

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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|-------------------------|---|--------------------------|
| In the Matter of: | : | |
| Steven J. Dodson. | : | Case Nos. 18-1347-TR-CVF |
| | : | 18-1261-TR-CVF |
| Notice of Apparent | : | |
| Violation and Intent to | : | |
| Assess Forfeiture. | : | |

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PROCEEDINGS

before Ms. Patricia A. Schabo, Attorney Examiner, at
the Public Utilities Commission of Ohio, 180 East
Broad Street, Room 11-C, Columbus, Ohio, called at
10:00 a.m. on Tuesday, May 21, 2019.

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APPEARANCES:

Yemc Law Office
By Mr. Michael J. Yemc, Jr.
600 South Pearl Street
Columbus, Ohio 43206

On behalf of the Respondent.

Mike DeWine, Ohio Attorney General
William L. Wright, Section Chief
Public Utilities Section
Mr. Robert Eubanks
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3793

On behalf of the Transportation Staff of
the Public Utilities Commission.

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1 Tuesday Morning Session,
2 May 21, 2019.

3 - - -

4 THE ATTORNEY EXAMINER: The Utilities
5 Commission of Ohio has assigned for hearing at this
6 time and place Case Nos. 18-1261-TR-CVF and
7 18-1347-TR-CVF, each being captioned In the Matter of
8 Steven J. Dodson, Notice of Apparent Violation and
9 Intent to Assess Forfeiture.

10 My name is Patricia Schabo. I am the
11 Attorney Examiner assigned by the Commission to hear
12 these cases and I will begin by taking the
13 appearances of counsel.

14 MR. EUBANKS: Robert Eubanks, Assistant
15 Attorney General, on behalf of the Staff. Address is
16 30 East Broad Street, 16th Floor, Columbus, Ohio,
17 43229.

18 MR. YEMC: Michael Yemc, Supreme Court
19 No. 0065390, on behalf of the Respondent. Address is
20 600 South Pearl Street, Columbus, Ohio, 43206.

21 THE ATTORNEY EXAMINER: Thank you. Right
22 before we went on the record, we discussed a couple
23 preliminary matters. I will open the floor to you,
24 Mr. Yemc.

25 MR. YEMC: Thank you. At this time we

1 would like to make a motion to consolidate both
2 these case numbers, as your Honor previously
3 indicated. Also we would ask that the Court go
4 ahead and waive the 30-day filing requirement
5 under OAC 4901:2-7-02.

6 THE ATTORNEY EXAMINER: Any objection?

7 MR. EUBANKS: No objection.

8 THE ATTORNEY EXAMINER: Okay. The oral
9 motion will be granted on both counts, the
10 consolidation and the waiver of 30 days.

11 Mr. Eubanks.

12 MR. EUBANKS: I'd like to call Rod Moser.

13 - - -

14 ROD MOSER

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

17 DIRECT EXAMINATION

18 By Mr. Eubanks:

19 Q. Could you state your name.

20 A. My name is rod Moser, M-O-S-E-R.

21 Q. Your position?

22 A. I am the chief of the compliance within
23 the Transportation Department for the Public
24 Utilities Commission of Ohio.

25 Q. Your duties as they relate to

1 transportation hearings?

2 A. Basically I administer the civil
3 forfeiture process for the Commission, for the
4 transportation section of the Commission.

5 Q. You also oversee the issuance of the
6 Notices of Preliminary Determination?

7 A. Yes. That's part of the process.

8 Q. What is your training as it relates to
9 your duties with transportation hearings?

10 A. I'm North American Standards trained,
11 Parts A and B, cargo tank, hazmat, bulk and nonbulk,
12 motor coach. I think that's it for the North
13 American Standards, but I spent time with the Ohio
14 Patrol as a commercial enforcement coordinator for
15 District 6. I spent roughly 30 years with the
16 Highway Patrol.

17 Q. You mentioned your training. Is it
18 current?

19 A. It is current.

20 Q. And part of your training is
21 understanding the proper amount of forfeiture for
22 each violation?

23 A. Not specifically related to training.
24 That's more on-the-job training related to my
25 specific position, but the person who mentored me as

1 part of the job did talk to me about forfeitures, how
2 they derived, and what my role is in that.

3 Q. And that is a part of your duties?

4 A. It is what? I'm sorry.

5 Q. That is a part of your current duties?

6 A. Yes.

7 MR. EUBANKS: May I approach the witness?

8 THE ATTORNEY EXAMINER: You may.

9 MR. EUBANKS: I'd like to have this
10 marked as Staff Exhibit 1.

11 THE ATTORNEY EXAMINER: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. (By Mr. Eubanks) Can you identify the
14 document in front of you?

15 A. This is a copy of what we commonly call
16 an NPD or Notification of Preliminary Determination.

17 Q. Are you aware whether or not this was
18 mailed out to the Respondent?

19 A. It was, June 8, 2018.

20 Q. And looking at the forfeiture amount, are
21 they appropriate for the violations cited?

22 A. They are, yes.

23 MR. EUBANKS: I have no more questions
24 for the witness.

25 THE ATTORNEY EXAMINER: Do you have any

1 cross, Mr. Yemc?

2 MR. YEMC: No.

3 THE ATTORNEY EXAMINER: You may step down
4 then.

5 Do you have any motions, Mr. Eubanks?

6 MR. EUBANKS: Next I would like to call
7 to the stand Officer Rebecca Missig.

8 - - -

9 REBECCA MISSIG

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

12 DIRECT EXAMINATION

13 By Mr. Eubanks:

14 Q. Hello. Could you please state your name
15 for the record?

16 A. Rebecca Missig, M-I-S-S-I-G.

17 Q. And what is your position?

18 A. I'm a state trooper with the Ohio State
19 Highway Patrol.

20 Q. What are your duties?

21 A. I --

22 Q. As they pertain to this case?

23 A. Okay. I am North American certified in
24 Part A, Part B, hazmat, passenger bus, and inspection
25 of motor vehicles.

1 Q. How long have you been doing that?

2 A. Since February of 2016.

3 Q. Is your training current?

4 A. Yes, sir.

5 Q. On March 14, 2018, did you perform an
6 inspection for the Respondent in this case?

7 A. Yes.

8 Q. Did you write an enforcement report?

9 A. Yes, sir.

10 MR. EUBANKS: May I approach the witness,
11 please?

12 THE ATTORNEY EXAMINER: You may.

13 MR. EUBANKS: I'd like to have the
14 document marked Staff Exhibit 2.

15 THE ATTORNEY EXAMINER: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. (By Mr. Eubanks) Do you recognize the
18 document in front of you?

19 A. Yes, sir.

20 Q. Could you identify it?

21 A. It's a copy of the inspection report that
22 I did on the Respondent.

23 Q. Okay. And in particular the quoted
24 violations that are listed in the middle of the front
25 of the cover page, were they the violations that you

1 cited the Respondent for?

2 A. Yes, sir.

3 Q. If we could start with 395.8A, why did
4 you cite the Respondent for that violation?

5 A. The no driver's record of duty status, no
6 log, on 3/14, when I stopped the Respondent I asked
7 him for his logbook. He was unable to present
8 current log pages. He handed me a logbook, and the
9 last entry in the logbook was February 28, 2018.

10 Q. And, again, the inspection was on?

11 A. March 14, 2018.

12 Q. Okay. Was there any other documentation
13 that you looked at at the stop regarding his on-duty
14 status?

15 A. Yes. There was a bill of lading in the
16 truck that showed that he was making pickups and
17 deliveries within that week.

