

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Brandon :
L. Hiller, Notice of :
Apparent Violation and : Case No. 22-123-TR-CVF
Intent to Assess :
Forfeiture. :

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PROCEEDINGS

before Mr. Daniel Fullin, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at 9:56
a.m. on Monday, August 8, 2022.

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1 APPEARANCES:

2 Mr. Brandon L. Hiller

3 On his own behalf.

4 Dave Yost, Ohio Attorney General
5 By Mr. Shaun Lyons,
6 Assistant Attorney General
7 Public Utilities Section
8 30 East Broad Street, 26th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the PUCO.

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Monday Morning Session,
August 8, 2022.

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EXAMINER FULLIN: The Commission has
assigned for hearing at this time and place Case No.
22-123-TR-CVF which is the Matter of Brandon Hiller,
Notice of Apparent Violation and Intent to Assess
Forfeiture.

My name is Daniel E. Fullin. I am the
Attorney Examiner assigned to hear this case, and I
will begin by having appearances on the record. So
begin with the Respondent. If you would like to give
your name and address for the record. You can
testify or stay where you are to speak, if you would
like.

MR. HILLER: My name is Brandon Hiller.
I live at 10745 Old Lincoln Way East. That will be
Orrville, Ohio 44667.

EXAMINER FULLIN: Thank you.

And appearance on behalf of the
Commission Staff.

MR. LYONS: Your Honor, my name is Shaun
Lyons on behalf of the Ohio Attorney General Dave
Yost, 30 East Broad Street, Columbus, 43215.

EXAMINER FULLIN: Okay. Thank you.

Let me just explain to the Respondent the way I intend to proceed today. This case comes about because the Commission Staff issued a Notice of Violation, so they have the burden of proving that the violation took place. So they get to go first in terms of presenting their evidence and try to convince the Commission that the violation occurred and what should be the result as a matter -- as a result of that.

MR. HILLER: Yes, sir.

EXAMINER FULLIN: So they will put on -- I am expecting they will put on witnesses and/or tender exhibits that they will ask me to consider and make as part of the record that the Commission will use to decide the case.

When they are done with each of their witnesses, you will have the chance to cross-examine that witness about anything that they testified to or anything else that you want to bring up related to their testimony that has to do with your side of the case.

MR. HILLER: Yes, sir.

EXAMINER FULLIN: If they bring in exhibits, you can make objections to the exhibits. I won't allow the exhibits for you or for them into the

1 record until I've had -- both sides have had a chance
2 to argue about whether they legally should come into
3 the record or not, and then I will make a decision
4 today at the -- about the admissibility of the
5 exhibits and any testimony that comes up today.

6 And then when the -- when the Commission
7 Staff is done presenting their side of the case, then
8 I will swear you in as a witness, and you can -- you
9 can put on any evidence that you want in terms of
10 your own testimony and/or any exhibits that you want
11 to bring, same as they had a chance to do.

12 You will -- whatever you testify to will
13 be subject to cross-examination. Any exhibits you
14 bring could be subject to objection. But I will end
15 up making a ruling about what is or isn't part of the
16 record in this case.

17 And so I want you to understand that the
18 Commission will make its decision in this case based
19 on the evidence that's admitted into the record
20 today. I don't expect it will be based on anything
21 that was stated before or really that gets added in
22 later.

23 I am really going -- the Commission has a
24 burden to make its decision based on the record
25 evidence that's produced today so that's why I am

1 explaining the procedure to you so you understand
2 that.

3 MR. HILLER: Yes, sir.

4 EXAMINER FULLIN: Any questions of
5 anybody about anything that I have said?

6 If not, it looks like there is not, so I
7 will allow the Staff to go first, and you can put on
8 your case in chief.

9 MR. LYONS: Thank you, your Honor. I
10 would like to call Chad Durben to the stand, please.

11 EXAMINER FULLIN: I think I will have him
12 come and other Staff witnesses come to the stand, but
13 when it comes time for you to testify, if you would
14 like, you can come to the stand, but I am also going
15 to allow you to testify from where you are sitting if
16 you prefer that.

