

— — —

— — —

before Mr. Nick Walstra, Attorney Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, called at 1:30 p.m. on Tuesday, February 13, 2018.

— — —

— — —

APPEARANCES:

Mike DeWine, Ohio Attorney General
By Mr. William L. Wright,
Section Chief
Public Utilities Section
Mr. Werner L. Margard,
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

Mr. Otis Stevens

On his own behalf.

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

- - -

Witness	Page
Trooper Eric Weinman	
Direct Examination by Mr. Margard	5
Examination by Examiner Walstra	20
Cross-Examination by Mr. Stevens	22
Redirect Examination by Mr. Margard	28
Recross-Examination by Mr. Stevens	33
Rod Moser	
Direct Examination by Mr. Margard	38
Cross-Examination by Mr. Stevens	44
Redirect Examination by Mr. Margard	48
Recross-Examination by Mr. Stevens	50
Otis Stevens	
Direct Examination	53
Cross-Examination by Mr. Margard	55
Redirect Examination	59
Recross-Examination by Mr. Margard	60

- - -

Staff Exhibit	Identified	Admitted
1 Driver/Vehicle Examination Report	8	52
2 Photographs	11	52
3 5/25/2017 Notice of Apparent Violation and Intent to Assess Forfeiture	41	52
4 7/11/2017 Notice of Preliminary Determination	41	52

- - -

Tuesday Afternoon Session,
February 13, 2018.

- - -

EXAMINER WALSTRA: The Public Utilities Commission of Ohio has called for hearing at this time and place Case No. 17-1676-TR-CVF being in the Matter of Otis Stevens, Notice of Apparent Violation and Intent to Assess Forfeiture.

My name is Nick Walstra. I am the Attorney Examiner assigned by the Commission to hear the case. We'll start by taking appearances from the parties. We'll start with the State.

MR. MARGARD: Thank you, your Honor. On behalf of the transportation staff of the Public Utilities Commission of Ohio, Mike DeWine, Ohio Attorney General, William Wright, Section Chief, Public Utilities Section, by Assistant Attorney General Werner L. Margard, 30 East Broad Street, 16th Floor, Columbus, Ohio.

EXAMINER WALSTRA: Thank you. Sir, if you could give your name and address.

MR. STEVENS: Otis Stevens, address 420 West Liberty Street, Cincinnati, 45214.

EXAMINER WALSTRA: Thank you. We'll go off the record just for a second.

1 (Discussion off the record.)

2 EXAMINER WALSTRA: We'll go back on the
3 record.

4 Mr. Margard, if you would like to call
5 your first witness.

6 MR. MARGARD: Thank you, your Honor. I
7 would like to call Officer Eric Weinman, please.

8 EXAMINER WALSTRA: Please take a seat up
9 here.

10 (Witness sworn.)

11 EXAMINER WALSTRA: Thank you. Please
12 take a seat.

13 - - -

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

17 DIRECT EXAMINATION

18 By Mr. Margard:

19 Q. State your name, please.

20 A. It's Trooper Eric Weinman.

21 Q. Trooper Weinman, by whom are you
22 employed, please?

23 A. Ohio State Highway Patrol.

24 Q. Do you have a business address?

25 A. It's the Wilmington Post, Rombach Avenue,

1 Wilmington.

2 Q. Thank you, sir. In what capacity are you
3 employed at the Highway Patrol?

4 A. Commercial Motor Vehicle Trooper.

5 Q. And how long have you held that position?

6 A. Since June of '16.

7 Q. Do you have any prior experience with the
8 Highway Patrol?

9 A. Yes. Before that I was a Trooper with
10 the Georgetown post for about 24 years.

11 Q. Thank you. Do you have any special
12 certifications or trainings to permit you to conduct
13 inspections of commercial vehicles?

14 A. Yes. I went through the North American
15 Standards Class Part A, Part B. Part A is the driver
16 paperwork portion. Part B is the inspection vehicle
17 portion. And I've gone through the general hazmat
18 and the cargo tank hazmat, passenger vehicle
19 inspection portion of the training.

20 Q. Thank you, sir. Were you on duty on May
21 23 of 2017?

22 A. Yes, I was.

23 Q. And do you know what your assignment was
24 that day?

25 A. At that time I was in the area of 275 and

1 Kellogg Avenue which is down at the Ohio-Kentucky
2 state line. And I was sitting next to the state line
3 there observing traffic coming in from Kentucky.

4 Q. And was your -- your job to select
5 vehicles to inspect? What was your specific
6 assignment?

7 A. Yes, looking for violations. My main
8 thing working down there is watching vehicles
9 crossing the state lines that aren't displaying USDOT
10 numbers.

11 Q. I see. On that date did you have
12 occasion to inspect a vehicle operated by a James
13 Harvey for the Respondent Otis Stevens?

14 A. Yes, I did.

15 Q. And, sir, before we go any further let me
16 ask if you have an independent recollection of that
17 inspection as you sit here today.

18 A. Yes, I do.

19 Q. So you remember the inspection?

20 A. Yes.

21 Q. You remember meeting Mr. Stevens?

22 A. He -- yes, he came to the scene once the
23 driver was stopped and turned out that he was under
24 suspension. Mr. Stevens came and got the driver and
25 the truck.

1 Q. Okay. Thank you, sir. Do you have
2 before you what's been marked as Staff Exhibit No. 1?

3 MR. MARGARD: Your Honor, I will
4 represent Staff Exhibit No. 1 is the Driver/Vehicle
5 Inspection dated May 23, 2017.

6 EXAMINER WALSTRA: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Do you have that before you, sir?

9 A. Yes, I do.

10 Q. Do you recognize that report?

11 A. Yes. It looks -- it looks like the one I
12 prepared the day of the stop.

13 Q. And does it accurately reflect -- and
14 please take the time, whatever time you need, to
15 review that. Does it accurately reflect your
16 findings on that date?

17 A. Yes, it does.

18 Q. Thank you, sir. I am going to ask you a
19 couple of questions about some of the things on this
20 report. First of all, I am going to ask you about
21 the inspection level at the top box, a level II. Can
22 you briefly explain what a level II inspection is?

23 A. Level II is a combination driver
24 inspection/vehicle inspection. We're -- not only do
25 you inspect the registration, logbook if it's

1 applicable, registration paperwork, medical card,
2 driver's license, but you also do a walk-around the
3 vehicle looking, checking tires, body condition,
4 lights, pretty much everything except for getting on
5 a creeper and getting under the vehicle and checking
6 pushrod travel of the brakes.

7 Q. Okay. And that's for determining whether
8 there were motor carrier safety violations both on
9 the part of the driver and on the part of the carrier
10 of the vehicle itself, correct?

11 A. Yes.

12 Q. Now, sir, you understand the issues
13 before us today do not concern the driver. They only
14 concern the vehicle and the carrier. Do you
15 understand that?

16 A. Yes.

17 Q. Okay. Thank you. I am next going to
18 direct your attention to the location section on the
19 top half of that page. Do you see that, sir?

20 A. Yes.

21 Q. And there it says that the location was
22 the Cincinnati Horseshoe Casino. Is that where you
23 were located?

24 A. No. I was having an issue with the Aspen
25 program which is the program that we use to generate

1 the report and that day and I believe the day before
2 I had issues where it wouldn't let me enter a
3 location. It would just pop up at the default
4 locations which are permanent fixtures in the area
5 like the Horseshoe Casino, King's Island, some rest
6 areas, and that. And I could not get it to let me
7 put in the location I was at. So I went ahead and
8 chose that because, well, that's the closest thing to
9 where I was.