18 Q. Do you know the dates of the pickups and
19 deliveries that were on the bill of lading?

20 A. Without looking at the photos, I would
21 not. I believe there was one on the 8th, but I can't
22 say for sure on the dates without looking at the
23 photos.

24 Q. Did you make notes at the time of the
25 inspection or shortly thereafter?

1 A. After the information, yes.

2 Q. Was your recollection of the events at
3 the time you took the notes clear?

4 A. Yes.

5 Q. Do you have those notes here today?

6 A. I know there are photos. I would rather
7 -- yes, I got it.

8 MR. EUBANKS: May I approach the witness?

9 THE ATTORNEY EXAMINER: You may.

10 MR. EUBANKS: I only have one copy of the
11 document. I will show it to counsel. I believe that
12 was in the files.

13 MR. YEMC: Okay.

14 MR. EUBANKS: I just want to use it to
15 refresh the witness' recollection.

16 Q. (By Mr. Eubanks) Just in case I have to
17 use this, I want you to identify this.

18 A. Yes, this is notes.

19 Q. Okay. So back to the question about the
20 bill of lading, do you remember the dates that were
21 on it?

22 A. Looking at my notes, yeah, there was a
23 bill dated on March 5 that was delivered on
24 March 7 and a pickup for March 8 that was delivered
25 on March 10.

1 Q. As a result of looking at the logbook and
2 looking at the bill and the dates on the bill, what
3 conclusion did you draw?

4 A. That the -- that he was not current
5 on his logbook. He didn't have a current duty
6 status -- status of duty.

7 Q. What should have appeared in his logbook?

8 A. It should have showed the days that he
9 picked up the loads and dropped them off, the city
10 and state that he was in.

11 Q. Was that a company truck that he was
12 driving or personal?

13 A. I believe that he was driving a company
14 truck.

15 Q. Did you cite the Respondent for any other
16 violations? Actually, you did, so let's look at
17 392.4A-POS, "Driver on duty and in possession of a
18 narcotic drug/amphetamine. DID POSSESS LESS THAN
19 100 GRAMS OF MARIJUANA."

20 I'm once again reading from Staff
21 Exhibit 2, the enforcement report. Why did you cite
22 him for that violation?

23 A. When I stopped him and walked up to the
24 vehicle, I asked him for his license, registration,
25 logbook, and bills. The driver was coming out of the

1 sleeper area and he was drinking water out of a
2 bottle. I could smell marijuana in the vehicle. I
3 could see that he had a green leafy material in his
4 teeth and on his tongue.

5 I asked for another trooper to come back
6 me up because of the marijuana. We do not search
7 vehicles on our own. And that's why that charge was
8 there.

9 Q. Other than the appearance of his teeth,
10 was there any other sign that the Respondent was in
11 possession of marijuana?

12 A. Once the other officer showed up, he was
13 removed from the vehicle. He was advised of his
14 Miranda rights, and he admitted that he ate the
15 marijuana.

16 Q. Was there any smell that would -- that
17 was indicative of marijuana?

18 A. Yes, there was a smell.

19 Q. When did you notice that?

20 A. As soon as I walked up to the vehicle.

21 Q. All right. Have you ever smelled
22 marijuana before?

23 A. Yes, sir.

24 Q. Was it a strong smell or a faint smell?

25 A. It was strong enough for me to smell it.

1 Q. Okay. Additionally you cited him for
2 392.4(a), Driver under the influence of marijuana.
3 Why did you cite the Respondent for that violation?

4 A. Because he ate the marijuana, he was
5 under the influence while he was on duty. Because we
6 were in the middle of an inspection, he was still on
7 duty.

8 Q. Why did you originally pull over the
9 Respondent?

10 A. We were eastbound on the Ohio Turnpike
11 and the defendant was in the left lane. There are
12 signs posted all up and down the turnpike that say,
13 truck and slow-moving vehicles use right two lanes.
14 I got behind the defendant, and he switched from the
15 left lane into the center lane without using his turn
16 signal, so I had the two traffic violations.

17 Q. Are there any other events that occurred
18 during the stop or the inspection that you would like
19 to comment on?

20 A. No. He was cooperative. I ended up
21 taking him away from truck and relaying him off the
22 exit for him to sit out his 24 hours. He was charged
23 into one of the municipal courts for obstructing
24 official business.

25 Q. If you take a look at your inspection

1 notes on Staff Exhibit 2, that would be the
2 examination report, are your notes consistent with
3 your testimony today?

4 A. Yes.

5 Q. And the trooper that you called to the
6 site after advising the Respondent of his Miranda
7 rights was who?

8 A. Trooper Chris Beyer.

9 MR. EUBANKS: I have no further questions
10 for the witness.

11 THE ATTORNEY EXAMINER: Mr. Yemc.

12 MR. YEMC: Yes, thank you.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Yemc:

16 Q. Now, Trooper, did up search his vehicle?

17 A. Yes.

18 Q. Did you find any marijuana?

19 A. No additional marijuana was located.

20 Q. So no marijuana was found in the truck?

21 A. Correct.

22 Q. Did you find any case, any packaging that
23 contained or previously contained marijuana?

24 A. Not that I recall.

25 Q. So that's a no?

1 A. I don't recall.

2 Q. Okay. Wouldn't you recall finding some
3 package or container that had marijuana in it?

4 A. If it was residue, we would not have
5 confiscated it.

6 Q. So no marijuana was found. You indicated
7 in your report and you cited the driver for being on
8 duty while under the influence of a narcotic. Did
9 you perform any field sobriety tests?

10 A. No.

11 Q. Did you have the driver submit to any
12 blood or urine tests?

13 A. No.

14 MR. YEMC: I have nothing further.

15 THE ATTORNEY EXAMINER: Any redirect?

16 MR. EUBANKS: No, your Honor.

17 THE ATTORNEY EXAMINER: Okay.

18 - - -

19 EXAMINATION

20 By The Attorney Examiner:

21 Q. You said he's considered on duty during
22 the inspection.

23 A. Yes.

24 Q. When is he considered off duty?

25 A. Once the inspection is completed.

1 Q. Which is when?

2 A. When -- when -- a driver is considered on
3 duty -- they go from driving status to on-duty status
4 when we are doing an inspection. Once we continue
5 with the inspection and we give them their paperwork
6 and we leave, then they go back on driving status, or
7 if they are in a rest area or whatever, they can go
8 off duty then.

9 Q. How much time passed between you calling
10 the other officer and you having the opportunity to
11 search the vehicle?

12 A. Trooper Beyer was down the street --
13 down the road from me. He was only a few miles down
14 the road. So from the time I stopped the vehicle
15 and I smelled marijuana. I called him. He showed
16 up. We removed the driver, and we would have
17 started the search. Exactly the time, I don't have
18 that.

19 THE ATTORNEY EXAMINER: Thank you. You
20 may step down.

21 Mr. Eubanks.

22 MR. EUBANKS: Next I would like to call
23 to the stand Officer Chris Beyer.

24 - - -

25 CHRISTOPHER BEYER

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

3 DIRECT EXAMINATION

4 By Mr. Eubanks:

5 Q. Could you state your name for the record?

6 A. Trooper Christopher Beyer.

7 Q. Can you spell that?

8 A. Christopher, C-H-R-I-S-T-O-P-H-E-R,
9 Beyer, B-E-Y-E-R.

10 Q. And what is your position?

11 A. I'm a trooper with the Ohio State Highway
12 Patrol.

13 Q. What are your duties as they relate to
14 transportation stops?

15 A. I'll just give them all to you. My
16 duties and powers of a trooper are to aid and assist
17 motorists, to investigate traffic crashes, and
18 enforce violations of the Ohio Revised Code. I also
19 am Part A certified, which consists of logbook
20 violations and driver credentials, which I've had
21 that for, I'm going to say, about two years now. I
22 went through that class and successfully completed
23 the course with a passing grade.