17 MR. HILLER: Yes, sir.

18 - - -

19 CHAD DURBEN

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

22 DIRECT EXAMINATION

23 By Mr. Lyons:

24 Q. Good morning, Mr. Durben.

25 A. Good morning.

1 Q. Could you please state your name for the
2 record.

3 A. Trooper Chad Durben.

4 Q. Your business address, please.

5 A. 166 East High Avenue, New Philadelphia,
6 Ohio 44663.

7 Q. And can you please state by whom you are
8 employed.

9 A. With the Ohio State Highway Patrol.

10 Q. What is your current position and your
11 current duties in that -- in that position?

12 A. State Trooper and enforce commercial
13 federal regulations.

14 Q. What's your prior work experience?

15 A. I have been with the State Highway Patrol
16 for a little over 20 years now.

17 Q. Do you have any certifications in
18 training either within that job or prior to that job?

19 A. Yes. For today's hearing I have level 1,
20 level 2, level 3 certification for FMCSA, hazmat,
21 tanker, all the endorsements for the federal
22 inspections.

23 Q. And FMCSA, what specific training do you
24 have in that?

25 A. For?

1 Q. FMCSA certification.

2 A. The level 1, Level 2, 3, hazmat, tanker.

3 Q. Oh, okay. I understand. Thank you.

4 So I am going to ask you a few questions
5 about the inspection itself, and then we are going to
6 go over the Vehicle Examination Report. Do you
7 recall the date of the inspection?

8 A. December -- December 15 of '21.

9 Q. And you were on duty that day?

10 A. I was.

11 Q. What was your job assignment on that day?

12 A. I was working Tuscarawas County, Ohio,
13 just on regular duty.

14 Q. And did you inspect the vehicle that led
15 to today's case?

16 A. I did. I was sitting in the crossover on
17 Interstate 77 about milepost 82 watching southbound
18 traffic. He was southbound on the interstate. As he
19 went by me, no seat belt on. I --

20 Q. We'll get to that. I want to get the
21 report to you first but thank you for that. Okay.
22 Based on what you are saying there, you do have an
23 independent recollection of this stop at issue here.

24 A. I do.

25 MR. LYONS: Okay. Well, I want to

1 introduce the Driver/Vehicle Examination Report, let
2 me give a copy to everybody, as Exhibit 1.

3 Mr. Hiller.

4 MR. HILLER: It is.

5 EXAMINER FULLIN: I guess I will mark the
6 one that you gave me that's -- I don't see it is
7 already marked.

8 MR. LYONS: It is not, your Honor.

9 EXAMINER FULLIN: I will mark that as
10 Staff Exhibit 1.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. LYONS: Okay. Thank you, your Honor.

13 Q. Okay. One moment. Do you recognize this
14 report?

15 A. I do.

16 Q. Can you identify what it is?

17 A. It's a copy of my inspection I did on his
18 vehicle on McNelis Trucking on December 15, '21.

19 Q. Was it prepared by you?

20 A. Yes.

21 Q. In your -- during the stop or immediately
22 after the stop?

23 A. During the traffic stop.

24 Q. How do you prepare this report?

25 A. We have a laptop inside the -- inside the

1 Tahoe I do this form on.

2 Q. And this is part of the regular course of
3 your duties?

4 A. Yes.

5 Q. Can you tell me, was -- at the time you
6 were on duty, inspections like these were part of the
7 regular course of business; is that right?

8 A. Yes.

9 Q. When did this inspection occur?

10 A. On December 15, 2021, at 12:53 p.m.

11 Q. Okay. I see that there it says "Time
12 Started 12:53." Is it correct it ended at 1:41 p.m.?

13 A. Correct.

14 Q. Okay. There's a certification date.
15 That's blank. Do you know why that would be blank?

16 A. Where -- where is that at?

17 Q. Up at the top right of the page.

18 A. I don't know.

19 Q. Okay. Where it says "Inspection Level,"
20 what does that indicate?

21 A. I did a level 2, and a level 2 is a walk
22 around the commercial vehicle along with paper --
23 paperwork and driver qualifications.

24 Q. Okay. So it involves a walk around
25 inspection of the vehicle and then secondarily

1 looking at driver vehicle records.