10 And then at the time when I gave the
11 driver his copy, I scratched out Cincinnati Horseshoe
12 Casino and put the correct location was I-275,
13 milepost 69. I informed the driver and the owner of
14 the truck what had happened, why I did what I did,
15 and then for our purposes up here I put it in my note
16 section as to why that says that.

17 Q. And, in fact, at the bottom of page 1 of
18 Staff Exhibit 1, No. 1 in the inspection notes you --
19 you relate precisely what you've told us.

20 A. Yes. And then since then I figured why
21 it did what it did and how I can correct it so that
22 next time this won't happen.

23 Q. Very good. Thank you, sir. Let me
24 direct your attention now, if you would, please, to
25 the violations section. Do these similarly default?

1 What information do you put in here and what
2 information is generated by the system?

3 A. What it is is the violations that I find
4 I can put down. Most generally I will put down by
5 section number. Say, for instance, not having a DOT
6 number displayed. I just put in 390.21(b), and it
7 automatically populates the violation. And in some
8 of them there's another box you can go to where you
9 can put in more specific information. Like the tire
10 tread depth less than 2/32s of an inch, I have got a
11 drop down box where I can add stuff to it where I can
12 tell you exactly what tire it was, where it was
13 located, give more of a description on the violation.

14 Q. So am I understanding correctly that you
15 put in a violation code indicating which unit and it
16 otherwise populates this, but you have an option of
17 adding some additional information in that final
18 column; is that correct?

19 A. Yes, yes.

20 Q. Thank you. Officer Weinman, did you ever
21 happen to take photographs of the violations?

22 A. Yes, I did.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Sir, do you have before you what's been
25 marked as Staff Exhibit No. 2? It's a multi-page

1 packet of black and white photographs.

2 A. Yes, sir.

3 Q. And take a moment, if you would, please,
4 and look through those and I would like you to tell
5 me if, in fact, these were the photographs that you
6 took at the time of your inspection.

7 A. Yes, sir.

8 Q. Thank you. I am going to walk you
9 through some of these violations with respect to the
10 notices that were sent to Mr. Stevens, only a couple
11 of them actually involve forfeitures but there were a
12 number of other violations noted and I am going to
13 start with the nonforfeiture violations, if you don't
14 mind. And I am going to start with the 393.95A.
15 This is the no/discharged/unsecured fire
16 extinguisher. What did you find in noting that
17 violation, please?

18 A. That the commercial vehicle did not have
19 a fire extinguisher in the vehicle or on the vehicle
20 per PUCO regulations.

21 Q. No fire extinguisher at all.

22 A. No.

23 Q. The next violation on Staff Exhibit No. 1
24 there is no/insufficient warning devices. What kind
25 of devices are we talking about?

1 A. Anything that would warn traffic that the
2 commercial motor vehicle is disabled. It could be
3 three cones, traffic cones, flares, or most commonly
4 used by commercial motor vehicle operators is a
5 rectangular red box that has three sets of triangles
6 in it that they can put out behind the commercial
7 motor vehicle to show that it's disabled.

8 Q. And did the Respondent have any of those
9 devices?

10 A. No, sir.

11 Q. Thank you. The next -- and then there's
12 a similar one a little further down dealing with a
13 tread depth, the one on the left front and one on the
14 right front; is that correct?

15 A. Yes.

16 Q. And how did you determine that this was a
17 violation?

18 A. By looking at it I could tell that the
19 tires were worn and that it needed to be checked
20 further, so I have a tire gauge with me, and I'm able
21 to put the tread depth gauge along the tire in
22 various places and check the tread depth.

23 Q. Now, you took photographs of the tires,
24 correct?

25 A. Yes.

1 Q. Can you illustrate to us what you found
2 on the basis of any of these photographs? And if you
3 would, if you refer to any of these, please refer to
4 the page number just to keep the record clear.

5 A. On the left front steer I found it had
6 anywhere from 0/32s to 1/32s and a major tread groove
7 was the outside. Steer tires are required to have at
8 least 2/32s of an inch.

9 Q. And that problem existed on both of the
10 fronts.

11 A. Right. The right one I had 1/32 tread
12 right side groove. And the tires were located on the
13 second, third, fourth, and fifth pages of the
14 pictures.

15 Q. Okay. Thank you, sir. Now, the next
16 violation is an inoperable required lamp and where is
17 this lamp located on the vehicle?

18 A. On the rear, on the rear of the vehicle
19 there's three ID lights that are between the
20 taillights. One of those was not working. And
21 neither was the license plate light. I put those two
22 violations together since they were all the rear of
23 the vehicle.

24 Q. And do any of the photographs accurately
25 reflect that violation?

1 A. Page 7 and page 8 show the area. Of
2 course, the lights weren't on at the time, but it
3 does show the areas where those lights would be at.

4 EXAMINER WALSTRA: If I can interrupt,
5 how do you test for those?

6 THE WITNESS: Just ask the driver to turn
7 the lights on.

8 EXAMINER WALSTRA: Okay.

9 THE WITNESS: And then I'll tell him if I
10 want left -- I give the driver hand signals so I
11 don't have to yell at him and he try to hear me over
12 traffic, and I point to the left, to the right. If I
13 want the high beams, I tell him up. Low beams is
14 down, four ways, and then if I push down with my
15 hand, that's hit the brake.

16 EXAMINER WALSTRA: Okay.

17 THE WITNESS: So I have them leave the
18 lights on as I do my walk-around so I can inspect all
19 the lights.

20 EXAMINER WALSTRA: Okay. Thank you.

21 Q. Sir, the next violation that you've noted
22 is that the wheel and mudflaps were missing or
23 defective. Can you explain to us what you found with
24 respect to that violation?

25 A. At the time that commercial motor vehicle

1 went by, the rear wheels were exposed. I believe the
2 mudflaps were missing. That's why the vehicle was
3 stopped. Upon further investigation the left mudflap
4 was pinned up, and then the right one was missing.

5 Q. And, sir, I will refer you again to the
6 photographs and ask if any of these accurately
7 reflect your findings with respect to that violation.

8 A. Page 11 will show where the left one was
9 pinned up. And then page 9 you can see where the
10 right one is missing.

11 Q. Okay. Thank you, sir. At the very last
12 violation noted here is wheel fasteners were loose
13 and/or missing. And what were your findings with
14 respect to that violation, sir?

15 A. The right front steer axle has 10 lug
16 nuts, and 1 of them -- 1 of the studs was missing the
17 lug nut.

18 Q. And do any of the photographs accurately
19 represent that violation?

20 A. No. 13.

21 Q. And we can see there pretty much right in
22 the middle of the page there is a lug nut missing?

23 A. Right, about -- about 12 o'clock.

24 Q. Thank you, sir. Now, I want to go back
25 to the first two violations that you noted in this

1 section. The first one is that you noted that there
2 was no USDOT number displayed on the vehicle. Where
3 would that have been displayed?

4 A. There's various places to where people --
5 I've seen them put them. I look for them on the left
6 side of the vehicle or the right side of the vehicle
7 depending which side of the highway I'm on. They can
8 be anywhere on the fender. I've seen them on the
9 fender. I've seen them displayed on the door. I've
10 seen them displayed on the bed. So sometimes you've
11 got to look for them, and sometimes I'll stop them
12 and realize they do have one. But going by it's hard
13 to catch.