24 Q. Is your certification current?

25 A. It is.

1 Q. Are you familiar with the inspection stop
2 on March 14, 2018, of the Respondent?

3 A. I am.

4 Q. How were you brought to the scene?

5 A. At said date and time I was requested by
6 Trooper Missig to assist her in a search of a vehicle
7 that she stopped at mile marker 126 eastbound, Erie
8 County, Berlin Township.

9 I arrived on the scene to assist her with
10 what I found, and she briefed me on what was a
11 probable-cause search of the vehicle because of the
12 odor of marijuana in the vehicle. A search was
13 conducted. We were not able to find any marijuana in
14 the vehicle.

15 From my training and experience, which
16 I've seen many times over my years, is sometimes
17 people will ingest marijuana to essentially eliminate
18 any evidence of them having it, for any number of
19 reasons.

20 I came back and talked with the defendant
21 on that matter. Of course, I would read him his
22 Miranda rights. That is going to protect him and me.
23 So we had a conversation about what is going on
24 there. I did read him his rights. He indicated he
25 did understand them so we can have that conversation.

1 I asked him why he would have ingested
2 the marijuana. There was an admission. The exact
3 words I do not recall. I did not write a report on
4 this, but there was an admission of that, that he did
5 swallow the marijuana, at which point I could then
6 see as I talked to him there also that he had it on
7 his tongue and there was marijuana in his teeth
8 there. I could see through my training experience it
9 was marijuana. It was nothing else other than
10 marijuana.

11 Q. How much experience do you have with
12 stopping people for marijuana?

13 A. Quite a bit. I've been a trooper for
14 15 years, and better than half of that I've been
15 associated with our criminal patrol program. I was a
16 canine handler, a certified canine handler, for three
17 years with the Ohio patrol. I am now currently in
18 the capacity working in -- they call it a temp
19 position, but it's more on than off again, working
20 with criminal patrol in which we enforce, you know,
21 the Ohio Revised Code, but mainly quality of life
22 violations, which consist of drugs. So marijuana
23 being one of the most common drugs that occurs in our
24 society today, I have a great amount of experience
25 with that.

1 Q. Did you smell any marijuana at the scene?

2 A. Yes. There was an odor.

3 Q. Did you participate in the search of the
4 car?

5 A. I did.

6 Q. Okay. Where was the odor? Was the odor
7 on the person or in the vehicle or both?

8 A. It was from the vehicle there, from my
9 recollection, as we searched it. It was less of an
10 odor. Then as I spoke to him there, obviously, if
11 you ingest it, it's going to be coming off of the
12 breath of the person as you speak. And there was
13 also physical evidence. It was in his mouth there as
14 well.

15 MR. EUBANKS: I have no further
16 questions.

17 THE ATTORNEY EXAMINER: Mr. Yemc.

18 MR. YEMC: Yes, thank you.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Yemc:

22 Q. Now, Trooper Beyer, you said you were a
23 canine handler for three years.

24 A. Correct.

25 Q. When you searched the vehicle and didn't

1 find any marijuana, why didn't you call a drug dog?

2 A. You do not need one if you have a
3 probable cause to search without a dog.

4 Q. I understand your probable-cause search.
5 Since you didn't find any, I thought you'd call a dog
6 out and see if it could locate the marijuana.

7 A. It's not necessary.

8 Q. You say you saw it on his teeth and on
9 his tongue.

10 A. Correct.

11 Q. Did you ask him to spit some of it out so
12 you could have a sample?

13 A. No.

14 Q. And this was all captured on video?

15 A. It was in the back seat of a patrol car
16 so there wouldn't have been a video. At one time,
17 yes.

18 Q. Okay. We don't have any of that today,
19 right?

20 A. I don't know what evidence you have other
21 than what I'm testifying to, so I really can't answer
22 that.

23 Q. Now, you've got a lot of experience with
24 drugs. Why didn't you have the defendant submit to a
25 field sobriety test?

1 A. It wasn't my position to do that. I
2 wasn't the stopping officer.

3 MR. YEMC: Okay. Thank you.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Eubanks:

7 Q. Just to be clear, were you present when
8 the Respondent admitted to swallowing marijuana?

9 A. I was.

10 MR. EUBANKS: I have no further
11 questions.

12 THE ATTORNEY EXAMINER: You may step
13 down. Thank you.

14 THE WITNESS: Thank you.

15 MR. EUBANKS: I'd like to move to have
16 the exhibits moved into evidence.

17 THE ATTORNEY EXAMINER: Any objection?

18 MR. YEMC: No objections.

19 MR. EUBANKS: All right. Staff Exhibits
20 1 and 2 will be admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 THE ATTORNEY EXAMINER: Mr. Yemc.

23 MR. YEMC: Yes. I call the Respondent to
24 the stand.

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STEVEN J. DODSON

being first duly sworn, as hereinafter certified,
deposes and says as follows:

DIRECT EXAMINATION

By Mr. Yemc:

Q. Please state your name and address for
the record.

A. Steven Jamal Dodson, 1099 Hidden Cove,
Apartment No. 6, Memphis, Tennessee, 38016.

Q. Mr. Dodson, what is your occupation?

A. I am a CDL truck driver.

Q. And how long have you been doing that?

A. One year.

Q. And on March 14th of 2018, were you
driving a commercial vehicle?

A. Yes, sir.

Q. Okay. Can you describe what happened
that day?

A. I was coming from the Pennsylvania
Turnpike and I was entering into Ohio, and I was
routing into the left lane trying to get over. I
passed Ms. Missig, and she proceeded to pull me over.
Now, my blinker was on trying to switch
lanes because there was a lot of traffic there. And
the first sign I saw that said no trucks was right

1 where she was. She was facing the opposite oncoming
2 traffic on the highway, and she proceeded to bust a
3 U-turn, and she followed me for about three or four
4 minutes down the road. I had my blinker on trying to
5 get over.

6 She pulled me over. She ran to my truck
7 and snatched my door open on the passenger side and
8 asked for my license, insurance, my logbook. And I
9 proceeded to give her everything.

10 And as far as my logbook, I had a paper
11 log because we didn't have the electronic log yet.
12 And as far as the log, to my knowledge you were
13 supposed to have electronic logs. The only thing I
14 had was some on my phone from the Penske rental that
15 I was in. And also I had my logbook up to date until
16 that date but it wasn't logged as far as hour to
17 hour.

18 And me and her being had a verbal -- I
19 wouldn't say altercation, but I was telling her that
20 the law hasn't passed that had electronic logbooks
21 yet. And she said it was. And as of right now, you
22 do have to have electronic logs.

23 Q. But at that time it wasn't enforced?

24 A. Right.

25 Q. So your paper logs, they were up to that

1 date?