2 A. Correct.

3 Q. Okay. Thank you. What -- what equipment
4 did you use to conduct your inspection?

5 A. I'm sorry?

6 Q. Did you use any equipment? Did you have
7 a computer with you? Camera?

8 A. Yeah, camera, we take pictures on every
9 inspection.

10 Q. Okay.

11 A. And then, of course, the MCT in the
12 patrol car.

13 Q. And as we mentioned, you prepare the
14 inspection report on your computer, you enter the
15 data, and it spits out a report at the end of
16 entering the data; is that correct?

17 A. Correct.

18 Q. Does it look like the report that you see
19 in front of you?

20 A. It's a little different, but it's the
21 same format. It's just printed out a little
22 different.

23 Q. So it's the same basic data, or it's the
24 same data?

25 A. It's the same data just a little

1 different format.

2 Q. Okay. And it was accurate at the time
3 you inputted it into the computer?

4 A. It was.

5 Q. Is this record prepared in the normal
6 course of business?

7 A. Yes.

8 Q. So what do you -- once you are finished
9 with this report, does it print out?

10 A. I upload it. I print him a copy and
11 provide it to him. I upload the rest of the
12 information on the computer so the PUCO can get it.

13 Q. So it's sent directly to the Commission
14 once you upload; is that right?

15 A. Yes.

16 Q. Online.

17 A. Correct.

18 Q. Okay. Okay. Do you see where it says
19 "Vehicle Identification"?

20 A. Yes.

21 Q. Those columns -- excuse me. Forget that.
22 Okay. Do you see where it says
23 "Violations"?

24 A. Yes.

25 Q. How many violations do you see there?

1 A. Four.

2 Q. Okay. Today's case though deals with
3 only two; is that right?

4 A. Correct.

5 Q. Do you know which two?

6 A. For the seat belt violation and for
7 failure to retain the previous seven days.

8 Q. Well, I am going to stick to those two
9 violations today. The Violation Code 392.16, failure
10 to use a seat belt while operating a CMV, do you see
11 where it says "Unit"?

12 A. Yes.

13 Q. What is -- what does that mean there?

14 A. D for driver.

15 Q. Okay. And then where it says "OOS N"?

16 A. Out of service, that would be a no on
17 that.

18 Q. Okay. And then it says "Violation
19 Description failing to use seat belt while operating
20 a CMV," can you describe what -- what occurred at the
21 time of the stop factually?

22 A. Okay. Like I said earlier, he was
23 southbound on Interstate 77, no seat belt as he went
24 by me. As I walked up to the passenger side of the
25 vehicle, he was already getting out to open up the

1 door for me. I asked him about the seat belt. He
2 said he had it on. I asked him to show me how he had
3 it on and he showed me and he put it on properly.
4 There was no seat belt as he went by. He had a
5 bright orange shirt on with a dark gray seat belt.

6 Q. Okay. So you were in the median looking
7 at him driving along 77; is that correct?

8 A. Correct.

9 Q. Okay. And you could see through the
10 front window? You could see through the front window
11 that he had an orange shirt without the belt along
12 the side?

13 A. Correct. As he is coming toward me, I am
14 looking through the windshield looking at the whole
15 front of his shirt. There was no seat belt going
16 through there. As he is getting closer, I transition
17 over to the driver's window, and I am able to
18 actually see if the seat belt is coming from the B
19 pillar, that's where the seat belt is actually
20 attached, whether it is coming across his shoulder.
21 There was no seat belt on there either.

22 Q. Okay. And at the time that he stepped
23 out of the vehicle, you couldn't see if he took his
24 seat belt off or anything.

25 A. No. He was already up as I was already

1 getting closer to the door.

2 Q. Okay. And so, secondly, we have the
3 violation of 395.8K2 which is driver failing to
4 retain the previous seven day records of duty status.
5 Can you tell me a little bit about what led you to
6 enter that violation?

7 A. He had paper logbooks. He said his ELD
8 stopped working, and his paper log showed him having
9 logs for the December 8, December 9, December 10. He
10 was missing December 11 all together. He had them
11 for the 12th, the 13th, the 14th, and the 15th. He
12 said the 11th was his day off, but he didn't have a
13 log paper showing that.

