

PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of :
Michael Hymes Notice of: Case No.
Apparent Violation and : 21-886-TR-CVF
Intent to Assess :
Forfeiture. :

- - -

PROCEEDINGS

Before Jim Lynn, Attorney Examiner, via WebEx,
on Friday, March 18, 2022, 10:00 A.M.

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1 APPEARANCES:

2 Mr. Michael J. Yemc, Jr.
3 P.O. Box 469
4 Delaware, Ohio 43015

5 On behalf of the Respondent.

6 Mr. Thomas Lindgren
7 Assistant Attorney General
8 30 East Broad Street, 26th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the
11 Public Utilities Commission
12 of Ohio.

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1 Friday Morning,
2 March 18, 2022.

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4 ATTORNEY EXAMINER: The Public
5 Utilities Commission has assigned for a hearing
6 at this time Case No. 21-886-TR-CVF concerning
7 Michael Hymes Notice of Apparent Violation and
8 Intent to Assess Forfeiture. I am Jim Lynn, the
9 Attorney Examiner assigned to hear this case.

10 I will note that this case is being
11 conducted via WebEx virtually. And we will have
12 the appearances of the parties, and first we
13 will start with the Ohio Attorney General's
14 office.

15 MR. LINDGREN: Thank you, your
16 Honor. My name is Thomas Lindgren, I am an
17 Assistant Attorney General of the office of Ohio
18 Attorney General Dave Yost. The address is 30
19 East Broad Street, 26th Floor, Columbus, Ohio
20 43215.

21 ATTORNEY EXAMINER: Thank you. And
22 for Mr. Hymes. I believe, Mr. Yemc, you are
23 representing him.

24 MR. YEMC: That is correct, your
25 Honor. Michael Yemc, Supreme Court No. 00065390

1 on behalf of Mr. Hymes. The address here is 523
2 Kingsberry Road, Delaware Ohio 43015.

3 ATTORNEY EXAMINER: Thank you. In
4 that case I want to thank both parties for
5 submitting their exhibits in advance. That is
6 much appreciated. And we will get underway,
7 then, Mr. Lindgren, with your witness.

8 MR. LINDGREN: Thank you, your
9 Honor. The Staff calls Inspector McCormack to
10 the stand.

11 (WITNESS SWORN)

12 ATTORNEY EXAMINER: Please go ahead,
13 Mr. Lindgren.

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15 ANGUS PATRICK MCCORMACK
16 called as a witness, being first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Lindgren:

20 Q. Good morning, sir. Could you please
21 state your full name for the record?

22 A. My name is Angus Patrick McCormack.

23 Q. And what is your business address?

24 A. The address for the Patrol Post in
25 the county it occurred, 3149 France Road,

1 Medina, Ohio 44356.

2 Q. Thank you. Where are you employed,
3 sir?

4 A. I am employed with the Ohio State
5 Highway Patrol, License and Commercial Standards
6 in Cleveland.

7 Q. And what is your position with the
8 Patrol?

9 A. I am a Motor Carrier Enforcement
10 Inspector.

11 Q. And how long have you been in that
12 position?

13 A. I have been in this position for a
14 little over and year.

15 Q. Thank you. What sort of training
16 have you had for your position?

17 A. I have been trained in North
18 American Standards Part A, Part B, passenger and
19 school bus for the State of Ohio.

20 Q. Thank you. Do you hold any
21 certifications?

22 A. Yes. I hold certifications for
23 North American Standards Part A, Part B,
24 passenger and school bus for the State of Ohio.

25 Q. Thank you. Are you familiar with

1 the motor carrier regulations involving the
2 wearing of seat belts?

3 A. Yes, I am.

4 Q. Are you familiar with the motor
5 carrier regulations involving the use of
6 hand-held mobile devices?

7 A. Yes, I am.

8 Q. Thank you. Do you recall an
9 inspection involving the Respondent in this
10 case, Michael Hymes?

11 A. Yes, I do.

12 Q. And what was the -- can you explain
13 the purpose of that inspection?

14 A. The inspection was a traffic stop
15 leading to inspection for the use of a hand-held
16 mobile device while operating a commercial motor
17 vehicle and not wearing the seat belt while
18 operating the commercial motor vehicle.

