

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Gregory :
D. Willet, Notice of :
Apparent Violation and : Case No. 18-946-TR-CVF
Intent to Assess :
Forfeiture. :

- - -

PROCEEDINGS

before Ms. Lauren Augostini and Mr. Nick Walstra,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-D,
Columbus, Ohio, called at 10:00 a.m. on Thursday,
April 4, 2019.

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1 APPEARANCES:

2 Dave Yost, Ohio Attorney General
3 By Mr. Steve Beeler,
4 Assistant Attorney General
5 Public Utilities Section
6 30 East Broad Street, 16th Floor
7 Columbus, Ohio 43215

8 On behalf of the Staff of the PUCO.

9 Mr. Gregory D. Willet

10 On his own behalf.

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1 Thursday Morning Session,

2 April 4, 2019.

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4 EXAMINER AUGOSTINI: Let's go on the
5 record.

6 The Public Utilities Commission of Ohio
7 has assigned for hearing at this time and place Case
8 No. 18-946-TR-CVF, being in the Matter of the Gregory
9 D. Willet, Notice of Apparent Violation and Intent to
10 Assess Forfeiture.

11 My name is Lauren Augostini, and with me
12 is Nick Walstra. And we are the Attorney Examiners
13 assigned by the Commission to hear this case.

14 At this time I would like to take
15 appearances of the parties beginning with Staff.

16 MR. BEELER: Thank you, your Honor. On
17 behalf of the Staff of the Public Utilities
18 Commission of Ohio, Ohio Attorney General Dave Yost,
19 I'm Steve Beeler, Assistant Attorney General, 30 East
20 Broad Street, 16th Floor, Columbus, Ohio.

21 EXAMINER AUGOSTINI: And then,
22 Mr. Willet, will you please state your name for the
23 record.

24 MR. WILLET: Gregory D. Willet.

25 EXAMINER AUGOSTINI: Thank you.

1 Mr. Beeler, are you ready to proceed?

2 MR. BEELER: Yes, your Honor.

3 EXAMINER AUGOSTINI: You may call your
4 first witness.

5 MR. BEELER: Your Honor, the Staff would
6 call Trooper Mularcik.

7 (Witness sworn.)

8 EXAMINER AUGOSTINI: Thank you. You may
9 be seated.

10 - - -

11 TROOPER TIMOTHY MULARCIK
12 being first duly sworn, as prescribed by law, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Beeler:

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. Just to begin please state your full name
19 for the record.

20 A. Trooper Timothy Mularcik.

21 Q. Where are you employed?

22 A. The Ohio State Highway Patrol District 6
23 Columbus District.

24 Q. Okay. What is your position at the
25 Highway Patrol?

1 A. Commercial motor vehicle inspections
2 primarily, outside of that enforce traffic and
3 criminal laws on the roadways of Ohio.

4 Q. Okay. How long have you been with the
5 Patrol?

6 A. With the Highway Patrol for coming on 15
7 years. I've been with the LCS section for almost two
8 and a half.

9 Q. Okay. And the LCS section is?

10 A. I apologize, commercial vehicle section,
11 the commercial enforcement, doing inspections and
12 whatnot.

13 Q. Okay. In your current duties, explain
14 what your current duties are.

15 A. My current duties assigned to the
16 specialty position of Licensing Commercial Standards.
17 We primarily focus on the FMCSA/PUCO regulations and
18 violations, stopping the commercial vehicles subject
19 to PUCO, doing inspections and safety inspections
20 based on that.

21 Q. Okay. And what sort of training do you
22 have in that area?

23 A. I started off with the North American
24 Part A Standards. I was at the post level doing just
25 logbooks and vehicle and driver credential

1 violations. That certification gave me preference to
2 get into the section full-time. I then participated
3 in multiple one- and two-week long classes at the
4 Ohio State Patrol Academy, training by FMCSA for a
5 hazmat vehicle and commercial vehicle, North American
6 Part A, Part B, things of that sort.

7 Q. Okay. In the -- in the inspection
8 process would you generally say that motor carrier
9 inspections are conducted to protect Ohio's traveling
10 public?

11 A. Absolutely. The point of them is not for
12 fines and forfeitures. The idea is to make sure they
13 are safe, they are not causing crashes and causing
14 injury.

15 Q. All right. How many inspections on
16 average do you think you perform in a year?

17 A. On average somewhere in the ballpark 750
18 to 800, on average 65 to 80 a week.

19 Q. Okay.

20 MR. BEELER: May I approach the witness,
21 your Honor?

22 EXAMINER AUGOSTINI: You may.

23 MR. BEELER: And I have here what has
24 been previously marked as Staff Exhibit 1. This is
25 the Driver/Vehicle Examination Report with an

1 inspection date of February 7, 2018. I ask -- it's
2 been previously marked.

