, Your Honor. I would
22 like to call Rod Moser to the stand, please.

23 ATTORNEY EXAMINER: Mr. Moser.

24 (WITNESS SWORN)

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ROD MOSER

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

ATTORNEY EXAMINER: Please proceed
then. Thank you.

MS. BAIR: Thank you.

DIRECT EXAMINATION

By Ms. Bair:

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

A. My name is Rod Moser.

Q. By who are you employed and in what
capacity?

A. I am employed by the Public
Utilities Commission of Ohio. I work in the
compliance portion of the transportation
department within the Commission.

Q. And in that position what would you
characterize your duties to be?

A. My duties are to manage the
administrative process for inspections, and the
forfeiture process.

Q. And what are your expert
qualifications in this area that allow you to do
your job?

1 A. Well, I am certified North American
2 Standards Part A and B. And just my experience.
3 I was with the Highway Patrol for almost 30
4 years. I have a lot of dealings with commercial
5 vehicles in that job.

6 Q. And could you explain how a
7 forfeiture is determined in your job with the
8 Commission?

9 A. Sure. The violations are all broken
10 down into a series of categories, five different
11 categories. The fines that are associated with
12 those categories depend on the nature of
13 the violation.

14 In this case it is a Group 4
15 violation. Those are all assessed independently
16 of each other. What I mean by that is there is
17 different amounts within that particular group.
18 So depending on the violation it could be a
19 lower amount or a higher amount.

20 Q. Does the Commission apply this
21 process uniformly?

22 A. Yes, we do.

23 MS. BAIR: Thank you. May I
24 approach the witness, Your Honor?

25 ATTORNEY EXAMINER: Yes, you play.

1 MS. BAIR: Thank you.

2 (EXHIBIT HEREBY MARKED FOR
3 IDENTIFICATION PURPOSES)

4 Q. Do you have before you what has
5 been marked as Staff Exhibit 3?

6 A. I do, yes.

7 Q. Do you recognize this document?

8 A. I do. It's what we call a Notice of
9 Preliminary Determination.

10 Q. And would this document have been
11 sent to the Respondent, Mr. Kibler?

12 A. Yes, it was.

13 Q. Okay. Is this a document of a
14 Commission record kept in the normal course of
15 business?

16 A. Yes, it is.

17 Q. And I know that you have explained
18 it in general how civil forfeitures are
19 assessed, but could you explain how it was
20 derived in this case?

21 A. Our fine structure is based upon a
22 fine structure adopted by the Commercial Vehicle
23 Safety Alliance. We use them as a general
24 guideline.

25 In this particular case as I say

1 it's a Group 4 violation. The fine for this
2 particular violation due to the nature of the
3 violation is \$2,500.

4 Q. So this penalty is consistent with
5 the Commercial Motor Vehicle Alliance Schedule?

6 A. Yes, ma'am.

7 Q. Thank you. And what is the
8 forfeiture amount?

9 A. It is \$2,500.

10 Q. Is that the correct forfeiture
11 amount for this case?

12 A. Yes, it is.

13 Q. Is there anything else about the
14 forfeiture or the Notice of Preliminary
15 Determination to add?

16 A. No, ma'am.

17 MS. BAIR: Thank you. No further
18 questions.

19 ATTORNEY EXAMINER: All right.
20 Thank you. And, Mr. Kibler, any questions for
21 the witness?

22 MR. KIBLER: No, sir.

23 ATTORNEY EXAMINER: Thank you. Mr.
24 Moser, you may take your seat. And, Ms. Bair,
25 will you be making a motion that these exhibits

1 be admitted into evidence?

2 MS. BAIR: Yes, Your Honor. I make
3 a motion that Staff Exhibits 1, 2 and 3 be moved
4 into evidence.

5 ATTORNEY EXAMINER: Thank you. Mr.
6 Kibler, any objection to that?

7 MR. KIBLER: No.

8 ATTORNEY EXAMINER: Thank you. Then
9 all three exhibits, Staff Exhibits 1, 2 and 3
10 will be admitted into evidence.

11 (EXHIBITS ADMITTED INTO EVIDENCE)

12 MS. BAIR: Thank you.

13 ATTORNEY EXAMINER: Mr. Kibler, if
14 you would like to come up to the witness stand,
15 we would like to hear from you.

16 (WITNESS SWORN)

17 - - -

18 SHAWN KIBLER
19 called as a witness, being first duly sworn,
20 testified as follows:

21 ATTORNEY EXAMINER: Please take a
22 seat. And whatever comments you would like to
23 make about the alleged violation and, you know,
24 how it came about or why you feel it's not a
25 violation, let us flow.

1 MR. KIBLER: Okay. I say in the
2 particular violation, Trooper Morgan, be pulled
3 me over. As they explained earlier, there is
4 like a small kind of triangle where 104 can
5 transition on to Frank Road.

6 So, approximately two-thirds of
7 the way up the ramp I pulled off the right side
8 of the road. Trooper Morgan approached and said
9 I stopped you, you don't have a light bar.