19 Q. Thank you. Could you explain how
20 you observed these violations and what you saw?

21 A. Yes. I was southbound on Interstate
22 71 in Medina County. I approached the
23 commercial motor vehicle from behind. I was in
24 the left lane, he was in the right lane.

25 As I approached I looked over to my

1 right and observed the driver holding a cell
2 phone in his right hand up to his right ear with
3 the charger cord coming from the phone. And I
4 observed his seat belt on the left side post not
5 being worn and not across his body as required
6 to be.

7 At that time the driver, who I have
8 not yet identified, reached up and began
9 scratching his left ear with his left hand
10 blocking my view of any further use of the cell
11 phone. At that time I got behind the CMV and
12 activated my emergency lights and stopped it for
13 an inspection.

14 Q. Thank you. Did you say you observed
15 his cell phone in his hand?

16 A. Yes. The cell phone in his right
17 hand with the charger cord coming from the
18 bottom of it.

19 Q. Thank you. And what was the position
20 of the phone?

21 A. Up to his right ear.

22 Q. Thank you.

23 A. In the talking position.

24 Q. And did you say he started
25 scratching his ear after you made that

1 observation?

2 A. Yes, sir. After he looked over to
3 his left, observed me, he began again scratching
4 his left ear with his left hand.

5 Q. Thank you. Do you recall what the
6 driver was wearing that day?

7 A. Off the top of my head, no. My
8 inspection report will --

9 Q. Thank you. We can get to that in a
10 moment.

11 A. Okay.

12 Q. So what were the two violations you
13 observed on your inspection?

14 A. I observed the driver not wearing
15 his seat belt as required by regulation, and
16 using his hand-held mobile phone, not a
17 hands-free device.

18 Q. Thank you. Did you prepare an
19 inspection report after this inspection?

20 A. Yes, I did.

21 Q. Thank you. And was that report done
22 in the ordinary course of your business?

23 A. Yes.

24 MR. LINDGREN: Thank you. Your
25 Honor, I would like to have the witness look at

1 the inspection report, and I would like to have
2 that marked as Staff Exhibit No. 1.

3 ATTORNEY EXAMINER: We will mark it
4 that way. Go ahead.

5 (EXHIBIT HEREBY MARKED FOR
6 IDENTIFICATION PURPOSES)

7 Q. Mr. McCormack, do you have the
8 inspection report with you?

9 A. Yes, I do.

10 Q. Thank you. And does it accurately
11 reflect the results of your inspection that day?

12 A. Yes, it does.

13 Q. And does it reflect the two
14 violations that you observed?

15 A. Yes, it does.

16 Q. Thank you. And did you prepare this
17 promptly after completing the inspection?

18 A. Yes.

19 Q. What did you do with this report
20 after you prepared it?

21 A. A copy was handed to the driver, and
22 another copy was uploaded to the Saver website
23 and sent to the Public Utilities Commission.

24 Q. Thank you. Does the inspection
25 report that's been marked as Staff Exhibit 1

1 appear to have been altered in any way since you
2 prepared it?

3 A. No, it does not.

4 MR. LINDGREN: Thank you. Your
5 Honor, I have no further questions for this
6 witness, and I would like to move to have Staff
7 Exhibit 1 admitted into evidence.

8 ATTORNEY EXAMINER: Thank you.
9 Before we do that, and before we go to Mr. Yemc,
10 I have a few questions for the witness.

11 EXAMINATION

12 By the Attorney Examiner:

13 Q. Mr. McCormack, or should I call you
14 Inspector McCormack? What kind of vehicle was
15 Mr. Hymes driving? I am looking at the
16 inspection report, apparently it's there called
17 a straight truck, apparently not a
18 tractor-trailer. What kind vehicle was he in?

19 A. He was in a straight truck with a
20 roll-off dumpster located on the rear of the
21 truck.

22 Q. And what kind of vehicle were you
23 driving?

24 A. I was driving a 2011 Chevy Tahoe
25 with red emergency lights and white Motor

1 Carrier Enforcement markings.

2 Q. So when you were alongside him you
3 were traveling southbound in traffic, and you
4 looked over at him. Was your seat approximately
5 level with his, was he up higher than you?