14 I didn't see one on this vehicle looking
15 at all the markings on it and I stopped it and at
16 that time discovered that there was no USDOT number
17 displayed anywhere on the vehicle and upon checking
18 the system found that the company did not have one.

19 Q. And why is that important in your
20 inspection?

21 A. Any -- any vehicle, commercial motor
22 vehicle, crossing state lines in interstate commerce
23 over 10,001 gross vehicle weight rating is required
24 to have a USDOT number. This vehicle was marked
25 Speedy Maintenance Service indicating to me a

1 construction-type company which would be required to
2 have a USDOT number crossing state lines and did not
3 see one displayed.

4 Q. You mentioned a gross vehicle weight.
5 Let me direct your attention to the vehicle
6 identification portion of the Staff Exhibit No. 1. I
7 think it's also indicated in the photographs but can
8 you tell me what that rating was?

9 A. 16,500.

10 Q. So this would have exceeded the 10,000
11 figure.

12 A. Yes.

13 Q. Okay. Now, the critical question,
14 however, is that that's only relevant if this vehicle
15 is crossing state lines; is that correct?

16 A. Yes.

17 Q. Sir, did you observe this vehicle cross
18 the state line?

19 A. Yes, I did.

20 Q. And can you tell us which direction it
21 was coming? Where it was coming? Where it was
22 headed? What do you recall?

23 A. It was coming out of Kentucky at that --
24 at that point 275 where it makes the loop is
25 considered east and west, but I call it north and

1 south because if it's coming out of Kentucky, I call
2 it northbound, and if it's going into Kentucky, I
3 call it southbound even though per ODOT it would be
4 westbound going into Kentucky and eastbound, but I
5 did observe the vehicle coming toward the north out
6 of Kentucky into Ohio.

7 Q. And did you have a conversation with the
8 driver with respect to where he was coming from or
9 where he was headed?

10 A. He was coming from Cincinnati, Ohio, and
11 he was headed to Batavia and he told me that he came
12 into Kentucky via Interstate 471 into Kentucky to 275
13 back into Ohio which a lot of commercial motor
14 vehicles use that way because it's a lot quicker and
15 easier going the interstate around Cincinnati than it
16 is trying to go down past Paul Brown Stadium and
17 Great American Ballpark and that way back to 275.

18 Q. Very good. Is there anything else about
19 the inspection, anything about your report that you
20 think the Commission needs to know that we haven't
21 discussed?

22 A. The driver handed me an Ohio
23 Identification Card with the green banner. To me
24 that was a red flag because an identification card is
25 generally a person gets one of those for

1 identification that does not have a driver's license.
 2 Upon running the driver he was suspended for failure
 3 to pay a reinstatement fee at which -- at that time I
 4 wrote him a traffic citation and cited him into
 5 Hamilton County Municipal Court.

6 Q. So just to be clear, we had an unlicensed
 7 driver operating a commercial motor vehicle across
 8 state lines without DOT registration.

9 A. Yes, sir.

10 MR. MARGARD: Okay. Thank you. I have
 11 no further questions for this witness. Thank you,
 12 your Honor.

13 EXAMINER WALSTRA: Thank you.

14 - - -

15 EXAMINATION

16 By Examiner Walstra:

17 Q. I have a few questions. How far north of
 18 the border were you stationed?

19 A. At that -- I was sitting about half a
 20 mile north which at that point in time I'm covering
 21 the exit -- or the entrance ramp from Kellogg Avenue,
 22 so at that point in time, I know the driver came
 23 across the state line plus I observed it. The actual
 24 stop took place probably about 3 miles north, and I
 25 do that for safety because once you get past the New

1 Richmond exit where U.S. 52 comes off 275, it narrows
2 into two lanes and you go through a valley and it's
3 not really safe. So I wait until I get to Five Mile
4 Road which is about the 69 to where I have a good
5 shoulder. It's nice and straight. People can see my
6 lights. We began a third lane so that people have an
7 extra lane to move over like they're supposed to for
8 flashing lights. So I followed him a bit to where I
9 could get to a safe location to stop him.

10 Q. Okay. From where you are stationed are
11 you able to see essentially the border?

12 A. Yes.

13 Q. Are there any exits or onramps between
14 the border and where you are stationed?

15 A. No. I was sitting right there at the
16 first -- last exit and the first entrance.

17 Q. Okay. And I think you said earlier in
18 your testimony that that's one of the main things you
19 are actually looking for is the USDOT numbers?

20 A. Yes.

21 Q. But did you also say that's not the main
22 reason why you pulled him over?

23 A. I saw that and then the -- saw that he
24 also had no mudflaps. That also drew my attention to
25 him.

1 EXAMINER WALSTRA: Okay. Mr. Stevens, do
2 you have any questions?

3 MR. STEVENS: Yeah, just a couple.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Stevens:

7 Q. I'm real ignorant to this. I know you
8 said earlier you -- you know North American training.
9 You said the first part of the training was dealing
10 with paperwork. Did they ever say anything about the
11 paperwork not being accurate at the location? I
12 mean, how important is paperwork being right?

13 A. Well, the paperwork it's very important
14 to be right, and like I had stated before that I had
15 an issue with the program, that it shaded the
16 location, and I had no way of putting the location I
17 was at, that it would only let me put in a fixed
18 location or what's already stored in the computer for
19 various fixed locations in the State of Ohio.

20 At that time I corrected your copy by
21 hand changing the location, and then for the purposes
22 up here I did put those in my notes and at that --
23 since then I found out why the computer does what it
24 does and how I can correct it next time, so I don't
25 have to do it that way and that way it won't be an

1 issue again.

2 Q. How far is that Horseshoe Casino from
3 where the stop was?

4 A. It's probably, I don't know, 3, 4 miles.
5 It's down -- down by the Hamilton County Jail. It's
6 now called Jack Casino which they haven't updated the
7 list here, but it's right across from the Hamilton
8 County Sheriff's Office or the Jail. And, like I
9 said earlier, I chose that location because it would
10 not let me use any other locations and that was the
11 closest to where we were.

12 Q. What is the distance of the bridge? I
13 mean, what's the span of the bridge that is going
14 from 275 across over in Kentucky? Because I'm
15 thinking as long as -- it's further than 3 miles,
16 maybe like 7, 8 miles, maybe 10 from --

17 A. How long --

18 Q. -- from where we were stopped at versus
19 the Horseshoe Casino. It's quite a distance.

20 A. How long is the bridge?

21 Q. Yeah, that span.

22 A. I couldn't tell you how long the bridge
23 is. I've never measured. It's probably -- the Ohio
24 River has probably got to be half a mile wide or
25 more.

1 Q. Yeah. And the other distance over from
2 Kellogg so I don't know. I mean, I think it's longer
3 than 3 miles. I think it's more like 7 miles. It's
4 pretty far from the Horseshoe, from Jack's Casino,
5 which is on -- that would be Reading Road and
6 Eggleston just drops down. That's quite a distance.
7 That's like downtown Cincinnati almost.

8 A. Yeah. I was going -- I was going from
9 275 and Kellogg.

10 Q. Yeah.

11 A. And then, of course, the 69, you're
12 probably -- that's probably about 3 or 4 miles north
13 of where I was sitting. Like I said, you know, I
14 followed your driver a good bit to where we had a
15 safe place to make the stop and better visibility,
16 better places to pull off.