3 EXAMINER AUGOSTINI: Thanks.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. (By Mr. Beeler) Do you recognize this
6 document?

7 A. Yes. This inspection report I generated
8 in regards to why we are here today.

9 Q. Okay. Is this document a Patrol record?

10 A. It is.

11 Q. Is it kept in the ordinary course of your
12 business?

13 A. It is.

14 Q. And it's the practice of the patrol to
15 make this report, right?

16 A. It is.

17 Q. And do you report on matters you observe
18 pursuant to a duty imposed by law as to which there
19 was a duty by you to report?

20 A. I do.

21 Q. Is this document in the same substantial
22 condition as when you prepared it?

23 A. It is.

24 Q. And was the reason for you producing this
25 report an inspection of the Containerport Group,

1 Incorporated?

2 A. It is.

3 Q. You remember the inspection?

4 A. I do.

5 Q. Who is the driver listed on the report?

6 A. The driver listed is Gregory D. Willet.

7 Q. Okay. Is Mr. Willet here today?

8 A. He is seated in the defendant's table.

9 Q. And does the driver get a copy of that
10 report at the stop?

11 A. They do.

12 Q. Okay. Are there any violations noted on
13 the report?

14 A. The only violation is -- the only one
15 discovered is the seat belt violation.

16 Q. Okay. And you observed Mr. -- Mr. Willet
17 not wearing his seat belt on the day of the
18 inspection, correct?

19 A. I did note the violation.

20 Q. Just in the narrative how did you observe
21 Mr. Willet not wearing his seat belt?

22 A. On this day, the 7th, about 4 o'clock in
23 the afternoon, I was on Alum Creek Road as it
24 overpassed 270. I observed a commercial motor
25 vehicle configuration exiting from 270 would have

1 been eastbound to Alum Creek Southbound.

2 What caught my attention was the vehicle
3 was in the far right hand in the right turn lane. I
4 was in the middle lane coming southbound and had no
5 view obstructions to my right. As the commercial
6 vehicle came to a stop at the red light, as I had the
7 green, the driver leaned forward away from the seat
8 back, then looked at southbound traffic, to observe
9 for the safety belt on the right.

10 As I do, my 15 years, it's just a habit.
11 Seat belt violations are very important to us in
12 Patrol, that we are always looking for those. As the
13 driver leaned away from the seat back, it was clear
14 and evident that the seat belt was not being used as
15 I could see clearly obviously not coming from the
16 door pillar to the shoulder.

17 I don't recall a shirt color to say if it
18 was a light-colored shirt contrasted with the belt to
19 say if there was any type of contrast between the
20 belt and the shirt. But another primary indicator
21 that I use over my 15 years, and I found to be almost
22 more reliable, is that belt coming from the door
23 pillar to the shoulder, that was clearly and
24 obviously not present in this case.

25 Because the way the intersection was, the

1 busyness of it, obviously it didn't make sense to
2 stop dead in the intersection to wait for the truck
3 to pull out.

4 I then rode past the truck. I moved to
5 the right shoulder, waited for the truck to come out
6 from the stop light. As I came out, I came off the
7 berm, made the traffic stop and made the contact and
8 did the inspection.

9 Q. Okay.

10 MR. BEELER: May I approach?

11 EXAMINER AUGOSTINI: You may.

12 Q. You've described the -- the intersection
13 a little bit that the truck was -- was at at the
14 time, at the time you observed him.

15 MR. BEELER: I would like -- this is
16 previously marked as Staff Exhibit 2. I would like
17 to have it marked.

18 EXAMINER AUGOSTINI: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Is this the intersection that you
21 observed Mr. Willet not wearing his seat belt?

22 A. It is.

23 Q. Is this an -- is this an accurate
24 depiction of -- of the intersection?

25 A. It is.

1 Q. And from this picture you see that it
2 is -- it's a Google image, and the image captured was
3 June of 2018?

4 A. Yes.

5 Q. Is that correct?

6 A. That is very accurate. In fact, the lane
7 which is depicted with the silver pickup truck in it,
8 that would have been approximately where my vehicle
9 was. The defendant's vehicle would have been to the
10 right of where the white commercial vehicle is
11 sitting. It looks like it's about in the middle of
12 the left turn.

13 Q. Back to the June 2000 -- this inspection
14 took place in February of 2018?

15 A. Right.

16 Q. So we are talking four months' difference
17 there?

18 A. Yes.

19 Q. So when you observed -- so you would
20 be -- your vehicle would have essentially been what
21 this truck -- this truck, the four door -- I am not
22 sure what sort of truck that is. Do you know what
23 sort of truck that is?