10 The vehicle did have four-ways on.
11 I understand that, from talking to Trooper
12 Morgan, I understand that was not sufficient.

13 And I, yes, he did communicate to me
14 that I was out of service. I contacted my
15 employer and said hey, I got stopped, no light
16 bar, I was placed out of service.

17 Got the light bar out of our
18 vehicle, I put it on, it just goes red only.
19 It has no turn, no brake.

20 And he hung up and said I will get
21 back with you. And about an hour later he
22 called, said that he had spoken with the local
23 company that deals in towing supplies and said I
24 need you to get the truck to them, they have to
25 calibrate this to work. Because I guess there

1 is three different types of transmitters for the
2 different outlets on the back of the truck.

3 ATTORNEY EXAMINER: These are
4 transmitters that allows the light bar to work?

5 MR. KIBLER: Yes. They communicate
6 between the tow truck and the towed vehicle.

7 ATTORNEY EXAMINER: All right.
8 Okay.

9 MR. KIBLER: I waited there and
10 where I was parked, I mean, my first initial
11 thought would be I am still kind of at the edge
12 of the road, but the issue of having being able
13 to drop the vehicle to go get the truck repaired
14 was the road is at an angle there where I pulled
15 off as far over as I could. And it had been
16 raining all day, the tow heads on a tow truck
17 are solid steel, flat straight across. They
18 don't articulate if the vehicle is at an angle.

19 ATTORNEY EXAMINER: And the tow head
20 is what you would attach to the towed vehicle?

21 MR. KIBLER: That actually clamps to
22 the tires.

23 ATTORNEY EXAMINER: I see. Okay.

24 MR. KIBLER: It's a straight piece
25 of steel with two jaws. And I called my boss

1 back and I let him know, I am like if I drop it
2 here I don't know if I will be able to get back
3 up under the vehicle, or, you know, I don't know
4 how wet this ground is or if it's going to sink.

5 And my boss said is there somewhere
6 where you can safely drop it? I said, you know,
7 approximately 150, 250 feet down the road there
8 is a driveway that's no longer being used. I
9 would be able to drop the vehicle there. And it
10 would be out of the roadway, it was on flat,
11 hard asphalt surface, and it would be able to --
12 because the issue of the violation was that the
13 towed vehicle was not marked.

14 Everything on the tow truck worked
15 perfectly fine. If I can drop then I could go
16 get calibrated for the new light bar.

17 ATTORNEY EXAMINER: The towed
18 vehicle didn't actually have operating tail
19 lights?

20 MR. KIBLER: No. It was actually
21 being towed from behind, so the front end would
22 have been facing the traffic behind it.

23 ATTORNEY EXAMINER: I see. I see.
24 So you actually were towing it from the rear
25 wheels lifted?

1 MR. KIBLER: Were off the ground and
2 strapped down, yes.

3 ATTORNEY EXAMINER: I see. And you
4 said that there was a tow bar that you had
5 attached to the towed vehicle; am I right about
6 that?

7 MR. KIBLER: Yes.

8 ATTORNEY EXAMINER: And that tow bar
9 that was actually attached to the front of the
10 towed vehicle?

11 MR. KIBLER: The F150s are aluminum.
12 The magnets in it, like they were stating
13 earlier, wouldn't stick to it.

14 ATTORNEY EXAMINER: So, this tow bar
15 that you had on the towed vehicle, where was
16 that attached then to the towed vehicle?

17 MR. KIBLER: It did not put it on
18 because I tried to -- the only place I could put
19 it was the dash, and because of the shape of
20 the dash it would be pointed down. You wouldn't
21 be able to see it anyway.

22 ATTORNEY EXAMINER: So, I am sorry,
23 and you are indicating that the tow bar that you
24 already had just was all red anyway. It didn't
25 have separate turn signals and stop lights, and

1 that kind of thing?

2 MR. KIBLER: Yes, it did not have
3 the turn signals and stop light. The
4 transmitter turned out to be bad and it wasn't
5 getting a signal for those lights to work.

6 ATTORNEY EXAMINER: And you are
7 indicating then that on the vehicle that was
8 being towed you actually did not have a tow bar
9 attached at all; am I correct?

10 MR. KIBLER: That's correct.

11 ATTORNEY EXAMINER: All right.

12 Thank you. Please go on.

13 MR. KIBLER: I pulled over, and I
14 was dropping the car. I mean, I thought it
15 would be the safest option for everybody
16 involved. I mean, being that if I sat it down I
17 might not be able to get it. If I can't get
18 under it that means I got to call the roll back
19 which they are longer, straight trucks. And he
20 would probably have to shut that ramp down to
21 get it.

22 ATTORNEY EXAMINER: And just for
23 the record the roll back, are those the towing
24 vehicles that have what I would call a flatbed?