2 A. They were up to that date, but not to the
3 hour, to my knowledge.

4 Q. Okay. How long were you driving that
5 day?

6 A. I was driving about maybe three or four
7 hours.

8 Q. Okay. And, now, when the trooper
9 approached your vehicle were you in the driver's
10 seat?

11 A. Yes, sir.

12 Q. At what point did you get into the back
13 of the cab of the truck?

14 A. I had to get my wallet. It had my
15 license in it.

16 Q. And was the trooper present while you
17 were getting your wallet?

18 A. I believe she went back to her vehicle
19 because I gave her all the paperwork that I did have,
20 and she went back and ran some things, called for
21 backup, and that's when he came.

22 Q. Now, was there an indication of an odor
23 of marijuana prior to her going back to her cruiser?

24 A. No, sir. None of that was brought about
25 until he showed up.

1 Q. Okay. So until Trooper Beyer showed up,
2 nothing was mentioned about the smell of marijuana?

3 A. Not until he showed up.

4 Q. Now, you heard both troopers testify that
5 you admitted to ingesting marijuana.

6 A. Correct.

7 Q. Can you walk us through how that all came
8 about?

9 A. If you looked in my -- they were in my
10 truck, so I had snacks all through my truck, snacks
11 and candy, bottles of water, and I was eating peanuts
12 and candy. And as far as admitting some marijuana,
13 she wrote me up to a logbook and wrote me up for
14 riding in the left lane, and she proceeded to work a
15 deal with me saying, If you just admit to having
16 marijuana, 100 grams or less, I will give a \$100
17 ticket because the state law that just passed in
18 Ohio, if you get pulled over for marijuana, you just
19 pay a \$100 fine.

20 And I told her five times I don't have
21 any marijuana at all. At this time I was upset, in
22 handcuffs. Everybody was grabbing me on my arm,
23 clenching me, yelling irately, saying, You have
24 marijuana. You have marijuana. I said I didn't.

25 They said, If you say you had it, I'll

1 give you \$100 fine. And I was kind of being
2 sarcastic. I said, Okay, all right, I have it. And
3 she wrote me up to everything that you see on that
4 piece of paper. But I never had any marijuana.

5 And I didn't have any marijuana in my
6 mouth at all. She said my tongue was green. My
7 tongue was not green at all. If I did have marijuana
8 in my teeth, you could easily take it out and have it
9 for some evidence or anything like that. And if I
10 just drank water, I don't believe anything would be
11 in my mouth.

12 MR. YEMC: All right. Thank you, sir. I
13 have nothing further.

14 THE ATTORNEY EXAMINER: Mr. Eubanks.

15 MR. EUBANKS: Yes.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Eubanks:

19 Q. So you were stopped after switching
20 lanes, correct?

21 A. I was stopped before switching lanes for
22 riding in the left lane. I just got on the Ohio
23 Turnpike. I was coming in from Pennsylvania.

24 Q. And then Officer Missig approached your
25 car?

1 A. Correct, and pulled me over for driving
2 in the left lane.

3 Q. And as you stated, she asked you to
4 provide you with your driver's license, your logbook,
5 and the rest?

6 A. Yes, sir.

7 Q. Is it your testimony today that your
8 logbook, your written logbook, had entries in it
9 after February 28? Because it's the testimony of the
10 officer that the last date of any records was
11 February 28 in your logbook. So are you saying there
12 were entries after February 28?

13 A. Correct. I have a Penske app that shows
14 my whole history.

15 Q. And that's electronic?

16 A. That's electronic.

17 Q. I'm talking about paper. Let's stick to
18 the paper for now.

19 A. Correct.

20 Q. Were there any dates on your paper
21 logbook after February 28?

22 A. To my knowledge they were up to that day
23 but not logged specifically from when -- as I was
24 driving. As you're sitting going miles, you can't,
25 you know, keep writing lines while you're driving and

1 whatnot. All you do is start your day.

2 Q. You heard the officer's testimony, and
3 the officer's testimony was that she searched your
4 car and she found the bill of lading. You heard that
5 testimony, right?

6 A. Correct.

7 Q. And that one of the deliveries was
8 March 5, 2019, and that's what the bill said, and
9 that bill also said that you delivered it on March 7,
10 2019, and that it was -- there was another pickup
11 date an March 8, 2019, and then a final delivery date
12 on March 10, 2019. First of all, can you verify
13 those dates? Were there indeed a pickup and drop-off
14 on those dates?

15 A. I don't have -- me, personally, I don't
16 have the actual paperwork of those bills of lading.

17 Q. I'm sorry, one second. I'm sorry.

18 A. No problem. ,

19 Q. All right. Let me ask the question again
20 because I believe I said 2019 and I should have said
21 2018, so let's just go through those questions again.

22 First of all, did you have several
23 deliveries between March 5 and March 10, 2018?

24 A. Well, I wouldn't say several, maybe a few
25 throughout the week. It's not like two-day loads.

1 Some of them were a day, you know, if I can make it
2 in a day, but the majority of my loads take about
3 15 hours to get, and that would be, like, two days.

4 Q. Okay. So between March 5 and March 13
5 having about two trips, that wouldn't be --

6 A. That's a few. Several to me is, like,
7 you know, one every day maybe.

8 Q. So you would have had approximately three
9 in that time period?

10 A. I don't know exactly how many I had, but
11 I know I had some deliveries and I was loaded, I
12 believe, when I was pulled over.

13 Q. Do you destroy your logbooks after you
14 write in them?

15 A. No, sir.

16 Q. Okay. So I take it it was your point to
17 come here today and show that your logbook was
18 current. Did you bring your logbook today?

19 A. I don't have the exact logbook, no, sir.
20 I don't have the logbook right now with me.

21 Q. Okay.

22 A. Normally we turn them in to, like, a
23 supervisor and whatnot.

24 Q. Okay.

25 A. He has all the logs.

1 Q. Okay. So it's basically your testimony
2 here today that the officer saw your logbook and saw
3 the bills, the bills of lading, saw that you had some
4 deliveries between February 28 and the time of the
5 stop, but she ignored the fact that your logbook had
6 entries and just basically is lying and saying you
7 only had an entry on February 28?

8 A. Well, I'm not saying she was lying, but
9 all the date books -- at the end of day you were
10 supposed to have electronic logs at the time I was
11 pulled over. You're not supposed to have paper logs
12 unless your system is broken. And regardless of the
13 paper log, even if the system is broken, it is
14 supposed to be logged as far as up to that exact
15 hour. Even if you have it up to the exact date, to
16 my knowledge, that's still like a fine, points on
17 your CDL driver.

18 Q. To be clear, she did not cite you for not
19 having an electronic log. Her citation is CFR
20 395.8A, and it's "No drivers record of duty status.
21 No Log on 3/14/2018. NO LOGS FOR 7 DAYS." So did
22 she look at your electronic log?

23 A. I tried to show her my cell phone, and
24 she told me to put my cell down on the dash, so I
25 proceeded to leave my cell phone down on the

1 dashboard, get my wallet and insurance information
2 and everything from Penske Rental.

3 Q. Okay. She did not look at your
4 electronic log?

5 A. No, sir.

6 Q. So it's clear then this violation she's
7 citing you for is for at least what she thought was
8 not in your paper log.

9 A. Correct. And also when I told her I had
10 an electronic log on my cell phone, it was -- she was
11 saying it doesn't really matter. You are supposed to
12 have the whole actual system inside of the truck.
13 You know, it's like a small computer where you just
14 type each and every move that you make.

15 I was in the Penske rental and I'm
16 working for a small company in South Carolina. It's
17 their first year starting up and it's my first year
18 driving, and they didn't kind of have all those
19 things intact because they were just starting up, and
20 that log law was just now passing. And when they
21 passed the log law, they gave an extension to get
22 those POD systems inside of trucks. That law just
23 passed about a year ago.