6 A. He would be slightly higher than me
7 when I was driving next to him. But, not by
8 that much.

9 Q. And you mentioned that you observed,
10 let's see, you were on the left side, you
11 observed him holding a cell phone in his right
12 hand up to his ear. And then at some point he
13 scratched his left ear with his left land.

14 When he began to use his left hand
15 was he still listening to his cell phone, or
16 could you tell?

17 A. He was to a point where my view was
18 blocked by his left hand and left arm.

19 Q. And then as far as the seat belt
20 violation, you are indicating that the belt was
21 apparently just not buckled, of course, hanging
22 from the side of the vehicle; am I right?

23 A. The left side post on the inside of
24 the vehicle.

25 ATTORNEY EXAMINER: All right. I

1 don't have anymore questions at this time. Mr.
2 Yemc, would you like to go ahead?

3 MR. YEMC: Thank you very much.

4 CROSS-EXAMINATION

5 By Mr. Yemc:

6 Q. Now, Inspector, do you recall
7 the traffic that day?

8 A. Yes, I do.

9 Q. And how was it?

10 A. Light traffic.

11 Q. Light traffic. What time of day was
12 it?

13 A. It would have been morning, before
14 afternoon, if I recall.

15 Q. And what's the speed in that area
16 that you observed the violation?

17 A. The speed limit on 71 is 70 miles
18 per hour.

19 Q. Do you recall your speed?

20 A. I do not.

21 Q. Do you know what the Defendant's
22 speed was, or the Respondent's speed was, how
23 fast he was going?

24 A. I do not. I am not trained in speed
25 enforcement.

1 Q. Guesstimate you were going
2 approximately 70 miles per hour? Were you going
3 the speed limit at the time?

4 A. If I had to guess it would probably
5 be the speed limit, sir, or matching that of
6 the commercial motor vehicle.

7 Q. How many lanes of travel were there?

8 A. There were three lanes of travel on
9 71 south.

10 Q. And you were in the middle lane;
11 Is that correct?

12 A. I was either in the middle or left
13 lane. I was in the lane left of the commercial
14 motor vehicle. He was in a lane to the right of
15 me.

16 Q. And the color of the seat belt, do
17 you remember?

18 A. The seat belt would be light gray.

19 Q. His shirt was dark?

20 A. Dark or black colored, yes,

21 Q. And the straight truck, it was a
22 newer straight truck?

23 A. Yes.

24 Q. According to your inspection report
25 that's been made an exhibit in this case, looks

1 like it's a 2019, so it's a pretty new truck; is
2 that correct?

3 A. Yes.

4 Q. And it's a 5500; is that accurate?

5 A. 5500 in relation to --

6 Q. The type of truck. Do you recall?

7 A. I won't recall the type of truck it
8 was, aside from what I have listed on the
9 inspection report.

10 MR. YEMC: I have nothing further.

11 Thank you.

12 ATTORNEY EXAMINER: All right.

13 Thank you. And Mr. Yemc, do you have any
14 objection to the Staff Exhibit 1 being admitted
15 into evidence?

16 MR. YEMC: I do not, Your Honor.

17 ATTORNEY EXAMINER: Okay. Then we
18 will admit Staff Exhibit 1 into evidence. That
19 is the Driver/Vehicle Inspection Report

20 (EXHIBIT HEREBY ADMITTED INTO
21 EVIDENCE)

22 ATTORNEY EXAMINER: And, Mr.
23 Lindgren, I believe you have one more witness.

24 MR. LINDGREN: Actually, Your Honor,
25 Mr. Yemc and I have agreed to stipulate that the

1 appropriate forfeiture would be the \$350
2 assessed in the event the Commission finds the
3 violations.

4 So at this time I would ask to have
5 moved into evidence the Notice of Preliminary
6 Determination as Staff Exhibit 2.

7 ATTORNEY EXAMINER: Okay. And we
8 will admit that into evidence as well. Thank
9 you two for working on that stipulation in
10 advance.

11 (EXHIBIT MARKED FOR IDENTIFICATION
12 AND ADMITTED INTO EVIDENCE)

13 ATTORNEY EXAMINER: All right. Mr.
14 Yemc, we will go to you and I know you submitted
15 some exhibits as well. And, of course, you have
16 a witness available. So, Mr. Yemc, actually we
17 will swear in your witness.