24 A. It looks like a Toyota Tundra.

25 Q. Toyota Tundra. So you are traveling

1 southbound like the Toyota Tundra, and the
2 semitrailer was parked one lane over making a --
3 making a right turn, and you crossed the face of the
4 truck while -- when you observed it.

5 A. Right, correct.

6 Q. So you observed -- you observed the
7 violation from the driver's side, and then as you
8 crossed the entire -- the entire windshield, correct?

9 A. Correct. My visual observation was
10 through the driver side window as the driver was
11 leaning forward, and when I came past, I would have
12 been approximately one lane width away from the front
13 bumper of his vehicle. On these roadways the way
14 they are built, these lane widths are average 12-1/2
15 feet, berm, 15, 20 feet from the driver at the time I
16 observed the violation.

17 Q. And then when you -- when you went
18 through the intersection, then the semitrailer made a
19 right turn and began following you and then that's
20 when -- that's when the stop occurred?

21 A. Yes. I drove past him, stopped on the
22 right berm, waited for the light cycle for the driver
23 to pull out, waited for the driver to pull out. It
24 came down near me. I pulled out and then fell in
25 behind him and made the traffic stop. I paused

1 momentarily next to it to get the DOT information,
2 the company name and number just for my information
3 as I fell in behind it, but the entire violation was
4 observed as it was stopped, and I came past
5 approximately 35, 45 miles per hour.

6 Q. At any point were you next to the semi?

7 A. No. I've never had any luck -- it's not
8 possible to observe a violation from a side because
9 at that point you got to be observing it through a
10 mirror, or through multiple different view
11 obstructions that wouldn't make a violation credible.

12 Q. Okay. Going back to Staff Exhibit 1,
13 which is your report, down in the inspection notes
14 area, could you just explain the information that's
15 in -- that's in that.

16 A. Yes. The inspection notes -- we have
17 since changed our state field, but at the time we
18 weren't including in our state field what the company
19 safety score was, the ISS. The ISS is the company
20 safety score indicator of 97 which is generally high.
21 OBVI states it's obvious, observed violation, not a
22 traffic, not a safety score stop, or an IDOT or
23 anything like, OBVI obviously.

24 Q. Obviously the violation here was you
25 witnessed -- you observed --

1 A. SBA is a seat belt. SBA is an
2 abbreviation used in Ohio for a seat belt arrest.

3 Q. Okay.

4 A. And then outside of that it just states
5 no ORC for indicating that there was no traffic
6 rules. There wasn't a red light violation. It
7 wasn't a speed or lane change or a turn signal or
8 any, you know, simple traffic violations for me to
9 then justify any violations under ORC to stop him for
10 to then issue a traffic citation.

11 Q. Again, you didn't cite him for a Revised
12 Code traffic --

13 A. Right.

14 Q. -- violation for seat belt because there
15 wasn't a primary -- you cited him for a regulatory --

16 A. Correct. The entire inspection and
17 violations are noted under the PUCO regulatory. It
18 was nothing under Ohio traffic or through Municipal
19 Court because of how the seat belt --

20 Q. And you -- you can do that because this
21 is a different field than the Revised Code; this is a
22 regulatory field?

23 A. Absolutely.

24 Q. Would you say this field has heightened
25 statutes?

1 A. Absolutely, yeah, with the chance of
2 injury due to the extra size, extra weight, the
3 dynamics of the vehicle. My background in crash
4 reconstruction can speak to that, as to how --
5 stopping and how it acts in a crash. There's need
6 for heightened requirement and safety.

7 Q. Okay. And you might have already said
8 this, but so you commonly as part of your job and
9 duties look specifically for drivers wearing or not
10 wearing their seat belt, correct?

11 A. Absolutely.

12 Q. According to the report, the stop was at
13 4:04 in the afternoon; is that correct?

14 A. Yes. The indication is 1604.

15 Q. Okay. The weather was clear from the
16 best of your recollection?

17 A. Yes.

18 Q. Okay. Do you wear glasses or contacts?

19 A. I do not.

20 Q. Okay. Regular vision checkups?

21 A. Yes. I mean, at the very least every two
22 years GXT which I did a month ago and passed with
23 flying colors.

24 Q. So, again, it's your -- your testimony
25 here that you observed Mr. Willet not wearing his

1 seat belt, correct?