24 Q. By your own admission your paper log was
25 not properly kept?

1 A. Not to the hour, but to that day.

2 Q. Is it required to be kept to the hour?

3 A. To my knowledge, it is to the exact hour.

4 Q. Okay.

5 A. So like I said, you're going to be
6 driving, so until you stop, you really can't put
7 anything else in the logbook. And all I did was
8 start driving, and I didn't stop for about three or
9 four hours. I stopped -- or started at 8:00 or 9:00
10 in the morning. She pulled me over about 12,
11 1 o'clock maybe. I was driving about two or three
12 hours.

13 Q. Did she question you about the bills?

14 A. She asked for them, and I gave her all
15 the bills that I had.

16 Q. Okay. So at that time you were also
17 cited for a lane violation, which is not at issue
18 here today, but that would have been Officer Missig
19 who cited you for that, correct?

20 A. Correct. She pulled me over for riding
21 in the left lane. I was trying to get over to the
22 right lane. I did have my blinker on the whole time.

23 Q. Like I said, that's not at issue today.

24 A. Okay.

25 Q. I'm just trying to establish that that

1 was the officer who cited you, correct? She also
2 cited you for improper lane change, correct?

3 A. Correct. That was when she was pulling
4 me over to get off the interstate, on the side of the
5 interstate or whatnot, and I did have my blinker on
6 as she was pulling me to the right side.

7 Q. And you had already provided her
8 everything about the logbook, correct? She was the
9 officer asking about the logbook. That wasn't
10 Officer Beyer, correct?

11 A. Correct.

12 Q. So at that moment in time, if the only
13 issue was changing lanes and turn signals and
14 logbooks, then the inspection would have been over as
15 far as Officer Missig is concerned; isn't that
16 correct?

17 A. Until she said she smelled marijuana.

18 Q. Okay.

19 A. Well, until he came. She called for
20 backup without me knowing, and he came to my truck,
21 and he pulled me out, searched me. He searched the
22 truck, stepped on my bed, bootprints all everywhere.

23 Q. Okay. That is my point. Your earlier
24 testimony was that Officer Missig didn't notice any
25 marijuana, didn't notice any smell of marijuana. But

1 it is true that she wouldn't have called the other
2 officer with everything already addressed, the lane
3 violations already addressed, the logbook already
4 addressed, unless there was some other issue that she
5 was concerned about, and that was, obviously, the
6 smell of marijuana, correct?

7 A. Well, like I said, I recall when she
8 pulled me over, took my information, she went to the
9 back of the truck, and he came. Common sense is
10 telling me she called him about the smell of
11 marijuana.

12 Q. Okay.

13 A. I asked her, and they proceeded to take
14 me out of the truck, search me, search my car, and I
15 was kind of bullied. I was in handcuffs, real tight
16 grip on my shoulder. I was not trying to run. I was
17 being yelled at numerous times to say you had
18 marijuana. Say it. Say it, just yelling at me.

19 I told her five times. She said, Look,
20 I'll give you a deal here, which all those violations
21 besides the DUI, the marijuana, those are serious
22 violations that would put my license on suspension
23 and given me points. She said she will do away with
24 all those. You know, you just pay a \$100 fine for
25 the smell of marijuana.

1 Q. And I understand. In these hearings we
2 aren't that adversarial, so I am not asking
3 constantly to the hearing examiner that your
4 testimony be cut off when it exceeds the question
5 that I'm asking.

6 A. Sorry about that.

7 Q. So I'm sure your learned counsel will
8 give you a chance to go through all that. I'm trying
9 to kind of methodically run through the violations
10 one question at a time, so if we can keep our answers
11 to the question I'm asking.

12 A. Sorry about that.

13 Q. So then back to the train of thought it
14 was Officer Missig's independent assessment there was
15 a smell of marijuana, which then led to her calling
16 Officer Beyer. We're in agreement on that?

17 MR. YEMC: Objection. How is he supposed
18 to know that?

19 THE ATTORNEY EXAMINER: I'll sustain
20 that.

21 Ask the question a different way.

22 MR. EUBANKS: Okay. Well, I think he
23 already testified to it.

24 Q. (By Mr. Eubanks) You said after she
25 completed the lane changes and after she completed

1 giving you violations for those and completed the
2 logbook, she then called Officer Beyer; is that
3 correct?

4 A. Negative.

5 Q. Is that correct?

6 A. That's not correct.

7 Q. Okay.

8 A. I'll explain. She didn't complete
9 anything until this backup officer came. I didn't
10 even know he was coming until he came.

11 Q. She didn't give you any citations?

12 A. She didn't give me anything until
13 everything was finalized.

14 Q. Did she mention the citation to the lane
15 violation?

16 A. Nothing was mentioned about any violation
17 until the backup officer came. Nothing.

18 Q. Okay.

19 A. And -- go ahead.

20 Q. So the only thing that occurred when
21 Officer Missig approached your car was she asked you
22 for your driver's license, asked you for your
23 logbook, and then she left?

24 A. Went to the back and ran my information,
25 like officers do, and about five or ten minutes later

1 he showed up, and he proceeded to get me out of the
2 vehicle.

3 Q. Okay. Did you drink any water at the
4 stop?

5 A. I was drinking water the whole time.

6 Q. Okay.

7 A. And I had food in my mouth while I was
8 riding, snacks and everything. When she snatched my
9 door open, to my knowledge I had the peanuts right in
10 front of me, pistachios, to be exact.

11 Q. So you were eating nuts. Were you eating
12 anything else?

13 A. I had candy. I had gum. An hour later
14 when I got --

15 Q. Were you eating anything else?

16 A. Not at the time that she pulled me over.
17 I was just eating peanuts. I just ate the peanuts
18 and my mouth was dry, and that's about it. And the
19 only reason I was in the back of the cab --

20 Q. You said your mouth was dry. Were you
21 drinking water or not?

22 A. I was drinking water.

23 Q. So your mouth wasn't dry?

24 A. My mouth was dry. That was the reason I
25 was drinking water.

1 Q. Okay.

2 A. I had peanuts. You've eaten peanuts
3 before. You know that dry feeling.

4 Q. At the time of the stop, you were
5 drinking water and you had peanuts; is that what
6 you're saying?

7 A. Correct.

8 Q. Okay. And there was no smell in your
9 car?

10 A. I had a Black & Mild. That's a cigar.
11 That's not marijuana. That's not any narcotic. You
12 can legally buy tobacco products from any store.
13 Jazz, to be exact.

14 Q. Were you smoking Black & Mild?

15 A. That day I was, but not as she pulled me
16 over, I was not.

17 Q. Okay.

18 A. To me it did not smell like marijuana in
19 that car, and I had no marijuana.

20 Q. When Officer Beyer came back with Officer
21 Missig, do you recall them asking you about
22 swallowing marijuana?

23 A. Right.

24 Q. Did that occur?

25 A. She asked me about it.

1 Q. She or he?

2 A. Both asked me.

3 Q. Who asked you first?

4 A. She asked me.

5 Q. She asked you about you swallowing
6 marijuana?

7 A. Well, she kind of just -- she really
8 wasn't asking. She really just threw it in the air
9 and said, You ate it. You ate it, didn't you? I
10 said no. To me that was bullying me. Say you ate
11 it. Say you ate it.