17 Q. You followed him about 2 miles before you
18 pulled him over, something like that?

19 A. Yeah, 2, 3, miles.

20 Q. Followed him pretty far. I mean, that's
21 quite -- that's -- you know, for the paperwork to be
22 wrong I don't know what that does, but I just know
23 paperwork is important and this is wrong period,
24 wrong. Now, the -- the -- and what kicks in the
25 inspection it's the DOT -- is it because you go over

1 state lines kicks in those other -- this other list
2 on Exhibit -- Exhibit 2 here all these violations
3 here? I mean, the photos, that goes with the Exhibit
4 3 that outlines the violations.

5 MR. MARGARD: Your Honor, Exhibit 3 will
6 be introduced with the next witness, and it lists the
7 same violations that are on Exhibit 1. I provided
8 Mr. Stevens all the exhibits in advance. If you'll
9 look at Exhibit 1, which is the report, those are the
10 violations that he was referring to so that's
11 probably the better document to use.

12 MR. STEVENS: On Exhibit 1.

13 MR. MARGARD: Right.

14 MR. STEVENS: Okay.

15 MR. MARGARD: The inspection report.

16 EXAMINER WALSTRA: Is your main question
17 why he did a level II walk-around inspection?

18 MR. STEVENS: Correct, correct. Yeah, it
19 was not for mudflaps.

20 Q. And what kicks in the level II inspection
21 was by not having the DOT number, correct?

22 A. The level II came about for not having
23 mudflaps because that's not really a driver
24 violation. The USDOT number I've cited that many
25 times by using just the driver only inspection

1 because that is part of the paperwork that you are
2 required to have crossing state lines. Observing the
3 mudflaps, the condition of the tires, you know, when
4 I was up making contact with the driver, that's when
5 I decided to do a level II to look at the vehicle a
6 little bit closer than just a driver only inspection.

7 MR. STEVENS: Can I enter this certified
8 statement from James Harvey of what occurred signed?
9 Is it okay? I guess I don't know what exhibit this
10 would be but. What should I call it?

11 EXAMINER WALSTRA: That would be
12 Respondent Exhibit 1.

13 MR. STEVENS: Okay.

14 MR. MARGARD: Your Honor, I am going to
15 object to this exhibit. This is the statement of the
16 driver. The driver is a witness. He could have been
17 here. This is a hearsay statement.

18 MR. STEVENS: It's notarized and
19 certified by a notary in the State of Ohio.

20 MR. MARGARD: And I have no opportunity
21 to confront this witness, your Honor.

22 EXAMINER WALSTRA: Yeah. Unfortunately,
23 Mr. Stevens, I am going to have to sustain the
24 objection. He is a witness that could have been
25 here. I understand it's been notarized, but it

1 deprives staff the chance to cross-examine the
2 witness and cross-examine statements that he has --
3 that he's made.

4 MR. STEVENS: Okay.

5 Q. (By Mr. Stevens) Officer Weinman, Trooper
6 Weinman, you said that when you stopped the vehicle
7 from -- stopped the vehicle originally, you noticed
8 it did not have the USDOT number, right? Or was it
9 mudflaps? Or was he coming across the bridge? Were
10 you sitting on Kellogg? I mean, so many -- it's a
11 lot of questions, you know. My -- what -- when I
12 talked with my employee, right?

13 MR. STEVENS: Can I say that? When I
14 talked to my employee, he says that -- that -- well,
15 that's hearsay too, isn't it?

16 MR. MARGARD: It would be.

17 MR. STEVENS: I guess. I don't know.

18 EXAMINER WALSTRA: You can ask --

19 MR. STEVENS: I guess I would say on the
20 fact that this is wrong. That's the wrong location.
21 He wasn't stopped there at the Horseshoe Casino. Be
22 it typo, righto, whatever. Not right. I rest, I
23 guess. Whatever that is.

24 EXAMINER WALSTRA: You're good. Thank
25 you.

1 Do you have any redirect?

2 MR. MARGARD: Just to make sure I've got
3 the record clear, your Honor.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Margard:

7 Q. The position of your vehicle, a vehicle
8 passing you would have only come onto the freeway
9 from the Kellogg entrance ramp or across the bridge
10 from Kentucky.

11 A. Yes.

12 Q. Did this vehicle come across the bridge
13 from Kentucky?

14 A. Yes. And it did not come up the ramp
15 from Kellogg because that's why I sit there so people
16 can't tell me, "Well, I came up Kellogg." I can say,
17 "No, you didn't because I seen you."

18 Q. And you were stationary, correct?

19 A. Yes.

20 Q. And the vehicle would have been passing
21 you at freeway speed.

22 A. Yes.

23 Q. And that's when you observed the mudflaps
24 were missing so that would have been from behind the
25 vehicle.

1 A. That -- where I sit I can observe the
2 side of the vehicle too, whether I sit on the edge of
3 the interstate or if I sit in the median. That way I
4 can also observe either side of the commercial
5 vehicle.

6 Q. But you didn't stop the vehicle
7 immediately as it -- as it passed you. You had to
8 get on the road. You waited until you reached a safe
9 place, and then you pulled the vehicle over; is that
10 correct?

11 A. Right. Because I had to accelerate,
12 catch the vehicle, work my way through traffic, and
13 then once we get into the two lane where U.S. 52
14 splits off to New Richmond. It turns into two lanes,
15 and it gets very narrow for about a mile or so as it
16 goes through a little valley. Then once you get to
17 the Five Mile Road, about milepost 69, that's where
18 it opens back up, gets straight. We began a third
19 lane because in those curves, I used to stop people
20 in this and what I found out when people come out of
21 these curves, it's narrow because there's guardrail.
22 We can't get off the road as far and people come out
23 of the curve and see me and they are all trying to
24 change lanes and that's why I just wait until we get
25 to where it's straight. There's no guardrail. We

1 can get off further over in the grass and there's a
2 third lane that people can change lanes and get over
3 away from us.

4 Q. So your -- the reason why you were
5 stopped as far away from the bridge as you were was
6 for safety, both yourself and for the driver of the
7 truck, correct?

8 A. Yes.

9 Q. And has nothing to do at all with the
10 casino, right?

11 A. No, no. Like I said before, it was an
12 error in the program I had. I had it for about two
13 days. It would not let me enter anything except from
14 a list -- default list of fixed objects, locations.
15 I notified my supervisor, Jack Goings, as to what
16 happened, I did -- why I did what I did and I learned
17 how to -- how to fix it next time that happened.

18 Q. Okay.

19 A. How to get in the program and fix it.

20 Q. We've also talked some about the gross
21 vehicle weight, correct? Do you have some
22 familiarity with what size truck is 10,000?

23 A. Generally from my experience it's usually
24 anything with dual rear wheels, generally get into
25 like the Ford F350s that are dualies, like a Chevy

1 3500, anything like that you're looking toward 10,001
2 or more. I have had a couple that are manufactured
3 at 10,000 or 9,999 and you stop them, you look at the
4 gross vehicle weight rating, and it's like catching a
5 fish that's too small. You just throw it back in the
6 water and go find another one.

7 Q. But based on your experience, you had
8 reason to believe this vehicle was at least 10,000.

9 A. Yes, yes, being -- I believe it was a --
10 that was a Ford, I believe it was at least an F350,
11 and just my experience with stopping these kind of
12 dump body landscaping trucks. They're generally
13 around the 13,000 plus range, so I was fairly
14 confident that this vehicle would be over 10,001.
15 And the couple that I have stopped that weren't, I
16 just explain to the driver how the law works, sorry
17 for his inconvenience, and you let him go.