14 Q. And he is required under the rules to
15 keep a log paper for the day of.

16 A. Correct.

17 Q. Thank you. Let's see here, was the
18 driver declared out of service on that day?

19 A. He was. I'm sorry, not the driver. The
20 vehicle was declared.

21 Q. The vehicle was.

22 A. I'm sorry.

23 Q. Did he -- did Mr. Hiller sign the sheet
24 that you gave him in front of you or no?

25 A. I don't remember.

1 MR. LYONS: Okay. That's all the
2 questions I have for you. Thank you, Officer.

3 EXAMINER FULLIN: I wanted to bring up on
4 the record that the Staff Exhibit No. 1 appears to be
5 a four-page document; is that correct?

6 MR. LYONS: That's correct, your Honor.

7 EXAMINER FULLIN: And I also want -- you
8 originally testified about a Tahoe, and I took in
9 context that meant the vehicle that you -- that you
10 were operating in.

11 THE WITNESS: Correct.

12 EXAMINER FULLIN: I wanted to make that
13 clear on the record too.

14 THE WITNESS: Yes.

15 EXAMINER FULLIN: Okay. Thank you.

16 Do you have any questions of this
17 witness? Take your time.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Hiller:

21 Q. Upon approaching the commercial vehicle
22 upon the final stop for inspection, did you happen to
23 gaze inside the vehicle to see whether I was wearing
24 a seat belt or not prior to the door opening?

25 A. As I was walking up?

1 Q. Yes, sir.

2 A. No. I'm -- as I am walking up, I am just
3 looking for you, and the only thing I was able to see
4 as I was getting closer was you approaching that
5 door, so I wasn't able to actually see you with the
6 seat belt on as I was walking up.

7 MR. HILLER: That's the only question I
8 had.

9 EXAMINER FULLIN: Thank you. I don't
10 have any questions.

11 Do you have any follow-up?

12 MR. LYONS: No, your Honor.

13 EXAMINER FULLIN: All right. Thank you.
14 You can be excused. Thank you for your testimony.

15 MR. LYONS: Your Honor, I would like to
16 call Staff Witness Brad Long to the stand, please.

17 EXAMINER FULLIN: Okay.

18 - - -

19 BRADLEY E. LONG

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

22 DIRECT EXAMINATION

23 By Mr. Lyons:

24 Q. Thank you. Please state your name for
25 the record.

1 A. It's Bradley E. long.

2 Q. And your business address?

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

5 Q. And by whom are you employed?

6 A. Public Utilities Commission of Ohio.

7 Q. What's -- in what capacity and what are
8 your duties with the PUCO?

9 A. I am the Assistant Chief of the
10 Compliance Section of the Transportation Division.
11 Currently is to maintain the files, assist in
12 shepherding cases into the hearing and civil
13 forfeiture process, responsible for sending out the
14 letters and AV and IF and IFG and NPDs. And I am the
15 supervisor of the two compliance officers that handle
16 the prehearing conferences. I oversee them and
17 approve their conference summaries.

18 Q. Can you explain your background, relevant
19 background experience?

20 A. Yeah. Spent 24 years as an Ohio State
21 Trooper. 10 of those years I was with the Crash
22 Reconstruction Analysis Unit where I had several
23 training courses on commercial braking systems,
24 commercial vehicles. After that, I was two years
25 with the Licensing Commercial Standard Unit in

District 6, Columbus, Ohio, where I was certified in North American Standards part A, B, hazmat, general cargo, bulk, tanker, school bus inspections, motor coach inspections. When I left there to work here at the PUCO, I had approximately six months on-the-job training with our computer system Salesforce, compliance procedures, and the process in assessing, and how our system assesses the violations.

Q. Thank you. I am going to ask you about the calculation of civil forfeitures by the Commission, how things were calculated.

MR. LYONS: And I have got a couple pieces of evidence here that I would just like to mark, and we will go through them.

EXAMINER FULLIN: Yeah.

MR. LYONS: I have a Notice of Apparent Violation and Intent to Assess Forfeiture which we will mark as Exhibit 2.