12 Q. Was that her exact words, You ate it,
13 didn't you?

14 A. Yes, those were her exact words.

15 Q. And those were the first words she said
16 to you when she came back?

17 A. No.

18 Q. I'm trying to figure out who spoke with
19 you first. Was it Officer Missig or was it Officer
20 Beyer?

21 A. Well, of course, it would be Missig
22 because she pulled me off. That's the first officer
23 I talked to.

24 Q. What did she say to you when she came
25 back?

1 A. Well, I was out of the car already
2 because he came and got me out of the truck. He
3 walked me on the side of the highway back to the
4 front of the vehicle.

5 Q. So he was the first one who came back to
6 you after that?

7 A. Right. He got me out of the car and
8 brought me down to where she was at, and we were kind
9 of like walking up and down the truck. And they
10 brought me back to where their vehicle was, and it
11 was like --

12 Q. And who spoke to you first?

13 A. Of course he spoke to me first because he
14 got me out of the car.

15 Q. You just said that Officer Missig spoke
16 to you first.

17 A. When are you saying who spoke to me
18 first? She spoke to me first when she pulled me
19 over.

20 Q. Okay.

21 A. When they came back to my truck, he spoke
22 to me the second time, which would be first in your
23 eyes.

24 Q. Okay. For point of clarity, we've
25 already went through the initial part of the stop.

1 We've already had where she's asked you for your
2 identification. She then went back to the car. She
3 then called Officer Beyer. Now, this is the second
4 part of the stop.

5 A. Exactly.

6 Q. I was asking you who spoke with you
7 first.

8 A. All right.

9 Q. Okay. So Officer Beyer came and he got
10 you; is that what you're saying?

11 A. Correct.

12 Q. After the stop without Officer Missig?

13 A. Correct. She was kind of standing behind
14 them alongside the trailer of the truck as far as,
15 like, you know, backup or whatnot.

16 Q. Okay.

17 A. I got out of the truck, left my
18 belongings. They put me in handcuffs.

19 Q. Wait a minute. Who put you in handcuffs?

20 A. I don't know exactly which officer put me
21 in handcuffs. They were not the only two officers
22 that were on the scene. There were other officers
23 that came, state troopers and officers that came,
24 about four, maybe five at most, but at least four of
25 them out, and I was in a circle standing up with them

1 around me and everybody was questioning me.

2 Q. Okay. But Officer Beyer was the first
3 one you came in contact with after Officer Missig
4 went back to her car, correct?

5 A. Correct.

6 Q. What did he say to you?

7 A. Step out of the vehicle.

8 Q. Okay. And you stepped out of the
9 vehicle, I take it. Did he then put the handcuffs on
10 you?

11 A. Yes.

12 Q. Okay.

13 A. No. He searched me first.

14 Q. He searched you personally?

15 A. Yes, first. Then he put me in handcuffs.

16 And she kind of tag-teamed --

17 Q. Did he tell you why he was searching?

18 A. He said it smelled like marijuana in my
19 vehicle.

20 Q. Okay. Did he search the vehicle?

21 A. Yes.

22 Q. When did that occur?

23 A. After he put me in handcuffs and they
24 searched me.

25 Q. Okay. Did he ever ask you did you

1 possess marijuana?

2 A. Yes.

3 Q. When was the first time he asked?

4 A. After -- actually, when he was checking
5 me, he asked me, Do you have any drugs or guns,
6 weapons on you? And I told him I don't have
7 anything.

8 Q. Did he ask you about the substance in
9 your mouth?

10 A. Not until I was in handcuffs, detained by
11 this officer, Ms. Missig, and maybe one more officer.
12 And after he searched my vehicle, about 10 or
13 20 minutes later, that's when she yelled out, You ate
14 it. Everybody, you got to have some marijuana
15 somewhere. I told them I don't have anything.

16 They looked in my old background. When I
17 was about 23 years old, I had a possession charge of
18 marijuana. And he proceeded to ask me where the big
19 drugs are, you know, like, heavyweight drugs. Do you
20 know if anything else is coming down the highway?

21 I'm like, Why are you asking me this? I
22 don't have any marijuana. They said, You have a
23 criminal record. I said, It's old. It was over ten
24 years ago. It was only possession. So they
25 proceeded to, you know, just go off of the background

1 and throw stuff up in the air, you know, and make
2 assumptions. It was kind of a forceful, hostile
3 situation.

4 Q. Okay.

5 A. And being that -- I'll let you go and ask
6 the questions.

7 Q. So it's basically your testimony that you
8 admitted to smoking marijuana but it was jokingly?

9 A. I didn't admit to smoking anything. She
10 told me, If you go ahead and just admit to eating
11 some marijuana --

12 Q. Okay.

13 A. -- I will give you a \$100 fine and let
14 you go about your way, and I will do away from the
15 violation of your logbook, the violation of the turn
16 signal when she pulled me over, and also the
17 violation of riding in the left lane on the turnpike,
18 only if you admit to eating marijuana.

19 Q. And you're saying you jokingly admitted
20 to eating marijuana?

21 A. Sarcastically, yes.

22 Q. Sarcastically?

23 A. Yes, because of the tense way they were
24 coming at me, and I just told them over five times I
25 did not eat any marijuana. She said, Just say you

1 had.

2 Okay, I ate it. That's how I came at it,
3 you know. I never had anything. I did not do any
4 marijuana. And because she saw me drinking water
5 earlier, you know, that's where she came from, that
6 assumption, and an hour maybe had passed from when I
7 last drank anything.

8 Q. Was your tongue green?

9 A. No, my tongue was not green.

10 Q. Did you eat anything leafy?

11 A. No. You want to say like a peanut, the
12 stuff on the peanuts, maybe, you know, like the
13 shelling, maybe. That's it.

14 MR. EUBANKS: I have no further
15 questions.

16 MR. YEMC: No redirect.

17 THE ATTORNEY EXAMINER: Mr. Dodson, you
18 may step down.

19 THE WITNESS: Yes, ma'am.

20 MR. YEMC: I have no further witnesses.

21 MR. EUBANKS: I would like to call
22 Officer Missig back to the stand for rebuttal.

23 THE ATTORNEY EXAMINER: I remind you you
24 are still under oath.

25 THE WITNESS: Yes, ma'am.

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REBUTTAL CASE.

REBECCA MISSIG

being previously sworn, as hereinafter certified,
deposes and says as follows:

DIRECT EXAMINATION

By Mr. Eubanks:

Q. Did the Respondent have pistachio nuts in
his possession when you stopped him?

A. I don't recall if there were pistachios
in the vehicle or not.

Q. Okay. Do you recall any other food
products in his car when you stopped him?

A. I can't recall.

Q. The smell that was in his car, was it
consistent with the smell of peanuts?

A. No.

Q. Was it consistent with the smell of a
cigarette?

A. No.

Q. Of a Black & Mild?

A. No.

Q. Are you familiar with the smell of a
Black & Mild?

A. I'm familiar with the smell of cigars and

1 cigarettes, and, no, it was not.

2 Q. The Respondent testified he was being
3 coerced into admitting that he swallowed marijuana.
4 Did that occur?

5 A. No.

6 Q. Was he placed in handcuffs?

7 A. Yes.

8 Q. Was Officer Beyer the first officer to
9 approach the Respondent after the initial stop, after
10 you went back to your car?

11 A. I did not go back to my car.

12 Q. Okay. Could you describe what you did
13 after you requested the logbook, the driver's license
14 from the Respondent?