25 MR. KIBLER: Yes.

1 ATTORNEY EXAMINER: Flatbed like
2 tips up and to drive the wrecked vehicle onto
3 the flatbed?

4 MR. KIBLER: Yes, that is right.

5 ATTORNEY EXAMINER: Okay. Keep
6 going.

7 MR. KIBLER: So, I pulled off and
8 backed the car up. There was one active
9 driveway there and I moved it back past that
10 point, and was setting the vehicle down to be
11 able to go get the new tow bar set up to get
12 everything, make sure it worked properly.

13 ATTORNEY EXAMINER: So your goal was
14 to drop the towed vehicle and go and get the tow
15 bar that would work?

16 MR. KIBLER: Yes.

17 ATTORNEY EXAMINER: Then return?

18 MR. KIBLER: Return.

19 ATTORNEY EXAMINER: To wherever you
20 were?

21 MR. KIBLER: Get it and be able to
22 move the towed vehicle to another location.

23 ATTORNEY EXAMINER: From where you
24 were stopped because you felt you couldn't
25 really safely, properly drop it where you were

1 stopped?

2 MR. KIBLER: Yes.

3 ATTORNEY EXAMINER: All right.

4 Okay. Thank you. Any other comments?

5 MR. KIBLER: Yes. As I was dropping
6 my vehicle, the towed vehicle, like I said
7 another driver from my company come through and
8 was stopped on the road. I was stopped prior to
9 the stop sign, he was stopped after the stop
10 sign, after he crossed the exit ramp.

11 And when he finished up he
12 started -- the other trooper pulled in and he
13 started up his tow truck and pulled in and put
14 his car right next to mine.

15 I went over and talked to the other
16 driver. I am like, you know, Adam, please tell
17 me they told you to park this here. He said,
18 like no, they didn't say anything. I got to get
19 it off the road; don't I?

20 ATTORNEY EXAMINER: I am sorry.
21 I didn't quite follow why you mentioned the
22 other driver.

23 MR. KIBLER: He come in and same
24 thing, been stopped out on the same road and
25 when he finish the violation pulled in and

1 dropped his car next to me.

2 ATTORNEY EXAMINER: Next to it?

3 MR. KIBLER: Was not cited.

4 MS. BAIR: Objection.

5 ATTORNEY EXAMINER: Well, okay.

6 Well --

7 MS. BAIR: Objection to the hearsay
8 nature of what the other driver said.

9 ATTORNEY EXAMINER: Well, I
10 understand why you mentioned that, Mr. Kibler,
11 but actually what we need is what happened with
12 you. So thank you. Okay. I will agree to the
13 objection.

14 Did you have any other comments?

15 MR. KIBLER: No, sir.

16 ATTORNEY EXAMINER: Okay. Ms. Bair,
17 any questions of Mr. Kibler?

18 MS. BAIR: I have no questions.

19 ATTORNEY EXAMINER: Okay. Let's go
20 off the record. I just want to see if I have
21 any other questions.

22 (DISCUSSION OFF THE RECORD)

23 ATTORNEY EXAMINER: Go back on the
24 record just for a minute.

25 Question for Inspector Irmscher.

1 You don't have to come back to the witness
2 stand. You can just stay where you are.

3 So the toe bar that you are
4 referring to then, they would have again lights
5 that indicated a vehicle is stopping as well as
6 lights indicating a vehicle was turning left or
7 right?

8 INSPECTOR IRMSCHER: Yes, sir.

9 ATTORNEY EXAMINER: Am I correct?

10 INSPECTOR IRMSCHER: That's correct.

11 ATTORNEY EXAMINER: Okay. I have
12 no other questions at this point in time. Ms.
13 Bair, any other thoughts or your part?

14 MS. BAIR: No, Your Honor. Thank
15 you.

16 ATTORNEY EXAMINER: And, Mr. Kibler,
17 any other issues you want to bring up?

18 MR. KIBLER: No, sir.

19 ATTORNEY EXAMINER: All right.

20 Thank you. I usually provide the parties an
21 opportunity to do a brief if they wish. And,
22 Mr. Kibler, that is simply like a written
23 summary of what your arguments are. It does not
24 have to be done.

25 Ms. Bair, are you interested in

1 doing anything of that nature?

2 MS. BAIR: Not if Mr. Kibler is not,
3 no.

4 ATTORNEY EXAMINER: Okay. Mr.
5 Kibler?

6 MR. KIBLER: No.

7 ATTORNEY EXAMINER: Okay. Well,
8 then, we will just leave things as they are.

9 I want to thank everybody for
10 attending today. And have a good day.

11 MS. BAIR: Thank your, Your Honor

12 MR. KIBLER: Thank you.

13 (At 10:55 A.M. the hearing was
14 concluded)

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
October 31, 2017, and carefully compared with my
original stenographic notes.

Michael O. Spencer
Michael O. Spencer,
Registered Professional
Reporter.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/14/2017 9:43:36 AM

in

Case No(s). 17-1602-TR-CVF

Summary: Transcript In the Matter of Shawn Kibler Notice of Apparent Violation and Intent to Access Forfeiture, hearing held on October 31, 2017. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.