2 A. Yeah. And to speak to that, I'll say
3 that it's that I observed that he was not wearing it.
4 It's not that I couldn't see that he wasn't wearing
5 it. In order for me to put a violation, particularly
6 a seat belt, it's no doubt in my mind that he wasn't
7 wearing it or else I wouldn't have put it on the
8 inspection.

9 Q. Okay. Anything else you think would be
10 important to note or have -- we have not discussed
11 here that would be important for the Examiners or the
12 Commission to know?

13 A. Just outside, as I just reiterated about
14 that, is that, again, the credibility is important to
15 me on these because of the magnitude it brings the
16 driver in his career. If it's not something I am
17 100 percent certain about, I am not going to put it
18 on an inspection to the tune I can probably count on
19 multiple occasions just in the course of one day that
20 I'm 98 percent certain I saw a seat belt violation,
21 but because of how I would have to ultimately testify
22 as to how I observed it, I am not going to stop for
23 it, not going to go for it because I am more worried
24 about my credibility than I am a seat belt on an
25 inspection. It's not that important to me.

1 MR. BEELER: No further questions, your
2 Honor. I would move for the admission of Staff
3 Exhibits 1 and 2, subject to cross-examination. And
4 then, again, I would reserve this witness for
5 rebuttal, if it's necessary.

6 EXAMINER AUGOSTINI: Do you have any
7 questions, Mr. Willet?

8 MR. WILLET: Actually I do.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Willet:

12 Q. You just stated that -- he asked you
13 about the weather, and you said it was clear that
14 day. Do you recall that day?

15 A. To the best of my recollection, there was
16 no inclement weather, i.e., heavy snow, heavy rain,
17 anything that would have impeded my observation.

18 Q. Okay. I have turned in documents, which
19 I don't know if I need to bring these up, I already
20 turned them in, but it showed clearly the night
21 before and the day of how much snow we had and how
22 much overcast skies there were. So how long were you
23 on Patrol prior to pulling me over?

24 A. My shift that day should have been 2:00
25 to 10:00. My normal shift is 2:00 to 10:00 so this

1 would have been approximately an hour and a half, two
2 hours after I started shift.

3 Q. A couple of hours, so would it be fair to
4 say that your windows or my windows on my commercial
5 vehicle were probably not the cleanest being that it
6 had been snowing, there's salt out, there's road out,
7 there's grime out?

8 A. No, because if those were issues, I
9 wouldn't have made the stop and noted the violation.

10 Q. So there is no way any salt or residue
11 could have been on the commercial vehicle windows
12 and/or your -- within your two-hour limit, and I
13 started at 6:00 in the morning with my commercial
14 vehicle, so you pulled me over at 4:00, I will have
15 almost 12 hours, 10 hours of driving on roadways with
16 salt, snow, debris?

17 A. To answer that I think most directly is I
18 think it's absolutely plausible there could have been
19 any dirt. On the cleanest day there is going to be
20 dirt on windows. However, had I believed any of that
21 type of vision obstruction to be an issue, I wouldn't
22 have made the traffic stop and issued the violation.
23 The only way I would have issued the violation is if
24 I clearly and obviously observed it, was 100 percent
25 certain of it.

1 MR. WILLET: Okay. I have no other
2 questions.

3 EXAMINER AUGOSTINI: Do you have any?

4 MR. BEELEER: Just one second, please.
5 Thank you.

6 Thank you. No further questions.

7 EXAMINER AUGOSTINI: I just had one
8 question. When you pulled him over, was he wearing
9 his seat belt?

10 THE WITNESS: I don't recall. Upon --
11 it's very common the overwhelming majority of the
12 time when I observe a seat belt, by the time my
13 lights come on behind them and they come to a stop,
14 they have it on because -- and my -- you can go
15 through all my traffic stops where I have them.
16 Majority of the time I will ask them when I observed
17 you this is what I observed. Did you see me and
18 remind you to put it on? Almost always they will
19 say, yes, it is.

20 I think that's very common behavior is
21 they realize they don't wear it, and when the lights
22 come on, they put it on real quick. But, again, upon
23 the point that I was next to him, I was in no
24 position to try to make that observation. And by the
25 time we came to a stop and I made the 70-foot walk

1 between the vehicles, there is more than enough time
2 to have placed it on.

3 EXAMINER AUGOSTINI: Thank you. You may
4 be excused. Would you like to move for the
5 admission?

6 MR. BEELER: We can do it now or do we
7 want to do it at the end? Either way.

8 EXAMINER AUGOSTINI: Okay. We will do it
9 at the end.

10 MR. BEELER: Staff at this point would
11 like to call Chip Moser to the stand.

12 (Witness sworn.)