15 A. I stood there. I spoke with the
16 defendant until Trooper Beyer showed up. I was at
17 the door the whole time.

18 Q. When did you notice the smell the
19 marijuana?

20 A. When I first approached the vehicle.

21 Q. Did you relay that to the Respondent?

22 A. No. We would typically wait for a backup
23 before we discuss narcotics or whatever we need to
24 do.

25 Q. Okay. Did you write any citations before

1 Officer Beyer was on the scene?

2 A. No.

3 Q. Okay. When Officer Beyer arrived, you
4 mentioned reading the Miranda rights to the
5 Respondent. When did that occur?

6 A. Officer Beyer arrived. We asked the
7 defendant to step out of the vehicle. He was walked
8 back to the patrol car. He was handcuffed and read
9 his rights by Trooper Beyer.

10 Q. When was he first questioned about
11 marijuana?

12 A. After his rights had been read.

13 Q. After he was walked from the vehicle?

14 A. Yes.

15 Q. Okay. And what questions were posed to
16 him?

17 A. I wasn't standing right there. I'm going
18 by what was told to me, that he was asked why he ate
19 the marijuana.

20 Q. So you weren't the officer who questioned
21 him about the marijuana?

22 A. No.

23 Q. Okay. To be clear, if we could backtrack
24 just one bit about the logbook, did he have a paper
25 logbook?

1 A. Yes, sir.

2 Q. And did you look at the paper logbook?

3 A. Yes, sir.

4 Q. And did you look at the last entry in the
5 paper logbook?

6 A. Yes, sir.

7 Q. And what was the date of the last entry
8 in the paper logbook?

9 A. February 28.

10 Q. Were you citing for failing to have an
11 electronic logbook?

12 A. No, sir.

13 Q. Were you citing for him failing to have a
14 current electronic logbook?

15 A. No, sir.

16 Q. Is there any chance that you could be
17 mistaken about there being entries in the logbook
18 after February 28, 2018?

19 A. No, because what I do is when they hand
20 me the logbook, I look at the last page. If it is
21 not current, I take a picture of the last page just
22 to show there is nothing after that.

23 Q. Did you take pictures in this case?

24 A. Yes, sir.

25 MR. EUBANKS: May I approach the witness?

1 THE ATTORNEY EXAMINER: You may.

2 MR. EUBANKS: I'd like to have this
3 marked as Staff Exhibit 3.

4 THE ATTORNEY EXAMINER: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Mr. Eubanks) Do you recognize that
7 document that's in front of you?

8 A. It's a photo of a logbook, a paper log.

9 Q. Who took the photo?

10 A. I did.

11 Q. When did you take the photo?

12 A. At the time of the stop.

13 Q. Is it a true and accurate copy of -- a
14 true and an accurate representation of what you saw
15 at the time of the stop?

16 A. Yes, sir.

17 Q. And was that the last page of the logbook
18 that you saw?

19 A. Is this one dated the 28th, or is it the
20 26th? I know there were two papers.

21 Q. So that --

22 A. Then this would be the last page.

23 Q. So based off of that document, the last
24 stop was February 27, or the last entry?

25 A. Yes. That was the last photo, yes.

1 May I see that report for a second?

2 THE WITNESS: Is that okay?

3 THE ATTORNEY EXAMINER: Which report?

4 MR. EUBANKS: May I approach the witness?
5 This would be Staff Exhibit 2.

6 THE ATTORNEY EXAMINER: Yes, you may
7 approach the witness.

8 Yes, it's fine if you look at it. It's a
9 marked exhibit.

10 A. The defendant indicated several times
11 that he had left Pennsylvania, and actually his load
12 was going from Buffalo, Iowa, to Alliance, Ohio. At
13 the time of my stop he was actually eastbound at mile
14 marker 126.

15 Q. I'm sorry. So I missed the significance
16 of your testimony.

17 A. He kept saying that he was westbound when
18 actually he was eastbound at the time I stopped him.

19 Q. Okay.

20 A. He was going from Iowa to deliver in Ohio
21 instead of leaving Pennsylvania, wherever he said he
22 was going.

23 Q. Did the Respondent ever mention anything
24 to you about an electronic logbook?

25 A. No.

1 Q. Did he ever offer to show you anything on
2 his phone?

3 A. No.

4 Q. When did you get the bill of lading?

5 A. I believe he handed me his current bill
6 of lading during the stop. I was waiting for Trooper
7 Beyer to show up. This may have been when we were
8 searching the vehicle.

9 Q. Did you ever question him about why the
10 dates on the bill were not in the logbook?

11 A. I don't recall.

12 Q. Did he ever offer to show you any other
13 logbook with additional pages in it?

14 A. No. Because if he would have shown me
15 his logbook, he wouldn't have had a logbook
16 violation.

17 Q. Okay. Was the Respondent ever harmed
18 during the stop?

19 A. Was he harmed?

20 Q. Yes.

21 A. No.

22 Q. Did anyone physically assault him during
23 the stop?

24 A. No.

25 Q. Did anyone grab him?

1 A. He was placed in handcuffs, so yes,
2 somebody actually had a hand on him when he was
3 placed in handcuffs.

4 Q. Was he shaken in order to confess to
5 swallowing marijuana?

6 A. No.

7 Q. Was his mouth, in fact, green?

8 A. His tongue was green.

9 Q. Did you witness that yourself?

10 A. Yes.

11 Q. Did his breath smell like marijuana?

12 A. There was an odor coming from his person.
13 His breath -- there was an odor coming off of him.

14 Q. That was consistent with marijuana?

15 A. Yes, sir.

16 MR. EUBANKS: I have no further
17 questions.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Yemc:

21 Q. How many other troopers were on the scene
22 at the time?

23 A. There was me, Trooper Beyer, and Sergeant
24 Tim Hoffman. He did show up at the scene.

25 Q. And you took the pictures of the logs?

1 A. Yes, sir.

2 Q. With a camera that you have with you all
3 the time?

4 A. Yes, sir.

5 Q. Is there a reason why you didn't take a
6 picture of the defendant's green tongue and leafy
7 material in his teeth?

8 A. I didn't think of taking one.

9 MR. YEMC: I have nothing further.

10 - - -

11 EXAMINATION

12 By The Attorney Examiner:

13 Q. Officer Beyer testified it was not his
14 position to order a field sobriety test because you
15 were the officer that pulled the Respondent over.

16 A. Right.

17 Q. Why did you not order a field sobriety
18 test?

19 A. Because at the time I saw the green
20 material in his mouth, he had just eaten it. I was
21 not going to permit him to drive anyway, and I was
22 not placing him under arrest to take him into custody
23 for driving under the influence of a narcotic at the
24 time.

25 THE ATTORNEY EXAMINER: Mr. Eubanks, you

1 were going to move something?

2 MR. EUBANKS: I was going to call another
3 witness.

4 THE ATTORNEY EXAMINER: Okay.
5 You may step down.

6 MR. EUBANKS: I'd like to call Officer
7 Chris Beyer back to the stand as a rebuttal witness.

8 THE ATTORNEY EXAMINER: Mr. Beyer, just
9 to remind you as well, you are still under oath.

10 THE WITNESS: Yes, your Honor.

11 - - -

12 CHRISTOPHER BEYER
13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Eubanks:

17 Q. So you heard the testimony of the
18 Respondent.

19 A. I did.

20 Q. First of all, I think we've established
21 that after the initial stop, you were called to the
22 scene. At the time you were called to the scene,
23 were you the one to read the Miranda rights?