18 (WITNESS SWORN)

19 ATTORNEY EXAMINER: Thank you. Mr.
20 Yemc, go ahead.

21 MR. YEMC: Thank you, your Honor.

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23 MICHAEL HYMES
24 called as a witness, being first duly sworn,
25 testified as follows:

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DIRECT EXAMINATION

By Mr. Yemc:

Q. Mr. Hymes, can you please state your name and address for the record?

A. Michael David Hymes, 2339 Abbeyville Road, Valley City, Ohio 44280.

Q. Mr. Hymes, what is your occupation?

A. Full time work for the City of Cuyahoga Falls street department, and then I have this business on the side.

Q. What job were you performing on June 28th of 2021?

A. The side business, MDH Property Care. I am the President of that.

Q. What does that entail, I mean, as far as the work you were performing that day?

A. I am kind of in transition with Covid, where we clean out storage units and stuff like that. So, we use the dumpsters for that. And then we are trying to get into rentals of the dumpsters.

Q. What type of vehicle were you driving on the day of this alleged offense?

A. I was driving a 2019 F750 straight truck.

1 Q. And were there any specific benefits
2 of having that newer truck with regards to
3 electronics and cellular usage?

4 A. Yes. One of the reasons I speced,
5 I had that truck built from the Avon plant, it
6 had the Ford sync system which automatically
7 when you turn the truck on it links to your
8 phone. It has the Bluetooth capability. You
9 can play music from your phone through
10 the speakers of the truck.

11 When you talk on the phone, you have
12 a little box above your head that is a speaker,
13 and then the phone calls come out of the speaker
14 of the truck which is helpful with my, you know,
15 medical condition that I have. So that was one
16 of the reasons I paid extra for that feature.

17 Q. And now you mentioned you have a
18 medical condition. I am going to just refer to
19 what I have previously marked as Respondent's
20 Exhibit A. There is something -- would be
21 the first couple pages that you sent me, Mr.
22 Hymes. Do you recall these documents?

23 A. I do.

24 Q. Can you describe what this is?

25 A. This was just a note stating the

1 condition of the sebopsoriasis that I have.

2 I see the doctor when it flares up. It just
3 depends. Stress is the main cause of it. But,
4 temperature, allergies, stuff like that also
5 affects it.

6 So, that particular day it was one
7 of the warmer days. I was under a lot of stress
8 that month. I have some other things I
9 submitted. But, I had just gotten gas, I was
10 sweating.

11 When I got back in the truck and got
12 back on 71 the ear was inflamed, it was itching
13 and burning.

14 Q. Now, just describe for us here, what
15 exactly is that condition?

16 A. It's like a scaly rash behind my
17 ears and the back of my head. And it's like you
18 can, you know, it's warm to the touch when -- I
19 don't know, it's painful and it itches when it's
20 flared up. When it's not flared up, when it's
21 under control you can live with it, it's doable,
22 but when it's flared up and inflamed it's very
23 painful I guess is the best way I can describe
24 it.

25 Q. And typically what causes it to

1 flare up and itch?

2 A. With me it's usually stress and
3 heat. So like if its been extremely warm or
4 humid or whatever it will start to -- it takes
5 days to get there, it doesn't just, you know,
6 one day and it's there. But, as it gets warmer,
7 as I start sweating throughout the summer it's
8 always worse than in the winter for me.

9 And then stress always causes it for
10 me. I have had it for about the last five or
11 six years.

12 Q. Now, you have heard the testimony of
13 the inspector, and he testified that he saw you
14 with the cell phone placed up to your ear, and
15 he actually testified that he saw a charger
16 attached to that phone.

17 Could you describe what ended up
18 occurring that day?

19 A. So, yes. I don't know where the
20 charger came from. I kind of understand where
21 he would think there was a phone to the ear.

22 He was in the middle lane towards
23 the back of the truck when I seen him. But
24 prior to that -- I have this aluminum wallet
25 and --

1 Q. I think we have got that submitted
2 around. I just wanted -- is this an accurate
3 picture of that aluminum wallet?

