

PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of :
David D. Grass, Notice : Case No.
of Apparent Violation and : 22-85-TR-CVF
Intent to Assess Forfeiture. :

- - -

PROCEEDINGS

Before Daniel Fullin, Attorney Examiner, held at
the Public Utilities Commission of Ohio, 180
East Broad Street, Hearing Room 11-D, Columbus,
Ohio, on Friday, October 7, 2022, at 10:00 A.M.

- - -

Armstrong & Okey, Inc.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481 - (800) 223-9481

- - -

1 APPEARANCES:

2 Mr. David D. Grass
3 1308 State Route 39 NE
4 New Philadelphia, Ohio 44663

5 Appearing Pro se.

6 Ms. Sarah Feldkamp
7 and
8 Mr. Warner Margard
9 Assistant Attorneys General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

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

13
14
15
16 - - -
17
18
19
20
21
22
23
24
25

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

| INDEX TO WITNESSES | | |
|----------------------|--------|-------|
| - - - | | |
| STAFF WITNESSES | DIRECT | CROSS |
| Trooper Chad Durben | 10 | 23 |
| Rod Moser | 53 | 60 |
| RESPONDENT WITNESSES | | |
| David D. Grass | 61 | |

- - -

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

INDEX TO EXHIBITS

- - -

| STATE'S EXHIBITS | | MARKED ADT | |
|------------------|-------------------------------------|------------|----|
| 1 | Driver/Vehicle Examination Report | 12 | 51 |
| 2 | Notice of Preliminary Determination | 56 | 61 |
| 3 | Video | 33 | 51 |

- - -

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

Friday Morning,
October 7, 2022.
- - -

ATTORNEY EXAMINER FULLIN: The
Commission has assigned for hearing at this time
and place Case No. 22-85-TR-CV which is The
Matter of David D. Grass 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 before we do anything else I
will just have each of the parties enter an
appearance.

So begin with the Respondent. I am
just asking you at this point to identify
yourself, name and address for the record.

MR. GRASS: David D. Grass, 1308
State Route 39 NE, New Philadelphia, Ohio.

ATTORNEY EXAMINER: Thank you. And
for the Staff.

MS. FELDKAMP: Thank you, your
Honor. On behalf of the Staff of the Public
Utilities Commission of Ohio, Dave Yost, Ohio
Attorney General; John H. Jones, Section Chief

1 the Public Utilities Section; by Assistant
2 Attorney General Sarah Feldkamp, 30 East Broad
3 Street, 26th Floor, Columbus, Ohio.

4 ATTORNEY EXAMINER: Thank you. I
5 am going to explain that this case comes about
6 because the Commission Staff issued a notice of
7 violation. As a result they have the burden of
8 proof in this case. And so that means they are
9 going to go first in terms of presenting their
10 evidence. And the way they will be doing that
11 is they will be putting on witnesses, I will say
12 on the stand, but witnesses will be testifying,
13 be called to testify and there will probably be
14 an introduction of exhibits.

15 I am going to let the Attorney
16 General ask questions of their witnesses and if
17 you have some objection to the question you can
18 raise an objection.

19 And when we go to actually introduce
20 the exhibits into the record, at that time
21 before I would allow it into the record there
22 will be some testimony about it and so forth.
23 When the time comes if they move it into the
24 record, at that point I will give you a chance
25 to object to anything that you want to object to

1 in terms of the evidence they present.

2 And then that is usually the extent
3 of it. And when Staff is done with their
4 presentation of the case I will make them say on
5 the record that they rest in terms of their
6 presentation of their case.

7 And I want to emphasize when they
8 are done presenting their witnesses, actually
9 the way -- when their witness testifies, when
10 they are done asking questions of their own
11 witness, then you get a chance to cross-examine
12 that witness if you want. And you can, then
13 they will get a chance to ask redirect questions
14 of anything that came up in your
15 cross-examination. You can recross on anything
16 that came up in the next round.

17 So, normally at that point when I
18 make a ruling, I will let the witness step down
19 and make a ruling on the exhibits. And they
20 rest.