EXAMINER FULLIN: Okay. That will be marked Staff Exhibit 2.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. LYONS: Notice of Preliminary Determination which we will mark as Exhibit 3.

EXAMINER FULLIN: Staff Exhibit 3.

(EXHIBIT MARKED FOR IDENTIFICATION.)

1 EXAMINER FULLIN: Again, it might be best
2 to make note on the record how many pages each
3 exhibit is so we are not missing a page later on.

4 MR. LYONS: Sure. I will take a look at
5 that in a second.

6 Q. Thank you, Mr. Long. I would like you to
7 take a look at the Apparent Violation and Intent to
8 Assess Forfeiture.

9 A. Sure.

10 EXAMINER FULLIN: Is that the one we
11 marked as 2?

12 MR. LYONS: Yes.

13 EXAMINER FULLIN: Okay. Thank you.

14 MR. LYONS: Your Honor, that's four pages
15 as well.

16 EXAMINER FULLIN: Okay.

17 Q. Can you please describe to me how civil
18 forfeiture is calculated for violations of FMCSAs and
19 how -- basically how this system works that generates
20 these documents.

21 A. Sure. When an inspector does an
22 inspection on a commercial motor vehicle, they input
23 into their computer into the program called Aspen.
24 Once they upload that system -- or that inspection to
25 the system, it goes to SafetyNet, and it comes into

our system called Salesforce. Being that this is a non-hazmat inspection, non-hazmat violation, it is not a hazmat inspection, our system automatically assesses fines based on the violation and the group that it assigns.

So there's four groups. There is group 0, 1, 2, 3, 4, actually five groups. So group 0 fine, never receives a fine. Those violations are essentially not going to cause a crash. They are not essential, like it is going to lead to a serious situation. Groups 1 to 3 are assessed based on the severity and the likelihood that they could potentially be considered crash-causing violations.

So like group 1 violations, group 2 violations, 3, they are usually equipment violations, hours of service violations, violations similar to those things. Now, those violations 1 through 3 only receive fines if they are marked out of service by the inspector. So any violation that would be a group 1, 2, or 3 violation like out of service equipment violation like a headlight out, for example, if the inspector doesn't mark it out of service, it will not receive a fine. Group 4 violations, those are generally driver violations or authority and insurance violations. Group 4

1 violations will always receive a fine regardless if
2 they are marked out of service or not. Now, in this
3 situation when this inspection came in, seat belt is
4 a driver violation, driver behavior violation, so
5 that is always going to receive a fine.

6 Our system calculates that fine
7 automatically, and it's assessed \$100. That
8 assessment based on how fines are calculated,
9 recommended by the CSA, FMCSA, those are across the
10 board. It's the same fine for every driver. It
11 doesn't matter who the driver is. If it's written --
12 if the driver is written a seat belt violation, it's
13 going to be the same \$100 violation. The driver
14 failure to retain a previous seven day record is a
15 group 1 violation. However, it was not marked out of
16 service; so, therefore, it received no fine.

17 So this letter is what was sent out after
18 the system processed it and generates this letter.
19 What I do is I look at all the letters to make sure
20 the driver's name, address match, what's on the
21 inspection, and if the address is complete. I will
22 send out the letter, and then they are notified of
23 their violation and the fine amount at that point in
24 time.

25 Q. Thank you, Mr. Long. Is this document

1 produced in the normal course of business of the
2 Commission?

3 A. Yes.

4 Q. It's retained by the Commission?

5 A. That's correct.

6 Q. I would like to direct your attention to
7 the exhibit marked as Exhibit 3 which is the Notice
8 of Preliminary Determination.

9 A. Okay.

10 Q. You can see here this was sent out on
11 February 2. It's also got the two violations how --
12 is that the same system that generates that -- the
13 forfeiture amount in this letter or how does that
14 work?

15 A. Again, the system doesn't change. So
16 what an NPD letter generally is is the first notice
17 goes out which is called a Notice of Intent to Assess
18 Forfeiture, that first letter that we talked about,
19 Exhibit No. 2. If the driver responds to that letter
20 either by paying the fine or requesting a telephone
21 conference, then they are set up for a conference
22 with a compliance officer. If they work things out
23 or the violation gets removed or reduction in fine is
24 offered to the driver or the Company accepts that,
25 then they are issued a Settlement Agreement.