18 Q. All right. Thank you, sir. Now, we also
19 talked a little about the level of the inspection.
20 When you stop a vehicle to inspect it, what
21 determines what level of inspection you conduct, or
22 is that entirely within your discretion?

23 A. That can be with my discretion. A lot of
24 times a driver only inspection gets the job done
25 depending on the violation I have, and if I stop them

1 for traffic violations or if I run the USDOT number
2 and they have a high safety rating, a lot of times a
3 driver only inspection will -- is warranted. You get
4 into obvious vehicle violations are where you see
5 damaged tires, no mudflaps, lights that aren't
6 working, then that would warrant a level II, and also
7 for the scale we're discouraged from doing level III.
8 They want at least level IIs when you are working at
9 the scale.

10 Q. And you noted the mudflaps was obvious to
11 you as the truck passed you.

12 A. Yes.

13 Q. Could you have found violation of the
14 mudflaps without having conducted a full level II
15 inspection?

16 A. Oh, yes. I could have stopped him under
17 state law 5577.11 and issued a traffic ticket or a
18 warning at that time because that's what I did as a
19 trooper at the post level before I got my DOT
20 certification. I would stop them, and I would have
21 the option of writing the driver a ticket or issuing
22 him a warning based on, you know, the, you know,
23 stop.

24 Q. But with your certification it's your
25 testimony today that it was appropriate for you to

1 conduct a level II inspection.

2 A. Yes.

3 MR. MARGARD: I have nothing further.

4 EXAMINER WALSTRA: Thank you. If the
5 system was operating the way you expected it, what
6 would the location have shown up?

7 THE WITNESS: The location, if I put it
8 in the way I wanted to, it would have been IR 275
9 which stands for Interstate Route 275, and the
10 milepost would have been 69.

11 EXAMINER WALSTRA: Okay. Do you have any
12 further questions, Mr. Stevens, just to the
13 questions -- just to the answers he gave here in the
14 second segment?

15 MR. STEVENS: Yes, yes, yeah.

16 - - -

17 RE CROSS-EXAMINATION

18 By Mr. Stevens:

19 Q. You said your system -- when you ran your
20 system to check to see if Speedy Maintenance the
21 company had a DOT number, your system was functioning
22 well at that point, right, to see if the state --

23 A. Yeah. The only issue I had was the Aspen
24 program and that's the program --

25 Q. But your system was working good when you

1 ran it though for me?

2 A. It generates this report. The system
3 that I ran not only Speedy Maintenance through but
4 your name, sir, is called the ISS System which is
5 the --

6 Q. I got you. At what point --

7 MR. MARGARD: Your Honor, if the witness
8 could be permitted to complete his answer.

9 EXAMINER WALSTRA: Yeah. Please finish.

10 THE WITNESS: Okay.

11 A. Yeah. The Aspen program which would not
12 let me put in the correct location, all that does is
13 that just generates this report here. The system
14 that I run Speedy Maintenance through or Otis Stevens
15 in order to find a USDOT number, see if there is one
16 registered to either you or the company, is called
17 the Inspection Selection System. And that's a
18 separate -- that's a separate icon on my computer, a
19 separate program, and I bring it up and I just put in
20 your name, nothing popped up. I put in Speedy
21 Maintenance Service, nothing popped up. So that told
22 me that there was no DOT number to either company
23 because you have to look because sometimes I've seen
24 it to where the company has one say Speedy
25 Maintenance, but then sometimes the owner of the

1 company will get a USDOT number in his name doing
2 business as whatever the company is, so I checked
3 both. I didn't find one. I cited the violation.

4 Q. Did you do that while you were following
5 the vehicle for the 2 miles?

6 A. No.

7 Q. Did you do it after you stopped?

8 A. I did that after the stop.

9 Q. Okay.

10 A. Because it's kind of unsafe to do all
11 that typing while you are trying to drive. I have --
12 I have ran DOT numbers, got up beside a truck, run
13 the DOT number, high safety rating you pull them over
14 but that's only a few numbers. When you are trying
15 to type in a company name plus at that time I don't
16 know what other names the company would be under
17 until I stop the vehicle, investigate a little
18 further, and know what I'm looking for.

19 Q. How many -- how many other vehicles did
20 you stop that day and was your system back working
21 then? How long did it take for you to get the system
22 to work, the Aspen system?

23 A. At that -- at that time I believe I had
24 at least one other inspection with a default
25 location, and then after contacting my supervisor,

1 because it didn't do it every inspection, I run a
 2 couple of inspections, and yours was one of them
 3 where it shaded out the inspection location. And it
 4 would not let me enter any location but one from a
 5 default list, and then the rest I think I probably
 6 did a total of five or six inspections that day. The
 7 other four turned out fine just like the day before I
 8 had a couple where it did the same thing to me, but
 9 then all the other inspections turned out okay as far
 10 as location.

11 Since then I've learned how to -- when
 12 that box is shaded how to navigate through Aspen to
 13 get the shading to go away to where I can enter the
 14 appropriate location.

15 Q. You also said that you were able to
 16 determine weight of the vehicle by looking at it.
 17 And you stated that you let a couple ones go that
 18 didn't meet the weight requirement for them to be
 19 required to have USDOT registered. And was my truck
 20 loaded or unloaded?

21 A. At that time I -- I believe -- I believe
 22 it was unloaded. But at the time whether it's
 23 loaded, looking at the pictures here unless there is
 24 something in the bed, I don't remember it having a
 25 load. But whether it's loaded or not makes no

1 difference. It goes by the gross vehicle weight
 2 rating by the manufacturer, either the manufacturer
 3 of the body -- chassis which would be Ford, Chevy.
 4 Sometimes you'll find two gross vehicle weight
 5 ratings where the manufacturer of the particular
 6 body, dump bed, utility body will put their own gross
 7 vehicle weight rating, and it matches what the one by
 8 the manufacturer of the chassis, so I went by the
 9 sticker on the door and that's how I came up with the
 10 16,500.

11 Q. But your original looking at that time
 12 you saw that it was over basically.

13 A. My experience told me that it would be
 14 over. A lot -- some vehicles are purposely made by
 15 the manufacturer at 10,001 or less, and it looks just
 16 like one that could be over because they do that so
 17 people don't -- so that they fall under the USDOT
 18 regulations just like a vehicle could be under CDL
 19 level or over CDL level. They are manufactured that
 20 way to suit different -- different buyers and
 21 different users.

22 Q. But you couldn't determine that by just
 23 driving up on it, right?

24 A. No. You have to -- my experience would
 25 let me know that, yes, this vehicle is going to be

over, but to know exactly what it is, you don't know that until you get it stopped. The plate, there's a weight sticker on the license plate to whatever you register that for. Gives me a general idea but to get the most accurate would be the door sticker from the manufacturer that's located on the driver's side inside the door.

MR. STEVENS: Thank you, Trooper. I have no further questions.

EXAMINER WALSTRA: Thank you. You're all set.

THE WITNESS: Thank you, sir.

MR. MARGARD: Your Honor, we would call Mr. Rod Moser.

(Witness sworn.)

EXAMINER WALSTRA: Please take a seat.