21 Then it will be your turn. And
22 again, I don't see that you have any other
23 witness, so I am expecting you will want to
24 testify. And I will swear you in as a witness,
25 and you can present whatever evidence you want

1 to present including your testimony and any
2 exhibits that you want to bring. And the same
3 rules will apply.

4 You will give your testimony, they
5 will get to cross-examine you, you get to follow
6 up after they are done with any
7 cross-examination questions, in terms of
8 presenting further information related to their
9 cross-examination and so forth.

10 When you are finished with your
11 presentation of your case then I make a ruling
12 on any exhibits that you present. Then I would
13 expect then the hearing will be closed. And at
14 that point the chance to present evidence in the
15 case will be over.

16 So when the Commission makes the
17 decision in the case, and I want to emphasize,
18 we are going to base the decision based on what
19 gets transcribed here at the hearing and
20 the exhibits that get admitted into the record
21 as well. So the Commission is going to make
22 it's decision based on the hearing evidence,
23 which is the testimony and exhibits presented
24 today.

25 And so this is your first hearing

1 chance and your last hearing chance to present
2 that kind of evidence. The only thing that will
3 come in later is some kind evidence that you can
4 demonstrate that it was not available as of
5 today and it's important to the case and you
6 think it ought to be considered and make your
7 case to the Commission and the Commission agrees
8 with you that it's something that wasn't
9 available to you to present today.

10 So this is the day and the chance
11 for you to present any evidence that is
12 available as of today. So that is enough of an
13 explantation about the procedure. Maybe it was
14 longer that it needed to be but I wanted you to
15 be clear on that's the purpose of today is
16 gather the record that the Commission will use.
17 My role is to be the referee that makes the
18 decision about what does or doesn't come in and
19 makes the case move along so we get all that
20 evidence in the record.

21 So with that being said, Staff has
22 the burden of proof so get to go first and you
23 can call your first witness who can testify from
24 where they are at. But I will have them stand
25 and be sworn in before they testify.

1 MS. FELDKAMP: Staff calls Mr.
2 Durben.

3 (WITNESS SWORN)

4 - - -

5 TROOPER CHAD DURBEN
6 called as a witness, being first duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 By Ms. Feldkamp:

10 Q. Could you please state and spell
11 your full name for the record?

12 A. Trooper Chad Durben, D-U-R-B-E-N.

13 Q. And where are you employed?

14 A. With the Ohio State Highway Patrol.

15 Q. What is your position within the
16 Highway Patrol?

17 A. I am a Commercial Trooper.

18 Q. And how long have you been with the
19 Patrol?

20 A. Little over 20 years now.

21 Q. What are your duties in your
22 position?

23 A. I enforce the Ohio Revised Code
24 laws, investigate crashes and also to enforce
25 the Federal Standards on Commercial Motor

1 Vehicles.

2 Q. What kind of training do you have in
3 that area?

4 A. In the commercial aspect I have got
5 certificates to do Level 1, Level 2, Level 3
6 inspections, hazmat tankers, school bus and
7 passenger vans.

8 Q. Have you taken any continuing
9 education courses?

10 A. We go through in-service every year
11 at the Academy where they update us on anything
12 that's changed or any certifications. And go
13 through that with the Commercial side of it and
14 also with the Highway Patrol side of it.

15 Q. Are commercial motor vehicle
16 inspections conducted to protect the safety of
17 the Ohio traveling public?

18 A. Yes.

19 Q. How many inspections on average do
20 you perform in a year?

21 A. Probably 8 to 900 inspections a
22 year.

23 MS. FELDKAMP: May I hand the
24 witness an exhibit?

25 ATTORNEY EXAMINER: Sure.

1 MS. FELDKAMP: I am handing the
2 witness what's been marked as Staff's Exhibit 1.

3 ATTORNEY EXAMINER: Since it's
4 already marked it will be noted for the record.

5 (EXHIBIT HEREBY MARKED FOR
6 IDENTIFICATION PURPOSES)