4 A. Yes, that is it.

5 Q. Is this a picture that you took?

6 A. It is.

7 Q. Okay. And is that the wallet,
8 aluminum wallet, that you had on the day on June
9 28th of last year in your truck?

10 A. It is, yes.

11 Q. And go ahead and describe that,
12 continue on with the description of that wallet.

13 A. So, it's just a metal wallet. You
14 can pick it up. These are my city fuel cards and
15 stuff. I keep them in there because they get
16 demagnetized by all the debit cards and my own
17 credit cards.

18 So I keep them separate with this. I
19 usually keep this in my cup holder. You know,
20 put it in my pocket while I am working and
21 everything. I have just developed a pretty bad
22 habit that I got to break because I can't be
23 accused of this again, where this metal with
24 the air conditioning of the truck gets really
25 cool and I am able to put it behind the ear, go

1 like this, (indicating) sometimes I flip the
2 cards up and I scratch.

3 It's really kind of embarrassing and
4 I don't like to admit it. But, we are here.
5 But, that is what this wallet -- this is the
6 wallet that I have all my licenses. This is
7 what I use for work, and this is what I have my
8 license and everything in it.

9 Q. So, on the day in question, on June
10 28th, were you using that wallet to cool the
11 inflammation in the area?

12 A. Yes. I was using it to cool and
13 scratch at the time that he seen it. Like I
14 say, I just left the gas station and it was
15 itching and burning at the same time. So I
16 probably had it like this (indicating), like
17 this (indicating).

18 Warms up I put it back in the cup
19 holder. When I went over, you know, this ear
20 was also itching and I was going like this
21 (indicating). He was in the middle lane about
22 the back bumper of my truck. Then shortly after
23 that he turned the lights on.

24 Q. Now, I am just going to go through
25 these few additional exhibits quickly that I

1 guess show pictures of your condition. And we
2 have them marked as Exhibit C and Exhibit D.

3 Are these pictures of your head, I
4 take it?

5 A. Yes. My ear.

6 Q. Okay. And what do those two
7 exhibits reflect?

8 A. The scaly skin that's back there and
9 part of the sebopsoriasis. And I also have it
10 like on the back of my scalp.

11 Q. And now you indicated that generally
12 it gets inflamed during the summer months when
13 it's hot which makes sense that's when it
14 typically occurs. And then also under high
15 stress levels it worsens as well.

16 Now, I have got a couple exhibits
17 here at the tail end in Exhibit E and in Exhibit
18 F that you provided to me. First we can talk
19 about Exhibit E. It's got a combination picture
20 of your ear as well as it looks like a charge
21 maybe on a card or something along those lines.

22 Could you describe what this
23 reflects?

24 A. Well, you know, shortly before that
25 charge, which was after the stop we had taken my

1 dog and ended up having some lumps under her
2 neck. We took her to our regular vet. I
3 couldn't find the receipt for that.

4 So the next thing was we went to the
5 specialist, it's Metro Vet, it's an oncology
6 vet. My dog had lymphoma. And I had not had
7 that full diagnosis yet, but my vet has said
8 that's what it probably was. And, you know,
9 that was right around that time, a few days
10 prior to that stop when I got that news. So
11 that was on my mind.

12 That is what that Exhibit -- I have
13 the rest of the charges up until she passed
14 December 23rd. But we did try chemo and
15 everything.

16 Q. Sorry for your loss there. You
17 also have an Exhibit F. It looks like an
18 obituary notice that was prior to the date of
19 this offense. Could you describe what that is?

20 A. Yes. That was my grandmother. She
21 passed away on June 14th, a couple weeks before
22 the stop. And again, we were very close. I
23 grew up right nextdoor to her. My mom still
24 lives nextdoor there. And it was very stressful
25 month on top of everything else in the world

1 that was going on, Covid, and work and this
2 business and I am trying to do everything else.

3 So, very stressful time, you know,
4 just to show that I was definitely experiencing
5 extreme stress that was flared up with the heat.
6 And it was just, you know, was a really bad
7 time.

8 Q. So, we understand the stress, the
9 heat caused the condition to worsen. And you
10 indicate that you were using the wallet to try
11 to cool that area to calm the inflammation down.

12 And then let's just deal with the
13 cell phone usage that was alleged. You
14 indicated you got this sync system on your Ford
15 truck. Do you ever use your hand though when
16 you are driving down the road? Describe
17 generally what you do when you get into your
18 truck.