1 If they don't come to an agreement at
2 that telephone conference or settlement conference,
3 then they are issued what's known as a Notice of
4 Preliminary Determination which gives them the
5 opportunity to then request an administrative
6 hearing, which he did today, or they can still pay
7 the fine at the amount that we initially set. So
8 this is what's sent to them at the conclusion of a
9 compliance meeting or prehearing conference with the
10 compliance officer.

11 Q. Are you familiar with the Commercial
12 Vehicle Safety Alliance?

13 A. Yes.

14 Q. Is this document produced in accordance
15 with guidelines issued by them?

16 A. The fines are, yes.

17 Q. Okay. Can you explain that to me a
18 little bit more?

19 A. The fines?

20 Q. Well, what the CVSA has to say about the
21 fines.

22 A. The CVSA, they are the ones that have the
23 recommendation of the fines that can be -- that can
24 be charged, and traditionally our fines are a little
25 bit lower than what are actually set by the CVSA, so

1 they are guidelines. They give us kind of a bracket
2 of where we can assess fines for. Typically our
3 fines tend to be lower than what's recommended by the
4 Federal Motor Carrier Safety Administration, FMCSA.

5 Q. Can you tell me just basically how
6 this -- how the forfeiture amount gets calculated?

7 A. That's the automated process that comes
8 through there, yeah. I can't testify to the internal
9 mathematical calculations, but I can tell you that.

10 Q. And it's applied to all carriers and all
11 individuals equally?

12 A. Yes. In non-hazmat cases, yes. These
13 are -- it takes into account everything. So if one
14 driver in Clinton County gets the seat belt ticket
15 for \$100, a driver from Kentucky, California, New
16 Mexico is going to get the same \$100 fine. It's
17 applied equally.

18 Q. Thank you. You have answered several of
19 my questions before I asked them, so I appreciate
20 that. But I just want to take a look here at my
21 notes and make sure we are not missing anything.

22 I think I asked this -- for this, but
23 both these documents are maintained in the regular
24 course of business and maintained by the Commission.

25 A. Yes, sir.

1 MR. LYONS: Thank you. That's all the
2 questions I have, your Honor.

3 EXAMINER FULLIN: Let me get
4 clarification. I think you probably testified about
5 this, but I might not have been paying as close
6 attention as I wanted to. When you talk about the
7 automatic calculation of the fines, the picture I was
8 getting from what I was paying attention to is you
9 input into some kind of computer software the nature
10 of the violation, and it spits out automatically
11 calculations that's based on the recommendations?

12 THE WITNESS: The violation is pulled
13 when the record comes in from SafetyNet into our
14 Salesforce program. The Salesforce program sees the
15 violation code, and the violations are broken down by
16 kind and in groupings. So when 392.16 comes through,
17 the system registers 392.16. It understands that's a
18 seat belt violation, knows it's a group 4 violation,
19 so it puts it with the group 4 violation fine code
20 which in this case is \$100. It generates that letter
21 for that violation for that inspection.

22 EXAMINER FULLIN: When is -- the
23 violation code number, when does that get entered in?
24 Is that at the time of the inspection?

25 THE WITNESS: That code is already built

1 into the system so when that inspection comes
2 through, we would see that that 392.16 is a violation
3 during the inspection.

4 EXAMINER FULLIN: What's -- what's
5 involved with the inspection number? We had the
6 earlier testimony that he fills out the inspection
7 form, and it gets sent to PUCO. Is that the point at
8 which it enters into the system?

9 THE WITNESS: Yes. When it comes into
10 the PUCO in Salesforce, that Salesforce program
11 registers that violation code and attaches it to that
12 fine. So it sees that code. It understands it's a
13 392.16, puts it with the group 4, knows it's a group
14 4, and says group 4 violation 392.16 \$100.

15 EXAMINER FULLIN: Okay. Thank you.

16 THE WITNESS: Yep.

17 EXAMINER FULLIN: When the inspection
18 report is received at the Commission.

19 THE WITNESS: Correct.

20 EXAMINER FULLIN: Okay.

21 THE WITNESS: Yes.

22 EXAMINER FULLIN: Thank you. I don't
23 have questions. Do you have questions of this
24 witness?

25 MR. HILLER: I do not have any questions,

1 your Honor.