13 EXAMINER AUGOSTINI: Please be seated.

14 - - -

15 ROD A. MOSER

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

18 DIRECT EXAMINATION

19 By Mr. Beeler:

20 Q. Good morning. State your name for the
21 record.

22 A. My name is Rod Allen Moser, M-O-S-E-R.

23 Q. Where are you employed?

24 A. I'm the Compliance Chief within the
25 Transportation Department of the Public Utilities

1 Commission of Ohio.

2 Q. Okay. And so you are the Compliance
3 Chief, right?

4 A. Yes, sir.

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

6 A. Two years.

7 Q. Okay. What are your duties in that
8 position?

9 A. I manage the civil forfeiture process for
10 the public -- for the PUCO's Transportation
11 Department.

12 Q. Okay. What are your expert
13 qualifications for violation in the subject matters
14 of these inspections?

15 A. North American Standards Parts A and B
16 certified, cargo tank, motor coach, hazardous --
17 general hazmat and then nonbulk and bulk hazmat, and
18 then just on-the-job training in my current position
19 with a mentor who also works for the PUCO.

20 Q. And you have experience doing stops as
21 well in your past?

22 A. I do. I am an Inspector also, and my
23 prior position before coming to the PUCO was the
24 Commercial Enforcement Coordinator for the Highway
25 Patrol District 6.

1 Q. Okay. Just generally explain kind of the
2 forfeiture process at the PUCO.

3 A. All violations that are written on
4 inspections are subject to forfeiture if they are
5 considered an out-of-service violation or if they are
6 a Group 4 violation. Violations are divided into
7 five different groups for non-hazmat violations,
8 Groups 0, 1, 2, 3, and 4. And violations get
9 categorized depending upon the nature of the
10 violation. Group 4 violations are primarily driver
11 offenses and authority and insurance violations.

12 Q. And in this process does the Commission
13 apply it uniformly to everyone it regulates?

14 A. It's an automated process, yes.

15 MR. BEELEER: May I approach the witness,
16 your Honor?

17 EXAMINER AUGOSTINI: You may.

18 MR. BEELEER: I have what has been
19 previously marked as Staff Exhibit 3. It's the
20 Notice of Preliminary Determination that is sent to
21 the driver with a date of May 1, 2018. Ask that it
22 be marked.

23 EXAMINER AUGOSTINI: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Do you recognize this document?

1 A. I do, yes.

2 Q. What is it?

3 A. It's a copy of the letter that was sent
4 to Mr. Willet following an unsuccessful telephone
5 conference. By unsuccessful just means the issue
6 couldn't be resolved.

7 Q. Okay. Did you review this document in
8 preparation for this hearing?

9 A. I did.

10 Q. Is this document a Commission record?

11 A. Yes, sir, it is.

12 Q. Kept in the ordinary business of the
13 Commission?

14 A. That's correct.

15 Q. Explain how the civil forfeiture in this
16 case was derived.

17 A. Well, like I said, it's a Group 4
18 violation. The fine for that is always \$100. It's
19 just an automated process. Since that was the only
20 violation the fine total was \$100.

21 Q. Okay. Is that penalty consistent with
22 the recommended fine schedule and recommended civil
23 penalty procedure adopted by the Commercial Motor
24 Vehicle Alliance?

25 A. It is, yes.

1 Q. And it's also consistent with the
2 Commission's rules?

3 A. Yes, sir.

4 Q. Set forfeiture amount is \$100, correct?

5 A. That's correct.

6 Q. Would you -- that's the correct amount?

7 A. It's the correct amount, the amount I
8 would recommend, yes.

9 Q. Okay. Anything else important to note
10 that we have not discussed which you would like the
11 Commission to know for the record?

12 A. No, sir.

13 MR. BEELEER: Thank you. No further
14 questions.

15 EXAMINER AUGOSTINI: Mr. Willet, do you
16 have any questions?

17 MR. WILLET: No.

18 EXAMINER AUGOSTINI: You may be excused.
19 Thank you.

20 MR. BEELEER: At this time Staff would
21 move for the admission of Staff Exhibit 1, Staff
22 Exhibit 2, and Staff Exhibit 3.

23 EXAMINER AUGOSTINI: Staff Exhibits 1, 2,
24 and 3 will be so admitted into the record.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 EXAMINER AUGOSTINI: Mr. Willet, do you
2 want to testify?

3 MR. WILLET: I can.

4 EXAMINER AUGOSTINI: You can come up
5 here. I'll swear you in.

6 (Witness sworn.)

7 EXAMINER AUGOSTINI: Thank you. Will you
8 start by stating your name for the record and
9 spelling it for our court reporter.