- - -

ROD MOSER

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

DIRECT EXAMINATION

By Mr. Margard:

Q. State your name, please, sir.

A. My name is Rod Moser.

Q. And by whom you are employed, sir?

1 A. I'm employed by the Public Utilities
2 Commission of Ohio.

3 Q. And your business address, please?

4 A. 180 East Broad Street, Columbus, Ohio
5 43215.

6 Q. And in what capacity are you employed by
7 the Public Utilities Commission?

8 A. I'm the Chief of the Compliance Section
9 within the Transportation Department.

10 Q. Sir, would you please briefly describe
11 your relevant job experience.

12 A. Sure. Job experience?

13 Q. Please.

14 A. Okay. I have been with the Public
15 Utilities Commission for approximately 11 months in
16 this capacity. Prior to that I spent nearly 30 years
17 with the Highway Patrol, 25 of it as a supervisor in
18 some capacity, primarily in commercial enforcement.

19 Q. Sir, are you also certified to conduct
20 commercial vehicle inspections?

21 A. I'm certified North American Standard A
22 and B general, hazmat, and motor coach.

23 Q. And have you, in fact, conducted such
24 inspections?

25 A. Yes, I have.

1 Q. Thank you, sir. Would you please
2 describe for us how a civil forfeiture is calculated
3 for violations of the motor carrier safety
4 violation -- regulations.

5 A. I'm sorry. Can you say it again?

6 Q. Sure. Would you please explain to us how
7 a civil forfeiture is calculated for violations of
8 motor carrier safety regulations.

9 A. Sure. All the violations can be cited or
10 divided into four -- sorry, five different groups,
11 group 0, 1, 2, 3, and 4. Group 0 violations are
12 violations that are generally speaking relatively
13 minor and do not carry a fine at all. Groups 1, 2,
14 and 3 are more serious, and they carry a fine if they
15 are an out-of-service violation. And then group 4 is
16 a more serious violation that always carries a fine,
17 and those fines vary depending on the violation.

18 Q. Now, is there some kind of a schedule in
19 terms of how you decide what violations get fines?

20 A. Yes, there is. We have a schedule that
21 was originally based upon the recommendations from a
22 group called the Commercial Vehicle Safety Alliance.

23 Q. And the fine schedule that is currently
24 used by the Commission, are those recommended fines
25 consistent with those recommended by the Commercial

1 Vehicle Safety Alliance?

2 A. Yes, they are.

3 Q. And is the procedure that you've
4 described consistent with respect to all forfeitures,
5 all violations?

6 A. Yeah. It's -- it's an automated system,
7 so each -- each instance is treated the same as all
8 other instances. The fines are applied evenly.

9 Q. Now, prior to testifying today, did you
10 have an opportunity to review the Commission's files
11 with respect to this inspection?

12 A. Yes, I did.

13 Q. You had an opportunity to review the
14 Vehicle Examination Report?

15 A. I did.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 Q. Do you have before you what's been marked
18 as Staff Exhibits 3 and 4?

19 A. I do, yes.

20 MR. MARGARD: Your Honor, I'll represent
21 that Staff Exhibit No. 3 is a Notice of Apparent
22 Violation and Intent to Assess Forfeiture dated May
23 25 of 2017, and the Staff Exhibit No. 4 is a Notice
24 of Preliminary Determination dated July 11, 2017.

25 Q. Sir, are these documents that are

1 maintained as part of the Commission's file with
2 respect to this inspection?

3 A. Yes, sir, they are.

4 Q. And what is the purpose of these and what
5 do they show?

6 A. The Exhibit No. 3, the -- what we
7 commonly refer to as an NIF letter is a Notice of
8 Apparent Violation and Intent to Assess Forfeiture.
9 That is the first letter that will go out to a
10 Respondent to whom we intend to assess a fine. The
11 letter details the violations that were found and the
12 amount of the forfeiture assigned to each violation.

13 Q. And what -- what does a -- it shows \$100
14 fine for the failure to display a USDOT number,
15 correct?

16 A. Yes, sir.

17 Q. And that is a level 4 violation?

18 A. A group 4.

19 Q. Group 4, sorry. And also the failure to
20 have a USDOT registration is also a group 4
21 violation, correct?

22 A. Yes, sir.

23 Q. Showing a forfeiture amount of \$500.

24 A. That's correct.

25 Q. For a total forfeiture of \$600?

1 A. Yes, sir.

2 Q. And in your opinion have these forfeiture
3 amounts been accurately and reasonably determined?

4 A. They have been.

5 Q. Thank you, sir. And in your opinion has
6 the Respondent received all of the notices that he is
7 required to receive?

8 A. Yes, sir, he has.

9 Q. Let me ask you further, sir, if you've
10 had an opportunity prior to the hearing today to do
11 any other investigation of the Speedy Maintenance
12 Service Company.

13 A. I did, yes, sir.

14 Q. And did you ascertain whether the company
15 has subsequent to this violation since registered
16 with the USDOT?

17 A. To the best of my knowledge, they have
18 not. I searched the Federal Motor Carrier Safety
19 Administration portal which allows you to search by
20 name or doing business as, whatever -- whatever you
21 want to put in there basically. I did try by name.
22 I tried by the license plate to see if there had been
23 any other inspections with that same vehicle. There
24 have not been. I was not able to find any DOT
25 information for either Speedy Maintenance or Otis

1 Stevens.

2 MR. MARGARD: Very good. Thank you, sir.

3 I have no further questions of this witness.

4 EXAMINER WALSTRA: Thank you.

5 Any questions, Mr. Stevens?

6 MR. STEVENS: Yes.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Stevens:

10 Q. What state is Speedy Maintenance
11 registered in?

12 A. Well, I couldn't -- I checked through the
13 Secretary of State's website here in Ohio, and I
14 didn't find it there either. I didn't find any
15 registration information for Speedy Maintenance.

16 Q. Okay. But I'll testify to that where
17 we're registered at. So you didn't find any --

18 A. I didn't find anything.

19 Q. Do you also know if Speedy Maintenance
20 Service left -- the vehicles had left out of the
21 state to do any work in Kentucky, Indiana, you know,
22 anywhere outside Ohio? Do you know that?

23 A. I don't have any personal knowledge of
24 that.

25 Q. Is the vehicle registered in the State of

1 Ohio?

2 A. Yes, uh-huh. It was at the time of this
3 inspection.

4 Q. At the time you looked -- yeah. Since
5 you went back and checked all the -- you know, see
6 have we gotten a DOT sticker at that time, was the
7 vehicle still registered in the State of Ohio?

8 A. I don't know that. I don't have access
9 to LEADS information, Law Enforcement Automated Data
10 System. What I can do with the pictures that were
11 given, the information on the inspection report, it
12 showed it as an Ohio plate, and I ran that plate
13 through the federal portal just to see if there was
14 any other inspections based upon that plate. And I
15 didn't find any.

16 Q. There was none. The -- but you equally
17 don't know we have -- we have left -- we have -- how
18 does the law -- I don't -- can you tell me, enlighten
19 me how the law is written with regards to vehicles
20 traveling out of the state jurisdiction what happens?
21 I mean, what's -- how you have to have a USDOT
22 sticker.

23 A. If you are acting in interstate commerce,
24 you qualify as a commercial motor vehicle, then, yes,
25 you have to have a DOT number.

1 Q. Or as you know, we haven't left the state
2 as far as you know.

3 A. I'm not sure what you mean by that.

4 Q. That's the question, have you seen -- did
5 you see us leave the State of Ohio? Because -- in
6 other words, that law doesn't apply unless we leave
7 to have interstate commerce outside the state, right?

8 A. Well, you have to understand the
9 definition of interstate commerce. So you don't
10 necessarily have to cross a state line for this to
11 apply.