7 Q. Trooper Durben, do you recognize
8 this document?

9 A. I do.

10 Q. Is this document a Patrol record?

11 A. Yes.

12 Q. And is it kept in your ordinary
13 course of business?

14 A. Yes.

15 Q. Is it the practice of the Patrol to
16 make reports like this?

17 A. Yes.

18 Q. Let's talk about this report. In
19 this particular report did you report what you
20 observed?

21 A. I did.

22 Q. Did you report what you observed
23 soon after the inspection?

24 A. Yes.

25 Q. Does your job carry with it a duty

1 to report?

2 A. Yes.

3 Q. Is that duty to report enforced by
4 law?

5 A. Yes.

6 Q. Did you create an inspection for
7 this case because you have a duty to report?

8 A. Yes.

9 Q. Is this document in substantially
10 the same condition as when you prepared it?

11 A. Yes.

12 Q. Do you produce inspection reports
13 like this document when you perform inspections?

14 A. Yes.

15 Q. Did you produce this inspection
16 report based on your inspection of the
17 commercial motor vehicle driven by David Grass?

18 A. Yes.

19 Q. And just for clarity of the record
20 and to make sure you and I are on the same page,
21 when I say David Grass or Respondent or driver
22 can we agree that we are talking about the same
23 person?

24 A. Yes.

25 Q. Okay. Do you remember this

1 inspection?

2 A. I do.

3 Q. Who was the driver listed on this
4 report?

5 A. David D. Grass.

6 Q. And is Mr. Grass here today?

7 A. Yes, he is.

8 Q. Could you describe where he is
9 sitting in the hearing room?

10 A. He is the third person to my right
11 wearing a green shirt with a flannel shirt over
12 top of it.

13 MS. FELDKAMP: Let the record
14 reflect that the witness has identified the
15 Respondent.

16 Q. And did you give Mr. Grass a copy of
17 this report of the stop?

18 A. Yes.

19 Q. Did Mr. Grass' copy include your
20 notes?

21 A. No, it did not.

22 Q. Why did you block your notes from
23 the driver's copy of the inspection report?

24 A. That is just something that we
25 normally do. There is a button to click for

1 print notes. We don't do that unless we come to
 2 a hearing. Those are our personal notes to
 3 remind us of what happened during
 4 the inspection, the violations that occurred.
 5 Those just aren't things that we print and give
 6 out to the drivers.

7 Q. And when is the inspection report
 8 transmitted electronically to PUCO compliance?

9 A. At the end of my shift I will
 10 upload all these inspections. And I imagine
 11 they can download whenever they want.

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

14 A. There is one.

15 Q. What is it?

16 A. For a seat belt.

17 Q. What is the number?

18 A. 392.16, failing to wear a seat belt.

19 Q. And when did you observe Mr. Grass
 20 wearing the seat belt incorrectly?

21 A. October 29th of 2021.

22 Q. And on that date where were you?

23 A. I was on Interstate 77 about mile
 24 post 62 in Tuscarawas County.

25 Q. So did you see him not wearing his

1 seat belt as he was driving past?

2 A. Correct. I was sitting in the
3 cross-over. I was watching the north bound
4 traffic. I observed him as he went by me with
5 no seat belt on. Bright yellow shirt, with a
6 black belt. There was no seat belt on going
7 across.

8 Q. And then at the inspection stop was
9 he wearing his seat belt at that point?

10 A. When I walked up on the passenger
11 side he had already gotten up to open up the
12 door. So I spoke to him about the reason for
13 the stop. He was very rude, very upset, talking
14 about that he was being harassed.

15 And that he didn't have time for
16 this because it was Friday. And so we asked
17 about the seat belt. He stated he had it on. I
18 asked him to show me how. He put the seat belt
19 on and the shoulder strap went well below his
20 left elbow.

21 I asked him why he was wearing it
22 like that. He stated he is allowed because he
23 has a comfort strap. Called it a comfort
24 something. It's a button up on the B pillar for
25 the seat belt to put the slack in it. And we

1 disagreed about the way he should be wearing it.