10 THE WITNESS: My name is Gregory D.
11 Willet, G-R-E-G-O-R-Y, middle initial D, and last
12 name Willet, W-I-L-L-E-T.

13 EXAMINER AUGOSTINI: Just go ahead and
14 tell your story however you feel comfortable.

15 - - -

16 GREGORY D. WILLET
17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 THE WITNESS: As I recall on that day, I
21 did come off of 270 coming eastbound to go south on
22 Alum Creek. I did have my seat belt on that day --
23 I'm sorry. Let's go to the previous night. It had
24 snowed 3 or 4 inches which I turned in evidence of
25 that. That day it had snowed. There was clearly

1 stuff on my windshields. I had been working since 6
2 o'clock in the morning. When I come off, I made a
3 right-hand turn. I did not see on the left-hand
4 side. When I noticed you, we was at the light at
5 Groveport Road. I was in the far left lane to go
6 straight, and you was right beside me, so we
7 proceeded.

8 I seen you look up through the side of
9 the truck which you cannot see my seat belt from my
10 angle. We proceeded through the light. We weren't
11 underneath the underpass and then that's when you got
12 behind me and pulled me over to the right.

13 I mean, that's basically all I got. I
14 mean, I did not see you again sitting in the middle
15 lane like you said you were, so if I was looking
16 forwards to cross traffic, I would have seen you
17 clearly in that lane, but I do not recall that so.

18 I just wanted to put on the record that,
19 you know, the weather conditions were not favorable.
20 They were not clear. There was at least 4 or
21 5 inches of snow still on the ground by 4:00 p.m.
22 You know, again, the weather conditions was the
23 biggest thing. I don't know how he seen even if it's
24 the way he said he seen. The truck was covered in
25 salt and brine, and I just do not foresee him being

1 able to see clearly through the window. And as I
2 stated earlier, he looked straight through the
3 window. You wouldn't be able to tell so. I had my
4 seat belt on; and, I mean, that's the only reason I
5 have come to court and tried to fight this at all.
6 I've lost a job because of this so.

7 I mean, that's all I have.

8 EXAMINER AUGOSTINI: We'll see if -- so
9 you had mentioned pictures that you took. Do you
10 want to move them into evidence today?

11 THE WITNESS: I already turned them in.
12 They said it was supposed to be for evidence because
13 I have a copy of it. Do you want me to show that to
14 you?

15 EXAMINER AUGOSTINI: Yeah, if you don't
16 mind.

17 THE WITNESS: This is the weather reports
18 and here are pictures of what it was like outside.
19 This was another pickup truck to get these pictures
20 trying to give reference to his vehicle that he was
21 in.

22 EXAMINER AUGOSTINI: Okay. Let's mark
23 these as Willet Exhibit 1.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 THE WITNESS: I don't have another copy.

1 This is the only one I had.

2 EXAMINER WALSTRA: This is part of your
3 original filing, right?

4 THE WITNESS: Yes, sir.

5 EXAMINER WALSTRA: Do you have copies of
6 that?

7 MR. BEELER: I've seen it, yes.

8 EXAMINER AUGOSTINI: Go ahead.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Beeler:

12 Q. I do have a few questions for you.
13 Looking at the -- looking at the pictures, the two
14 pictures that you have up there, do you still have
15 the two pictures?

16 A. Yes, I have them.

17 Q. You -- the picture that -- is that you in
18 the picture?

19 A. Yes.

20 Q. Okay. And that picture is taken from
21 the -- from the passenger side, correct?

22 A. Yes.

23 Q. Okay. And then -- so then the picture
24 that shows two trucks in there, I mean, you're
25 focusing on the passenger side of the truck.

1 A. Correct, because that's where I had
2 observed him. Again, if I was turning south on Alum
3 Creek, he said he was to the right, and he said he
4 observed me looking across traffic, I would have
5 clearly seen a State Highway Patrol vehicle.

6 Q. Okay. Do you always wear your seat belt?

7 A. Yes, because -- as part of when I was
8 with CPG, they had put into ordinance that if --
9 again, if you got a seat belt violation, that's
10 automatic termination, so they enforced. We had, I
11 don't want to say class on it, but our safety
12 instructor, you know, he made it clear that it had to
13 be worn.

14 Q. Okay. Have you ever been cited for a
15 seat belt violation before?

16 A. Younger, yes.

17 Q. Okay. Do you know how many?

18 A. No. I have no idea.

19 Q. More than three?

20 A. Probably, yes, when I was younger.

21 Q. When do you think the last one was?

22 A. I don't remember.

23 Q. More than five?

24 A. I honestly couldn't tell you.

25 MR. BEELEER: Okay. No further questions,

1 your Honor.