24 A. I was.

25 Q. And when did you inquire of the

1 Respondent about the smell of marijuana or his
2 potential possession of marijuana?

3 A. After -- after reading the Miranda
4 warning and his acknowledgment that he understood.

5 Q. Was this when he was still standing by
6 the car?

7 A. We placed him in the back seat of the car
8 after we had probable cause to search his person
9 because of odor of marijuana on his person.
10 Therefore the sect search would extend to the person
11 because it was on his breath and person as well.

12 He was handcuffed. He was ordered to
13 walk back the guardrail at the time. He was
14 handcuffed in front of the vehicle in front of the
15 camera to record that probable-cause search of his
16 person. We talked about that, and the observation of
17 that was in the back seat. And he was read his
18 Miranda rights, we talked about that, at which point
19 I asked him the question that was previously stated,
20 Why did you ingest the marijuana? And he admitted to
21 swallowing there as well.

22 Q. So this was when he was in the back of
23 the police car that he admitted to that?

24 A. Yes.

25 Q. It wasn't when -- was he ever surrounded

1 by several officers during this time?

2 A. No.

3 Q. Was there ever a time where several
4 officers were imploring for him to admit that he
5 swallowed marijuana?

6 A. Never.

7 Q. Did anyone ever assault him?

8 A. No.

9 Q. Was he ever -- did he ever tell you that
10 what was in his mouth was pistachio nuts?

11 A. There was no other admissions that there
12 was any other substance other than marijuana that he
13 admitted to inside his mouth.

14 Q. Did he ever say that the smell could be
15 Black & Mild?

16 A. No.

17 Q. Did you bring up his past record during
18 that stop?

19 A. I don't recall if I did or didn't.

20 Q. Okay. Did you ever ask him about other
21 shipments of drugs on the highway?

22 A. So yes, and I'll expand on that. So,
23 obviously, we had a very small amount which he had on
24 his person, and him being in the trucking industry,
25 it's common knowledge there's a lot of drugs

1 potentially shipped in semis, so if he had any
2 knowledge of that, then I would like to ask him about
3 that. If he has no knowledge, which he testified to,
4 I believe he said at the scene he had no knowledge of
5 any of those interactions going on, so be it. But,
6 yes, of course, that question did come up because of
7 my knowledge of that stuff.

8 Q. When he admitted to swallowing marijuana,
9 was it in a sarcastic tone?

10 A. I don't recall the tone of his voice when
11 he admitted to that.

12 Q. Did he ever deny it before finally
13 admitting that he had marijuana?

14 A. Not that I recall.

15 THE ATTORNEY EXAMINER: Mr. Yemc.

16 MR. YEMC: Nothing.

17 MR. EUBANKS: I would move to have Staff
18 Exhibit 3 placed into evidence.

19 THE ATTORNEY EXAMINER: Any objection?

20 MR. YEMC: No.

21 THE ATTORNEY EXAMINER: No. 3 will be
22 admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 THE ATTORNEY EXAMINER: Off the record
25 for a moment.

1 (Off the record.)

2 THE ATTORNEY EXAMINER: Back on the
3 record.

4 In lieu of post-hearing briefs, we will
5 have a short closing argument.

6 Mr. Eubanks.

7 MR. EUBANKS: I implore the Court to
8 remember that this is not a criminal hearing. This
9 is a civil hearing. The proof is a preponderance of
10 the evidence, not beyond a reasonable degree.

11 The crux of the violations here are,
12 number one, that the Respondent was on duty. I don't
13 think that is in question; that he didn't have a
14 proper logbook, and while there's testimony from the
15 Respondent that he may have had a more detailed
16 logbook than was in the original officer's testimony,
17 it is also the admission of the Respondent, even by
18 his own standards, the logbook wasn't properly kept.
19 And the officer testified to the fact she looked at
20 the last page of the logbook and it did not go up to
21 March 14. Indeed, it stopped at February 27, 2018.

22 If the Respondent can be that off on the
23 simplest of the violations, the logbook violation, I
24 really believe that calls into question his testimony
25 about the more serious parts of the violations based

1 off of the testimony of Officer Beyer that indeed
2 there was an admission from the Respondent that he
3 swallowed marijuana.

4 Now, the defense offered by the
5 Respondent is that he did indeed admit it but it was
6 sarcastically. We have the testimony of two officers
7 that the smell was consistent with the smell of
8 marijuana, not with the smell of Black & Mild or
9 pistachio nuts.

10 There was no abusive behavior by the
11 officers. Indeed, we had testimony that the arrest
12 took place in front of a camera, and if indeed the
13 Respondent was harmed or abused by the officers, it
14 would have been caught on camera, and no doubt the
15 Respondent could have had his day in court by an
16 action against the officers for this alleged abusive
17 behavior. But there was no testimony in the Court
18 today that such an action was ever brought or that
19 the Respondent at any time ever requested that video
20 footage showing the officers acting in an abusive,
21 overly aggressive way.

22 I mean, this case basically boils down to
23 this simple thing. Either we have two of the biggest
24 liars in the court as officers here today who are out
25 to bury this particular Respondent, the motive for

1 which was not offered here today in this court, or we
2 have a Respondent who is trying to escape a violation
3 that he committed.

4 And if we're looking at the standard of
5 the preponderance of the evidence, I feel that to
6 reach a conclusion that these officers lied about the
7 logbook, didn't take a proper picture of the logbook,
8 went to the middle of the logbook instead of to the
9 end of the logbook and took a picture, and then
10 didn't smell the presence of marijuana, just saw nuts
11 in his mouth, put him in handcuffs and forced him to
12 sarcastically admit that he swallowed marijuana is an
13 absurdity, especially in light of the fact that, as I
14 said, the proof in this case is by a preponderance of
15 the evidence.

16 That's the end of my closing.

17 THE ATTORNEY EXAMINER: Mr. Yemc.

18 MR. YEMC: Thank you, your Honor.

19 Preponderance of the evidence means
20 there's got to be some evidence of a violation.
21 There's no evidence, physical or otherwise, that the
22 defendant ingested marijuana. Even if there was
23 video, they should be showing it. The best evidence
24 rule would require that they show the video so that
25 we can see the defendant's admission that he

1 ingested marijuana.

2 Officer Beyer even testified he couldn't
3 recall whether or not during the admission whether he
4 said it sarcastically or not. The video would have
5 shown that, but we don't have any of that here today.

6 We don't have a field sobriety test. We
7 don't have a urine test. We don't have a blood test.
8 We have nothing that would show that he was under the
9 influence of a narcotic at the time. We have no
10 evidence of a drug, no evidence of a container that
11 held the drug.

12 Trooper Missig testified that she took
13 pictures of the defendant's logbook. There was no
14 pictures of the defendant's green tongue or the leafy
15 substance in his teeth. We have no evidence of drugs
16 at all, and I think there's got to be something. I
17 know this isn't a criminal case, because this would
18 have been tossed out immediately, but there must be
19 something to even reach a preponderance of the
20 evidence, and that's not here today.

21 Thank you.

22 THE ATTORNEY EXAMINER: Thank you.

23 With that, the record will be submitted
24 to the Commission for a decision, and we are
25 adjourned. Thank you. (concluded at 11:52 a.m.)

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, May 21, 2019, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson

Rosemary Foster Anderson,

Professional Reporter and Notary Public in and for the State of Ohio.

My commission expires April 5, 2024.

(rfa-90046)

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Summary: Transcript In the Matter of Steven J. Dodson, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on May 21st, 2019 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.