19 A. When you turn the truck on it
20 automatically syncs to the phone. So, I mean,
21 to unsync it I would have to go into my phone
22 settings and turn the Bluetooth off so, you
23 know, that doesn't even happen.

24 And additionally, I don't use my
25 phone up to my ear even if I am out and about.

1 I use the speaker phone, my cell phone, because
2 when you put pressure and heat from the phone on
3 the ear it hurts. It itches, it hurts, you
4 know. I mean, it's not something that I do.

5 Q. In your personal vehicle you don't
6 do this?

7 A. In my personal vehicle, no. My
8 personal vehicle also has a Bluetooth setup.
9 At work, my work truck finally the city, you
10 know, slow, but I have one in my city truck.
11 It's Bluetooth that automatically links to my
12 phone.

13 So, I don't use my phone up to my
14 ear. And I haven't for a while because it's
15 painful.

16 Q. All right. And then there was
17 another violation with regards to a seat belt.
18 Could you just delve into that briefly?

19 A. I wasn't wearing my seat belt.

20 Q. All right. That is what I
21 understood. We are admitting to that violation,
22 but the cell phone usage it just didn't happen;
23 is that accurate?

24 A. That's correct. And the Chevy Tahoe
25 that he was in sits much lower than that F750,

1 not -- it's quite a bit lower.

2 MR. YEMC: And that is all I have
3 for this witness, Your Honor. And just move to
4 have Exhibits A through F admitted.

5 ATTORNEY EXAMINER: Okay. Thank
6 you. I have a question for Mr. Hymes.

7 EXAMINATION

8 By the Attorney Examiner:

9 Q. Mr. Hymes, can you explain to me
10 again, you were describing what you call a metal
11 wallet and something about demagnetized and so
12 on. Could you go into a little detail about
13 that?

14 A. The fuel cards are just really
15 cheap, you know, cards, and the magnet strip is
16 what you put into the city's -- the city has
17 their own fuel pumps. You put in the mileage
18 and, you know, then you got to put another one
19 in. This is your employee one and everything.

20 Magnet strip, when you put it in
21 with these chip cards and everything else they
22 stop working. So these cards don't read, these
23 cheaper -- they had the of system since I
24 started back in the early 2000s and I don't
25 know -- I am sure there is a better way.

1 Q. So what you ended up doing is then
2 these are the cards that your employer -- what
3 city was it again, sir?

4 A. City of Cuyahoga Falls.

5 Q. So, that is the cards that your
6 Cuyahoga Falls provides to identify yourself as
7 a city employee and to get fuel for the city
8 vehicle. What you are saying, when that is in
9 your ordinary wallet, let say your leather
10 wallet, with cards that have the chip, you are
11 saying that it creates some problems with being
12 able to use those city issued cards?

13 A. Sure. Or, I mean, it could be the
14 rubbing in there or what.

15 Q. I see.

16 A. I don't know what exactly caused
17 them to be demagnetized. That is what somebody
18 told me. But this doesn't allow anything to
19 rub.

20 Q. Because all you have in that metal
21 wallet I assume is just the cards issued by
22 the city?

23 A. Yes. I got -- there is the truck
24 card, non-vehicle card, credit card, and my city
25 ID.

1 ATTORNEY EXAMINER: All right.

2 Thank you.

3 And still keeping in mind, Mr. Yemc,
4 you wanted to move these into evidence. Before
5 we get to do that we will go to Mr. Lindgren.
6 Mr. Lindgren, did you have any questions for Mr.
7 Hymes?

8 MR. LINDGREN; Yes. Thank you, your
9 Honor, just briefly.

10 CROSS-EXAMINATION

11 By Mr. Lindgren:

12 Q. Mr. Hymes, did you have a cell phone
13 in the vehicle that day when you were inspected?

14 A. Yes, I did.

15 Q. And was it kept within reach?

16 A. It was kept on the console in the
17 cup holder.

18 Q. And that was in the front of
19 the truck; right?

20 A. Right. There is no back seat or
21 anything.

22 Q. Thank you. So it was within reach
23 then; right?

24 A. Yes.

25 Q. Thank you. And you mentioned you

1 used the Bluetooth system and the speakers on
2 the truck, but sometimes the sound quality
3 coming through the speakers isn't so good;
4 right?