2 EXAMINER AUGOSTINI: Do you have any
3 additional testimony, Mr. Willet?

4 THE WITNESS: No.

5 EXAMINER AUGOSTINI: You may be excused.

6 Mr. Willet, would you like to move into
7 evidence Willet Exhibit 1, those photographs?

8 MR. WILLET: Please.

9 MR. BEELEER: I would like to recall for a
10 rebuttal witness the Inspector.

11 EXAMINER WALSTRA: You don't object to
12 the exhibit?

13 MR. BEELEER: No, don't object to the
14 exhibit.

15 EXAMINER AUGOSTINI: They will be
16 admitted into the record. Thank you.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER AUGOSTINI: I will just remind
19 you you are still under oath.

20 THE WITNESS: Of course.

21 MR. BEELEER: May I approach?

22 EXAMINER AUGOSTINI: You may.

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TROOPER TIMOTHY MULARCIK

being previously duly sworn, as prescribed by law,
was examined and testified on rebuttal as follows:

DIRECT EXAMINATION

By Mr. Beeler:

Q. These are just the pictures that were
just admitted through Mr. Willet. Looking at both
these photos, do you recognize this truck?

A. I couldn't recall if the white one here
is the same one as the blue front, if that was
absolutely the truck that same day. I just recall it
was an early model Freight Liner.

Q. Okay. And -- and do either of these
pictures depict your vision line on that day?

A. No.

Q. Why not?

A. Because this wasn't where the violation
was observed. The violation wasn't observed
alongside as I testified earlier. My vehicle is
silver. It blends in with the gray road very easily.
It has reflective taping, but it's only reflective if
light illuminates against it in the dark. While
working on Interstate 270, it's very, very
incomparably common -- how common it is that cars
will pass while I am traveling along at or slightly

1 above the posted speed limit, comfortable, safe, 3 to
 2 5 miles over the posting. Cars will fly by 90 miles
 3 an hour and say they never saw me. The fact
 4 Mr. Willet didn't see me as I am southbound over
 5 three lanes with a large field of gray of roadway,
 6 movement behind my silver SUV, as he came to a stop
 7 and was immediately looking in the area behind me,
 8 absolutely credible that he wouldn't see my vehicle
 9 until he made the right-hand turn and then was
 10 focused forward where I was already parked.

11 Q. Okay. Was the -- was the intersection
 12 accurately described by Mr. Willet, or are you
 13 talking about a different -- a different
 14 intersection?

15 A. I am talking about the same intersection.
 16 It's multiple lanes wide, and I was in the middle of
 17 them as you are looking from an elevated height as
 18 his vehicle would have been. My silver SUV, there
 19 was nothing about it. It's not a white SUV. It's
 20 not a black SUV. It's a silver SUV, and it's going
 21 to blend in pretty easily with the multitude of lanes
 22 of gray pavement.

23 Q. Okay.

24 A. And I think as the timing was that I
 25 wasn't far back out of the intersection, I was very

1 close to it, so as Mr. Willet would have pulled up
2 and he looked north, he would have been essentially
3 looking behind my vehicle and nothing would have drew
4 his attention to my vehicle.

5 Q. And you don't recall anything on the
6 windshield, salt, grime, that would have been
7 obstructing your vision?

8 A. No. This was much later in the day. He
9 stated there was snow on the roadways, but it wasn't
10 snowing at the time. The roads were clear. There
11 was no longer spraying at that point. My windshield
12 was clean. I can't attest to, you know, how often he
13 cleans his windshield, but I know mine was absolutely
14 clean. And, again --

15 Q. What about his windshield from -- from
16 the best you remember, you could see through that
17 windshield?

18 A. His windshield was clean, or he wouldn't
19 have been driving. If you can't see out the
20 windshield enough to see in it, how could he be
21 operating down the roadway?

22 MR. BEELEER: Okay. No further questions.

23 EXAMINER AUGOSTINI: Do you have any
24 questions?

25 MR. WILLET: Yeah. He just said that my

1 windshield, yes, it would have been clean.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Willet:

5 Q. You earlier stated that you seen it
6 through the driver's side window. Those don't have
7 wipers on them.

8 A. No, they don't.

9 Q. Cruddy and nasty and, again, throughout
10 the day it had been snowing. There's -- it could
11 have been dirty. So, again, you kept saying the
12 windshield, the windshield, the windshield. It's --
13 it's going to be clean to drive forward.