2 And he was written up for
3 the violation for seat belt. When I walked back
4 up, after I prepared the inspection, I walked
5 back up to give it to him. He had his cell
6 phone out, which looked like he was trying to
7 record. He was being very polite, very nice at
8 that time.

9 He was asking questions for me to
10 explain stuff to him again. I told him I wasn't
11 going to explain it because we had already
12 argued right before. That he was given the
13 inspection and the traffic stop was concluded.

14 Q. Okay. When our driver was driving
15 past you where were you sitting?

16 A. In the cross-over.

17 Q. Okay.

18 ATTORNEY EXAMINER: Can I interrupt?
19 Because I was waiting for the chance to ask,
20 what do you mean by the cross-over?

21 THE WITNESS: There is paved portion
22 in the middle of the interstate about six foot
23 grassy median separating northbound and
24 southbound, paved portion in the median so we
25 can actually turn around. There is usually a no

1 u-turn sign there and a sign that says
2 authorized vehicles only.

3 ATTORNEY EXAMINER: I am familiar
4 with that concept. Thank you.

5 MS. FELDKAMP: Thank you for
6 clarifying that.

7 Q. How long was the Respondent in your
8 view as he was driving by?

9 A. I could see him approaching probably
10 about half a mile in the line of sight. He was
11 coming off a slight grade where I was sitting.
12 And for me to be able to see him not having his
13 seat belt was probably about three seconds of
14 actually being able to view him as he went by
15 me.

16 Q. The road that he was driving on, was
17 it curved or was it straight?

18 A. Relatively straight. Like I said, a
19 slight increase in elevation.

20 Q. How busy was traffic that day?

21 A. It was very light.

22 Q. And I think you have already touched
23 on this, but I just want to make sure we cover
24 it. As he was driving by how did it appear the
25 belt was being worn?

1 A. It didn't look like it was being
2 worn at all. The B pillar, which is where the
3 seat belt actually comes out for the shoulder
4 strap, going straight down, there was no strap
5 going across the shoulder, no strap going across
6 his chest.

7 Q. And how should a seat belt be worn
8 to avoid a violation?

9 A. All components of the seat belt
10 properly adjusted, properly worn. So the
11 shoulder strap needs to be coming up on the
12 shoulder coming across the chest, lap belt going
13 across his lap.

14 Q. Okay. And you mentioned earlier
15 that he was wearing a light colored shirt.
16 Would a lighter shirt make it easier or more
17 difficult to observe whether the seat belt was
18 on?

19 A. Very easy.

20 Q. Would it be correct to say that you
21 saw that the Respondent either wasn't wearing
22 his seat belt or wasn't wearing it correctly as
23 you pulled him over?

24 A. Correct.

25 Q. And once you pulled the Respondent

1 over did you walk up to the side of the vehicle
2 to talk to him?

3 A. Yes. On the passenger side.

4 Q. And, I am sorry if we already
5 covered this, what was the status of
6 Respondent's seat belt as you approached him?

7 A. He had it off because he got up and
8 opened the door.

9 Q. It was completely off?

10 A. Yes.

11 Q. All right. So on your inspection
12 report that I handed to you that was marked as
13 Staff Exhibit 1 under the inspection notes under
14 Locally Defined Fields it says Reason Code OBVI.

15 A. Yes.

16 Q. What does that mean?

17 A. Obvious violation.

18 Q. Can you describe what that means to
19 me?

20 A. Obvious violation is anything that
21 is obvious to us that is a violation of law, for
22 them a seat belt, light being out. Just
23 anything that we observe that is obviously a
24 violation.

25 Q. So commonly as a part of your job

1 you specifically look for drivers not wearing
2 their seat belts?