12 Q. Okay.

13 A. You don't necessarily have to have
14 physically crossed the state line. If you are
15 handling goods that are -- maybe originated in
16 Indiana, they came into Ohio by another carrier, you
17 pick them up in Cincinnati and take them to
18 Cleveland, you are still acting in interstate
19 commerce, and you are still required to have a DOT
20 number.

21 Q. Do you know if Speedy Maintenance or
22 myself have done that?

23 A. I don't know, sir.

24 Q. Okay. One other thing, I don't know, I
25 don't know your business, but if you have incorrect

1 information on a -- on a -- on some -- some document
2 or manifesto, how does -- would that affect the
3 manifesto as far as being accurate?

4 A. Well, I don't really know. That would be
5 up to a court to interpret whether or not they would
6 want to accept it. As far as it coming into my
7 possession, we would question why, you know, if we
8 have something immediately recognizable, we would
9 question what happened. In this case the trooper put
10 a pretty good explanation in there about it.

11 Q. Yeah. I understand. I understand that.
12 I mean, I get you understand the trooper did this.
13 I'm just saying how -- what happens when it
14 becomes -- what nullifies if you change it, if you
15 alter it? If you had a paper and you -- Ohio Public
16 Utilities -- what's your title again? I'm sorry,
17 Ron.

18 A. The Chief of Compliance.

19 Q. Chief of Compliance, okay. So you kind
20 of know that some paperwork can come before you that
21 is scratched out and rewritten, would you accept that
22 with an explanation?

23 A. Yeah, I would.

24 Q. Well, would it be --

25 A. I mean, we would want to know why and

1 hopefully correct it for the future, but as long as
2 there is an explanation, yes.

3 Q. Okay. But would it be like legal; in
4 other words, some documents that are -- couldn't do
5 that so you couldn't have a white out or scratch out.

6 A. I don't know the answer to that.

7 MR. STEVENS: All right. That's all.

8 Thank you.

9 EXAMINER WALSTRA: Thank you.

10 Any redirect?

11 MR. MARGARD: Yeah, just a couple of
12 questions. Thank you.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Margard:

16 Q. Sir, I understand you are not an
17 attorney, correct?

18 A. That's right.

19 Q. But your understanding of the regulations
20 is based on your years of experience and your
21 training with respect to motor carrier safety
22 regulations, correct?

23 A. Yes, sir.

24 Q. And you testified as to what constitutes
25 interstate commerce. And you've been present during

1 the hearing today, correct?

2 A. Yes, sir.

3 Q. The description that Officer Weinman gave
4 of vehicles essentially cutting across the state of
5 Kentucky to get from one point in Ohio to another
6 more quickly, would that in your opinion constitute
7 interstate commerce?

8 A. Yes, it does and, in fact, that was a
9 specific example given during our training going from
10 one state, through a state, back to the original
11 state is indeed interstate commerce.

12 Q. And while you testified that you don't
13 necessarily have to cross the state border in order
14 to be engaging in interstate commerce, if you were to
15 cross a state border, would that, in fact, be
16 engaging in interstate commerce?

17 A. Yes, sir.

18 Q. You were also asked a number of questions
19 about the accuracy of the documentations presented
20 to -- to the Commission. In your review of Staff
21 Exhibit No. 1, does that accurately reflect based on
22 the testimony that you've heard today the violations
23 that were observed in this instance?

24 A. Yes, sir.

25 MR. MARGARD: That's all I have. Thank

1 you.

2 EXAMINER WALSTRA: Any questions to his
3 answers that he just gave?

4 MR. STEVENS: Yes, yes.

5 - - -

6 RECROSS-EXAMINATION

7 By Mr. Stevens:

8 Q. Mr. Moser, how many times have you went
9 to court with documents -- documentation like this?

10 A. Actually one time in my own personal
11 experience, not with the Public Utilities Commission
12 but with the Highway Patrol where I actually had a
13 wrong location on a citation. I explained it to the
14 judge and he allowed me to make a change and he
15 accepted it.

16 Q. Okay. But with your official title have
17 you been to court with it?

18 A. No.

19 Q. Okay. Also I lose my train of thought
20 sometimes. Bear with me. I build buildings. I'm
21 like call me up and I'll build you a building.
22 That's what I do. But the prosecutor -- he asked a
23 question. I think it was something like does -- what
24 constitutes interstate commerce, right? And your
25 definition was things that come from another state

1 that is picked up in Ohio and traveled to another
2 state, right? That's what he asked, correct?

3 A. It doesn't necessarily have to be picked
4 up in Ohio, just something that originates outside of
5 Ohio and comes through Ohio, crossing a state line
6 someplace, could be multiple carriers handling it
7 along the way, but the good or service crossed the
8 state line.

9 Q. And would you look at the photo right
10 here? One of these photos on Exhibit No. 2 --

11 MR. MARGARD: May I approach, your Honor?

12 EXAMINER WALSTRA: You may.

13 MR. MARGARD: He doesn't have those. Go
14 ahead.

15 Q. Oh, page No. -- page No. 7, it doesn't
16 appear in this photo we have a load, carrying
17 anything that would be by definition interstate
18 commerce, right?

19 A. The truck is being used in the
20 furtherance of a commercial enterprise.

21 Q. But I am -- it doesn't seem to be
22 carrying any interstate commerce like carrying
23 supplies.

24 A. I can't really tell what's in it, but the
25 truck is being used.

1 Q. Based on the testimony of the Officer
2 Eric Weinman, Trooper Eric Weinman, he said that
3 there was no load on it, correct?

4 A. I think he said he didn't think there was
5 but, yeah.

6 Q. Right. So there is no load on it. Okay.
7 And you didn't actually see me, or Otis Stevens,
8 Speedy Maintenance carrying nothing, doing no
9 interstate commerce, right?

10 A. I didn't.

11 MR. STEVENS: Right. That's all.

12 EXAMINER WALSTRA: Thank you. You're all
13 set. Thank you.

14 MR. MARGARD: Your Honor, I have no
15 further witnesses and would respectfully request
16 admission of Staff Exhibits 1, 2, 3, and 4.

17 EXAMINER WALSTRA: Thank you. They will
18 be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER WALSTRA: Mr. Stevens, if you
21 would like to take the stand and give testimony.

22 MR. STEVENS: Yes.

23 (Witness sworn.)

24 EXAMINER WALSTRA: Thank you.

25 - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OTIS STEVENS

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

DIRECT EXAMINATION

EXAMINER WALSTRA: Now, you can give a
narrative of how you see things and how you
understand things, and then they will have a chance
to cross-examine you after that. So whenever you're
ready. If you have questions, go ahead.

THE WITNESS: Yeah. One question you
can't say like swear to God? You don't say that any
more, you know, swear to tell nothing but the truth?

EXAMINER WALSTRA: We have some
discretion there.

THE WITNESS: Oh, okay. All right. I
don't actually know where to start. I got a call
that the James Harvey individual that the citation
was written against driving without a license got
stopped -- I got a call that I needed to hurry up and
get over there, State Route 32, because the trooper
had stopped the truck and that he had some issues
with his -- his driving privileges.

I got to the scene. I saw Trooper
Weinman over at top -- you know, the trooper there
and we started talking about he -- that's when he

1 asked me some questions. I said, "Well, you know, I
2 don't -- I don't know those answers" and he asked
3 James Harvey those questions and he answered the
4 questions. We were very cooperative. We were trying
5 to understand what it is that we needed to do in
6 order to rectify and deal with the situation.