5 A. No, not really, not in that. It's a
6 gas motor truck, by the way, so it's not loud
7 like a diesel. It's a V 10 gas motor, so I can
8 hear just fine in that truck.

9 Q. Are there ever times when you can't
10 hear through the speakers and you need to have
11 the phone up to your ear?

12 A. No. If it's breaking up it's the
13 quality is breaking up, it's not the speaker
14 issue. What it is is a cell phone issue, and if
15 you held it to your ear you wouldn't have
16 anything better. The cell phone is breaking up.

17 Ever since 5 rolled out, you know,
18 dropped calls and stuff it's become abnormal
19 around here. I don't know how it is down there.

20 But, no, I mean, the truck is a V
21 10. Basically it's the F750 is an oversized,
22 bigger. It's like a big Ford pickup truck, but
23 just sits, you know, taller like a commercial
24 vehicle. It is a commercial vehicle, but it's
25 not loud like a diesel truck or anything like

1 that. It's not loud like, you know, the diesels
2 we have at work and stuff like that. No, it's
3 not -- the quality is not bad in that truck at
4 all, no.

5 MR. LINDGREN: Very well. Thank
6 you. I have no further questions.

7 ATTORNEY EXAMINER: All right.

8 FURTHER EXAMINATION

9 By the Attorney Examiner:

10 Q. And, Mr. Hymes, so you are
11 indicating that Inspector McCormack when he was
12 following your vehicle, it sounds as though you
13 are indicating that in your opinion the
14 inspector was not immediately alongside your
15 vehicle, maybe somewhat more towards the rear
16 bumper; am I correct?

17 A. He was -- when I seen him he was
18 down towards the back of the truck. If he was
19 beside it he wouldn't even be able see me, I
20 mean, at all. I don't know where he visually
21 started seeing whatever, but I noticed him when
22 I went over to this ear, I was itching it, and
23 he was towards the back of the truck.

24 Q. So, you do not recall him being
25 alongside your vehicle from your perspective

1 anyway?

2 A. I don't.

3 - - -

4 INSPECTOR ANGUS MCCORMACK

5 recalled as a witness, being previously duly
6 sworn, testified as follows:

7 FURTHER EXAMINATION

8 By the Attorney Examiner:

9 Q. Okay. Inspector McCormack, again I
10 will go to you for a moment. And you are
11 stating that when you observed Mr. Hymes at the
12 speed you were both driving you were able -- you
13 were alongside his vehicle. That was my
14 impression. Am I correct?

15 A. Yes, sir. Actually I was just ahead
16 of his vehicle and then alongside his vehicle,
17 and then behind his vehicle when he observed me,
18 just before I turned my light on.

19 Q. And you are stating you had no
20 problem looking into his cab and seeing what he
21 was doing?

22 A. No, sir. That truck does not sit as
23 high as a standard roll-off truck or a
24 tractor-trailer truck does.

25 ATTORNEY EXAMINER: Thank you. Mr.

1 Lindgren, do you have any objections to
2 admitting the exhibits for opposing counsel's
3 witness into evidence?

4 MR. LINDGREN: No objections, your
5 Honor.

6 ATTORNEY EXAMINER: Okay. Well,
7 thank you. Then we will admit those into
8 evidence as well.

9 (EXHIBITS HEREBY ADMITTED INTO
10 EVIDENCE)

11 ATTORNEY EXAMINER: And, I don't
12 believe I have any further questions. I want to
13 thank everyone for participating, and also the
14 two attorneys for submitting the exhibits in
15 advance. That certainly is helpful.

16 And, also thank Micha Schmidt, our
17 IT expert, for getting us up and running on
18 WebEx, as usual.

19 With that being said, I think we can
20 draw the proceedings to a close. And I wish
21 everyone a good weekend, stay safe and stay
22 well, enjoy the temperature as well. On that
23 note, have a good rest of the day.

24 MR. LINDGREN: Thank you. You as
25 well

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ATTORNEY EXAMINER: Bye, everyone.

(At 10:30 A.M. the hearing was
concluded)

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on March
18, 2022, and carefully compared with my
original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

- - -

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Case No(s). 21-0886-TR-CVF

Summary: Transcript March 18th 2022 In the Matter of Michael Hymes Notice of Apparent Violation and Intent to Assess Forfeiture. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.