3 A. Yes.

4 Q. Is it correct to say that the stop
5 was at 2:02 in the afternoon?

6 A. Yes.

7 Q. How was the weather that day?

8 A. Very light rain, cloudy.

9 Q. Would that light rain and those
10 clouds have impaired your vision that day?

11 A. No.

12 Q. Do you wear glasses or contacts?

13 A. Contacts.

14 Q. And do you get regular checkups?

15 A. Yes.

16 Q. All right. And just to verify, is
17 it your testimony that you observed Mr. Grass
18 not wearing his seat belt?

19 A. Correct.

20 Q. Is there anything else important
21 that you would like to note that we haven't
22 discussed, but you would like the Commission to
23 note for the record?

24 A. No. I don't think so. That is it.

25 MS. FELDKAMP: I have no further

1 questions for this witness, your Honor.

2 ATTORNEY EXAMINER: Okay.

3 MS. FELDKAMP: I would like to
4 reserve this witness for possible rebuttal.

5 ATTORNEY EXAMINER: In other words,
6 you might call him back after --

7 MS. FELDKAMP: Right. Yes.

8 ATTORNEY EXAMINER: After
9 the testimony of the Respondent.

10 MS. FELDKAMP: Correct.

11 ATTORNEY EXAMINER: Okay. I don't
12 know if I covered that in the introduction, but
13 I will allow that kind of thing to happen. Once
14 you testify she gets another chance to rebut
15 what you do and they can use a witness to do so.

16 But at this point you are done with
17 your direct testimony of this witness. I will
18 allow him to cross-examine the witness.

19 MS. FELDKAMP: Could I also move
20 Exhibit 1 into the record?

21 ATTORNEY EXAMINER: Let's go ahead
22 and have you move that, but I will wait until we
23 are done with all the cross-examination to make
24 a ruling on that or about any of your objections
25 you have for the exhibit.

1 Right now you can ask questions of
2 the witness.

3 MR. GRASS: First of all I would
4 like to introduce dash cam video into --

5 ATTORNEY EXAMINER: I think that
6 will be your chance to present your side of
7 the case.

8 CROSS-EXAMINATION

9 By Mr. Grass:

10 Q. Officer, at the time you pulled me
11 over you said you could see the pillar of my
12 truck; correct?

13 A. B pillar.

14 Q. The B pillar. Where the seat belt
15 is mounted; correct? Yes or no?

16 A. I could see the B pillar, yes.

17 Q. Yes or no? Okay. On that -- if I
18 was not wearing my seat belt you never said you
19 saw the buckle itself which is chrome-type or
20 silver; correct?

21 A. Correct. I never saw the chrome.

22 Q. So that would be an indication I was
23 not wearing my seat belt; wouldn't it?

24 A. No.

25 Q. If it was hanging there you would be

1 able to see. You said you could see the pillar.
2 If it was hanging there you would have been able
3 to see the buckle.

4 A. I was describing where the seat belt
5 comes from the B pillar. And the seat belt
6 comes from the B pillar. So the B pillar is
7 behind you. If you put your seat belt on
8 properly you are going to have a gap coming from
9 the B pillar over to your shoulder. Okay. I
10 could see the B pillar. That was what was right
11 behind you. So, yes, I could see the B pillar.
12 Could I see your latch for the seat belt? No.

13 Q. No. But if I did not have my seat
14 belt on and you could see the B pillar then you
15 would be able to see that buckle because it was
16 shiny. Because you could tell the color of my
17 shirt. Yes or no?

18 A. I disagree.

19 MS. FELDKAMP: Asked and answered.

20 Q. So the answer is that you couldn't
21 see any buckle and you could see the pillar?

22 A. I couldn't see the buckle, correct.

23 Q. But you could see the pillar?

24 ATTORNEY EXAMINER: He has already
25 said that too.

1 Q. Okay. Officer, on your training,
2 you have been trained to or been to classes to,
3 taught how to collect evidence and preserve it?