7 It -- it appeared to me that some of the
8 questions that were being answered was kind of like
9 loaded questions, you know, if you say this wrong,
10 then it's this. You say that wrong, then it's that.
11 But nevertheless we answered them, and we received a
12 citation. The first thing that I noticed was, you
13 know, there was some issues going on with, you know,
14 where -- you know, what -- exactly what -- what was
15 required from the US -- from the DOT perspective and
16 where -- where my guy's coming from. That was the
17 question. And -- and I have -- I know I can't use
18 this statement. I guess I can say it, right?

19 MR. MARGARD: You can try. I'll object.

20 THE WITNESS: You'll object? Okay.

21 Okay. Well, my -- well, after my investigation at my
22 office and my talking with James Harvey, you can't
23 object to that because he is on the citation, James
24 Harvey, I was talking with James Harvey and going
25 over everything we found in my office, that James

1 Harvey hadn't violated the USDOT law statute, that he
2 was in Ohio, that he never went to Kentucky.

3 MR. MARGARD: Your Honor, I'll object and
4 move to strike on the basis of hearsay.

5 EXAMINER WALSTRA: I'll allow it. The
6 Commission will give it the weight it deserves. You
7 can go ahead.

8 THE WITNESS: That's about it. I guess
9 that's it. That's all I have, your Honor. That's
10 all I have.

11 EXAMINER WALSTRA: Are you contesting all
12 the violations?

13 THE WITNESS: Yes.

14 EXAMINER WALSTRA: All the carrier
15 violations?

16 THE WITNESS: Yes.

17 EXAMINER WALSTRA: You may cross whenever
18 you're ready.

19 MR. MARGARD: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Margard:

23 Q. First of all, Mr. Stevens, you weren't
24 present during the inspection, correct? You came
25 after the inspection was conducted? You came at some

1 point after Mr. Harvey was stopped and the inspection
2 was being conducted, correct?

3 A. Not entirely.

4 Q. What portion of the inspection did you
5 observe?

6 A. The first -- I think we were looking for
7 the load -- the weight load of the truck. We were
8 looking for the weight load.

9 Q. Had Mr. Harvey been issued his copy of
10 the inspection report at the time you had arrived?

11 A. I can't really recall.

12 Q. Okay. Thank you. Now, Mr. Harvey did
13 not have a valid operating license; is that correct?

14 A. That is correct.

15 Q. Were you aware of that when you permitted
16 him to operate this vehicle?

17 A. No.

18 Q. You conducted no inquiry to determine
19 whether your driver was licensed to drive the truck?

20 A. Yeah, verbally, sure, I asked him.

21 Q. And did he tell you that he had a
22 license?

23 A. He wouldn't have been driving, that's
24 correct.

25 Q. All right. So Mr. Harvey was untruthful

1 to you.

2 A. I'll say per se, yeah.

3 Q. Yes. Now, with respect to the vehicle
4 weight, you have before you the photographs, correct?

5 A. Yes, I do.

6 Q. And if you turn to page 2, that is, in
7 fact, the plate that's on that vehicle, is it not?

8 A. That's the sticker that's on the door,
9 yes, yes.

10 Q. Okay. And what does it indicate the
11 gross vehicle weight rating to be?

12 A. It says, that's correct, 16 thousand 5.

13 Q. 16,500, correct?

14 A. Uh-huh.

15 Q. Okay. And you heard Mr. Moser testify
16 that he was unable to find a USDOT registration for
17 you; is that correct? You have not registered with
18 the USDOT; is that correct?

19 A. That is correct. I don't -- I don't
20 drive out -- all our work is in Ohio. We are in
21 Ohio. We don't pick up any interstate commerce and
22 carry from a state to another location. We do local
23 work.

24 Q. Do you have any means of monitoring where
25 your drivers drive?

1 A. Absolutely.

2 Q. And what means are those, sir?

3 A. Those means is daily log of where they
4 need to go. They pick up things and bring them back
5 or take and drop a crew off, yes, I know every
6 location of every project that I have going. None of
7 them are in the State of Ohio -- I mean State of
8 Kentucky or Indiana.

9 Q. And you're confident that your drivers
10 accurately complete those reports; is that correct?
11 That's your belief?

12 A. Yes.

13 Q. Even if they lie to you about whether
14 they are licensed to operate a vehicle.

15 A. Yeah, because they kind of like don't
16 want to put -- they don't want to be responsible for
17 the fuel in the truck, you know.

18 MR. MARGARD: I have no further
19 questions. Thank you, your Honor.

20 EXAMINER WALSTRA: Thank you.

21 Mr. Stevens, do you have anything to
22 follow up to their questions you were just asked?

23 THE WITNESS: Yes.

24 - - -

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDIRECT EXAMINATION

THE WITNESS: Most -- well, James Harvey, he has been a -- an outstanding employee. He has since went and has gotten his license situation straightened out so he has -- he met all the State of Ohio requirements for having a vehicle license. He has -- he has insurance, and he's doing real well. The -- when he -- when he was stopped, I guess from what he told me -- well, it's hearsay again. What I do know he was going through some issues with -- after investigating, going through some issues with his license.

He has since got all that straightened out. And -- and he has been, like I said, a loyal, good employee. He's hard working. He's honest. He's dedicated, and I personally see a lot of growth in him. He's taking classes now in order to better understand mechanical drawings, so he's moving forward in his life and doing well.

Now, again, the question to this examination report, the citation, you know, I -- again, I questioned it. When I -- you know, in all -- I am going to continue -- well, I question it. I think someone trained in, has all the expertise in the world, has all the means at their disposal in

1 order to get it accurate should have it accurate. I
2 don't think it should be inaccurate -- it should not
3 not be accurate and factual and -- and I be held
4 accountable for it. That's all.

5 EXAMINER WALSTRA: Thank you.

6 MR. MARGARD: Your Honor, may I just
7 follow up?

8 EXAMINER WALSTRA: Yes, sorry.

9 - - -

10 RECROSS-EXAMINATION

11 By Mr. Margard:

12 Q. Mr. Stevens, were you provided with a
13 copy of the report that was given to your driver?

14 A. I would say I was. Sure, I was.

15 Q. And were there, in fact, notations on it
16 correcting the location in the officer's handwriting?

17 A. I don't know the officer's handwriting.
18 I don't know who wrote it on there.

19 Q. But something was written on there
20 correcting the location.

21 A. I don't even recall seeing it, but I know
22 that from my experience, may be different from your
23 experience, when we see things altered, it throws up
24 a red flag. We have our pet peeves too as the
25 officer has his pet peeves, throws -- this throws up

1 red flags any time I see any document that comes
2 before that has been scribbled and/or altered in any
3 way, I find it less than being authentic.

4 MR. MARGARD: Thank you.

5 Your Honor, I have nothing further.

6 EXAMINER WALSTRA: Thank you.

7 Anything else from either of the parties?

8 MR. MARGARD: No, your Honor.

9 EXAMINER WALSTRA: Thank you. The
10 Commission will take this under advisement, and we'll
11 issue an opinion in due time.

12 Thank you. We're adjourned.

13 (Thereupon, at 2:48 p.m., the hearing was
14 concluded.)

15 - - -

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, February 13,
2018, and carefully compared with my original
stenographic notes.

Karen Sue Gibson
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6495)

- - -



This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/26/2018 11:49:48 AM

in

Case No(s). 17-1676-TR-CVF

Summary: Transcript In the Matter of Otis Stevens, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on February 13, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.