2 EXAMINER FULLIN: Thank you for your
3 testimony.

4 MR. LYONS: Your Honor, that's our --
5 that concludes our case in chief.

6 EXAMINER FULLIN: Okay. Do you want to
7 enter -- submit the three exhibits? Do you have
8 any --

9 MR. LYONS: Yeah.

10 EXAMINER FULLIN: Do you have any
11 objections to the exhibits?

12 MR. HILLER: No, I do not have any
13 objections.

14 EXAMINER FULLIN: They will be admitted
15 into the record at this time.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 MR. LYONS: Thank you, your Honor.

18 EXAMINER FULLIN: Thank you. And Staff
19 is resting at this point, so now it's your turn. If
20 you would like to present your side of the case with
21 whatever type of evidence you want, your own
22 testimony or -- and/or any exhibits, this is your
23 chance. If you are going to provide testimony, I
24 will have you stand, and I will swear you in from
25 where you are at unless you would rather come up.

1 MR. HILLER: It doesn't matter either
2 way. I can come up, or I can sit here.

3 EXAMINER FULLIN: Come on up.

4 (Witness sworn.)

5 EXAMINER FULLIN: So you can begin with
6 providing the testimony under oath that you wish to
7 provide. The counsel will have a chance to
8 cross-examine you and/or bring up objections along
9 the way, if it becomes necessary, but from my point
10 of view, this is your opportunity to really present
11 what you want to present and then you will get a
12 chance to question.

13 - - -

14 BRANDON L. HILLER
15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 THE WITNESS: Yes, your Honor. I am just
19 going to carry on with the Trooper's story. I was
20 heading southbound on Route 77. I was -- and he was
21 there in the median about that mile marker. My seat
22 was actually pretty low because it's an older seat.
23 It doesn't bounce very well. It's very
24 uncomfortable. We actually have had it recently
25 replaced. I was wearing an orange T-shirt as he was

1 stating, but my seat belt, with me having the seat
2 lowered, it was coming across my upper neck and I
3 actually had a red mark on my neck at the time and it
4 went underneath my beard and down to the seat.

5 So when he pulled me over for the initial
6 pullover, I was still wearing the seat belt. And
7 when he -- I waited for him to walk up to the door,
8 and he knocked on the door. And as soon as he
9 knocked on the door, I then unbuckled my seat belt,
10 and he was not -- he did not look inside the vehicle.
11 So I reached over, and I unlatched that door, the
12 door lock, because we are all about security with our
13 equipment.

14 And then that's when we began the initial
15 inspection, and then we proceeded to move down to I
16 believe that was -- I don't know, an exit a few miles
17 down the road where there was actually a safe place
18 for us to do a proper inspection. And at that time I
19 put my seat belt back on, rolled down there, and then
20 I took it off once he proceeded back to the vehicle.

21 EXAMINER FULLIN: Let me ask you this, I
22 notice as I am witnessing you, watching you, that you
23 are -- as of today, you have what I would consider a
24 long beard. Approximately did you have the same
25 length of beard at the time that this happened?

1 THE WITNESS: It is possible it may have
2 been longer because every spring I cut it down a
3 little bit because of the humidity from the heat from
4 the spring and summer.

5 EXAMINER FULLIN: Approximately how long
6 do you think your beard is? I see that comes to what
7 I would consider the middle of your chest area.

8 THE WITNESS: Yeah. Typically I don't --
9 I don't like it getting past my bellybutton and
10 that's about down around here, but normally it's just
11 below -- about halfway between my navel and my chest,
12 typically about 2, 3 inches, 4 inches longer.

13 EXAMINER FULLIN: So he is using his hand
14 to demonstrate, and I would say that he's showing
15 what he is considering the normal length of his beard
16 is about 4 inches above his navel.

17 THE WITNESS: Yes, sir.

18 EXAMINER FULLIN: Would you agree with
19 that?

20 THE WITNESS: Yes, your Honor.

21 EXAMINER FULLIN: Okay. I think that's
22 all I have for now. Do you have any questions? Are
23 you finished with what you wanted to present, or do
24 you have other things --

25 THE WITNESS: I don't have any other

1 documentation or anything, any other witnesses.