4 A. Yes.

5 Q. Take witness statements. Correct?

6 A. Correct.

7 Q. And on these trainings they tell you
8 the importance of collecting evidence and
9 the value of it; correct?

10 A. They explain how to collect evidence
11 and --

12 Q. So you were trained on your dash
13 cam?

14 A. No, I was not.

15 Q. You have not been trained on your
16 dash cam?

17 A. We are shown how to turn it on and
18 turn it off.

19 Q. And you know that is constant audio
20 when you talk to me in the cab, it's constant
21 audio. I can hear what you are saying. It's
22 recorded on your vehicle; correct?

23 A. The way that camera works is we
24 have a belt mike and the belt mike is actually
25 on our waist. And that records the audio as we

1 go up to the vehicles. And commercial vehicles
2 are long enough where when you go up to that
3 vehicle the audio is going to cut in and out.
4 There is nothing else we can do about it.

5 Except now with our new system with
6 the body cams they don't cut out that distance.

7 Q. And that day you did have a body cam
8 on; correct?

9 A. No, I did not. I had the belt mike
10 on. We didn't get the body cams until February
11 of '22.

12 Q. All right. You had a small camera
13 with you that you took pictures of my truck;
14 correct?

15 A. Correct.

16 Q. That camera was a 35 mil?

17 A. It's a digital camera. That's all I
18 can tell you.

19 Q. Does it have video on it?

20 A. No.

21 Q. You cannot record on it with
22 the video?

23 A. I don't know if you can record on
24 it. We use it to take pictures of markings of
25 the truck, the license plate, those types of

1 things so we can say, yes, we did a vehicle
2 inspection on this vehicle. Here is the license
3 plate, here are the markings on it.

4 Q. But if you would have found
5 something wrong, say a lug nut or a fuel cap
6 missing would you take a picture of it?

7 A. I take pictures of all violations,
8 yes.

9 Q. Correct. Thank you. On that day
10 when you were standing and questioning me and
11 you thought I was rude, we first started talking
12 about Friday, weekend, all that good stuff;
13 correct?

14 A. You brought up about being Friday
15 and you don't have time for this.

16 Q. Okay. All right. But you asked me
17 one question. You asked me why I did not have
18 my seat belt on; did you not?

19 A. Correct.

20 Q. And I responded very loudly which
21 you called rude what? Can you remember?

22 A. You said you had your seat belt on.

23 Q. And what did you say next, Officer?

24 A. Can you show me how.

25 Q. And did I do that?

1 A. Yes, you did.

2 Q. And then in that commentary you said
3 it was down by my elbow?

4 A. Below your left elbow.

5 Q. You have a camera. That is a
6 violation. Why didn't you take a picture?

7 A. Don't need to.

8 Q. Why not? It's a violation. Just
9 earlier you testified if I did not have a fuel
10 cap or missing lug nuts or broken windshield you
11 would take a picture to show that violation.

12 A. Because you put the seat belt on
13 after we have already made contact isn't going
14 to prove what I saw as you went by. So if I
15 walked right up to you after you opened the door
16 for me and took a quick picture of you not
17 having the seat belt on doesn't prove that you
18 didn't have the seat belt on when you went by
19 me.

20 Q. Okay. The thing is when you stood
21 at the door did you ever get up on the steps of
22 my truck and look in when I put my seat belt on?

23 A. Yes. The door was open, I was up on
24 the step of the truck when I asked you about
25 show me how you put the seat belt on.

1 Q. Why didn't you take a video picture?
2 It's a violation, clear violation, as you said,
3 correct? Yes or no?

4 A. We don't take pictures like that
5 because that's not going to prove whether you
6 had it on when you went by me.

7 Q. But it does prove I had it on
8 because you said show me how I was wearing my
9 seat belt. That is what the video says, show me
10 how you were wearing your seat belt. So you
11 admit that now I was wearing my seat belt.
12 Those are your own words; correct?

13 A. Those things were documented in my
14 notes as exactly how you were and I testified
15 exactly how you had it on.

16 Q. Correct. You said show me how you
17 were wearing your seat belt; correct? Yes or
18 no?

19 A. I think I already answered that.

20 Q. Yes is the answer. So, one, back
21 to the pillar, you did not see my chrome buckle,
22 correct, but you say you could see the pillar.