14 A. Correct.

15 Q. Them side windows, they do get dirty
16 throughout the day with the salt and the snow and the
17 debris.

18 A. Absolutely but, again, to reiterate what
19 I stated -- testified earlier, the observation was
20 through the driver side window. It was cleared and
21 obviously to me as it was, regardless of dirt or not,
22 that dark silhouette of the belt coming off the door
23 pillar would have been very obvious and looked
24 through the front windshield to verify that
25 observation.

1 Q. Okay. Did you -- you said the dark
2 silhouette of the -- do you remember the shirt I was
3 wearing that day?

4 A. No, I don't.

5 Q. Could you tell me what color the interior
6 of the truck was because you did approach and come in
7 from the passenger side?

8 A. It was an early model Freight Liner. The
9 majority of them was dark colored. I believe it was
10 before the era of the orange seat belt, but I didn't
11 make any notations nor have any strong recollection
12 as to coloration of a shirt or interior.

13 Q. So you're saying dark color inside. You
14 don't know what color clothes I was wearing. And you
15 couldn't see a dark-colored seat belt. Would it be
16 fair to say that you couldn't see it if everything
17 inside was dark?

18 A. It would have been accurate to say I
19 clearly observed a dark seat belt not coming off the
20 door pillar through that big gap to your shoulder.
21 As I was looking through, I was seeing the silhouette
22 of you against the light background, so my
23 observation was clearly straight through from the two
24 sides through the driver's side window and silhouette
25 of the white or illuminated or the sky or whatnot

1 behind you, that it wasn't you silhouetted against
2 the dark background. It was you silhouetted against
3 the light coming through the passenger side window
4 here and obviously that seat belt silhouette was not
5 there. And as I drove past the front of you and
6 looked through the windshield, that observation was
7 just verified.

8 Q. Okay. This is a -- I don't know if you
9 are common with a sleeper truck, it has a bed in the
10 back so there is no windows on the sides besides the
11 doors or the front windshield.

12 So my question is if you are looking as
13 you are driving by and you are looking this way,
14 there is no light coming in from the passenger side.
15 You are looking at it through an angle.

16 A. Well, I am speaking to as you can see
17 that silhouette of yourself through the passenger
18 side window.

19 Q. That's not where you said you observed.

20 A. No. I am just using this visual
21 illustration trying to indicate as to what I
22 observed. As I was coming down looking through your
23 driver side window, that observation was clear
24 through the passenger side window, you silhouetted
25 across the window light coming from the passenger

1 side. I could see your shoulder. I could see you
2 leaning up off the seat back because the way you had
3 come up and kind of angled a bit to give yourself a
4 visual in that turn lane, you were silhouetted
5 through your driver side window and the light coming
6 through the passenger side window, you leaning
7 forward off of the seat back. That seat belt was
8 clearly not coming off of your shoulder to the door
9 pillar and as I came past the front of you, it was
10 clearly not observed at that time.

11 Q. I don't think that angle is right.

12 MR. BEELER: Objection.

13 A. I've testified --

14 MR. BEELER: Object. Let me talk. Not a
15 question, just a statement, just an editorial.

16 EXAMINER AUGOSTINI: You have to ask a
17 question.

18 Q. (By Mr. Willet) Okay. You just stated my
19 truck was angled, not straight at the light. It was
20 angled off to the side. So as you are driving by,
21 you would see more of the inside of the cab than you
22 would that passenger side window to where you said
23 you seen the light and the silhouette of the seat
24 belt.

25 A. I am not sure how further I can

1 articulate my observation. I think we are going in
2 circles.

3 MR. BEELEER: Yeah. These have been asked
4 and answered, your Honor. He has given his
5 statement. I would object.

6 MR. WILLET: I am just trying to set for
7 the record the interior of the truck was dark. I had
8 a dark shirt. It's a dark seat belt.

9 EXAMINER AUGOSTINI: Overruled. I will
10 take it into consideration.

11 MR. BEELEER: Okay. Thank you.

12 EXAMINER AUGOSTINI: Do you have any
13 other questions?

14 MR. WILLET: No. That's it.

15 EXAMINER AUGOSTINI: Do you have any
16 redirect?

17 MR. BEELEER: No, your Honor.

18 EXAMINER AUGOSTINI: Okay. You may be
19 excused. Thank you.

20 All right. Are there any other matters
21 that need to be addressed?

22 MR. BEELEER: No, your Honor.

23 EXAMINER AUGOSTINI: Hearing none, this
24 case is submitted on the record. This hearing is
25 adjourned. Thank you.

(Thereupon, at 10:41 a.m., the hearing
was adjourned.)

- - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Thursday, April 4,
2019, and carefully compared with my original
stenographic notes.

Karen Sue Gibson
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6724)

- - -



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Summary: Transcript In the Matter of Gregory D. Willet, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on April 4th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.