2 EXAMINER FULLIN: -- that you wanted to
3 add? That being the case, then I'll allow
4 cross-examination.

5 MR. LYONS: Your Honor, I do have -- I do
6 want to explore the beard issue a little bit more.

7 EXAMINER FULLIN: No, that's fine. I was
8 just trying...

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Lyons:

12 Q. The Commission is going to see the
13 transcript, and we want to make sure they understand
14 what's going on with that. So your beard, how many
15 inches? How long did you say it was?

16 A. Typically in the spring I cut off about 4
17 inches.

18 Q. Thank you. And would -- would you say
19 that it's wider than your face at any point, or is it
20 about the same width as the width of your face?

21 A. That would be depending on the humidity.
22 Just like women with their hair, how they style it
23 and whatnot, it tends to frizz and plump up, and it
24 gets bulky. I mean, the widest I've had it is
25 probably at the edge of my ears.

1 Q. Okay. Well, so currently would you say
2 it's -- how much wider is your beard than your face?

3 A. I would need a mirror to understand that
4 one.

5 Q. Okay.

6 A. I apologize. Probably about 1 or 2
7 inches maybe. I don't know. Can you justify based
8 upon looking at me?

9 EXAMINER FULLIN: If you wanted to
10 suggest something he could agree or disagree with,
11 that's a suggestion.

12 MR. LYONS: Sure, sure.

13 Q. Maybe about an inch and a half but
14 decreasing thickness as we go out from the side of
15 your face? Does that sound about right?

16 A. That's about accurate, yes.

17 Q. Does your hair or your beard cover your
18 shoulders at all?

19 A. When I first wash it in the mornings, it
20 tends to widen down at the base because it's
21 actually, you know, freshly treated.

22 Q. Sure.

23 A. It gets pretty expansive.

24 Q. Okay.

25 EXAMINER FULLIN: You say the base; you

1 mean the bottom part?

2 THE WITNESS: Bottom.

3 EXAMINER FULLIN: Farthest away from the
4 face.

5 THE WITNESS: Yes, your Honor.

6 MR. LYONS: I think that's all the
7 questions I have, your Honor.

8 EXAMINER FULLIN: Thank you.

9 Do you have anything else that you wanted
10 to bring up in relation to the questions he asked or
11 anything else? I will give you another chance of
12 anything you wanted to bring up in your testimony.
13 If not, then we will just be finished.

14 THE WITNESS: I have no argument about
15 the other violation or the logs. That was my mistake
16 and due to my own negligence.

17 EXAMINER FULLIN: Okay. Anything else?
18 If not, I will excuse you as a witness.

19 THE WITNESS: Not at this time, your
20 Honor.

21 EXAMINER FULLIN: Okay. Thank you for
22 your testimony. Based on what you just told me, I am
23 taking it that you have nothing else that you are
24 going to present today in terms of this case, so you
25 also are ready to rest in terms of presentation of

1 your side of the case?

2 MR. HILLER: That is correct, your Honor.

3 EXAMINER FULLIN: Is there anything else
4 that we need to hear? Does either party want to make
5 a closing statement? You don't have to. That's
6 something you can if you wanted to make some kind of
7 argument, but really we are not going to base the
8 decision on the arguments in the closing statement.
9 We are going to base it on our understanding of the
10 facts, and but the arguments are allowed in terms of
11 helping the Commission to understand the case and the
12 law. But it's not a requirement.

13 Both sides don't seem too anxious to make
14 closing statements, so I am ready to bring this case
15 to a close, to adjourn this case and thank everyone
16 for their time.

17 (Thereupon, at 10:32 a.m., the hearing
18 was adjourned.)

19 - - -

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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 Monday, August 8, 2022,
and carefully compared with my original stenographic
notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7321)

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Case No(s). 22-0123-TR-CVF

Summary: Transcript August 8th 2022 In the Matter of Brandon L. Hiller, Notice of Apparent Violation and Intent to Assess Forfeiture. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.