23 ATTORNEY EXAMINER: Pillar, is that
24 what you are saying? The pillar is in the cab
25 where the seat belt connects?

1 MR. GRASS: Yes.

2 A. Yes, that is the whole piece that is
3 right behind him. I can see part of that. I
4 cannot see chrome attachment like we have
5 already testified several times to.

6 Q. Okay. Let's see.

7 And you said my seat belt was down
8 by my elbow?

9 A. Correct.

10 Q. But no proof of that, just your
11 words?

12 A. Correct.

13 Q. Did I protest about putting the seat
14 belt on when you asked me to? Show me how you
15 were wearing your seat belt. Did I say no?
16 Was I rude?

17 A. You were rude the whole stop, when
18 you did show me how you said you had the seat
19 belt on.

20 Q. Officer, I wasn't rude the whole
21 stop. But we will go over that. I put the seat
22 belt on, didn't I? I did not have to; did I?

23 A. You showed me how you stated you had
24 the seat belt on, yes.

25 Q. Yes. I know the Constitution Fifth

1 Amendment I have the right not to incriminate
2 myself; correct?

3 A. Correct. You don't have to.

4 Q. I put my seat belt on and I showed
5 you.

6 MS. FELDKAMP: Asked and answered.

7 Q. Yes. Okay.

8 Officer, when you ran my driver's
9 records how many moving violations I have had
10 and how far can you see my record?

11 A. I think it goes back 20 years. I
12 never even looked at your driving record when I
13 ran your license just to make sure you had a
14 valid CDL.

15 MR. GRASS: Okay. For the record I
16 have none for the last 20 years. And for the
17 last 50 years of driving --

18 ATTORNEY EXAMINER: You can testify
19 to that, but this is the time to ask him
20 questions.

21 MR. GRASS; Sorry, sir.

22 Q. Okay. So you did not know if
23 the -- on your dash cam that we were being
24 recorded or not?

25 A. I knew we were being recorded.

1 Q. You did not know if the audio would
2 be all there; correct?

3 A. I don't know, it doesn't tell me
4 when I am up there talking with you if it's cut
5 out at that time or not.

6 MR. GRASS: Okay. I want to read my
7 notes.

8 Q. We are alongside the freeway,
9 correct, Officer?

10 A. We were on Interstate 77 on
11 the berm.

12 Q. There was traffic?

13 A. There was some traffic going by,
14 yes.

15 Q. And it's loud out there; isn't it?

16 A. When the traffic is going by, yes,
17 it is.

18 Q. Could that be why my voice was
19 raised?

20 A. You are asking my opinion on that?
21 My opinion would be, no, there was no reason for
22 you to raise your voice, swear, and say
23 the things you said.

24 Q. I swore?

25 A. Yes, you did.

1 MR. GRASS: I am done, sir.

2 ATTORNEY EXAMINER: All right.

3 Thank you. You will have a chance to redirect
4 with anything that relates to the
5 cross-examination.

6 MS. FELDKAMP: Could we have just a
7 moment?

8 ATTORNEY EXAMINER: Yes. You can
9 have a minute.

10 (RECESS TAKEN)

11 MS. FELDKAMP: Your Honor, we have
12 a video that we could play, the dash cam
13 footage.

14 ATTORNEY EXAMINER: Are you wanting
15 to mark that as an exhibit?

16 MS. FELDKAMP: I can, yes. It will
17 be Exhibit 3 because I already have another
18 exhibit labeled as Exhibit 2.

19 ATTORNEY EXAMINER: I don't care
20 about the numbering. If you are going to play
21 it now because you are later going to introduce
22 it as an Exhibit, identify it as 3, that is
23 fine.

24 (EXHIBIT MARKED FOR THE PURPOSE OF
25 IDENTIFICATION)

1 ATTORNEY EXAMINER: Again you are
2 producing some additional evidence that you
3 didn't earlier. So he is going to get a chance
4 to ask questions about the video.

5 The other thing I was going to bring
6 up is that he mentioned bringing up the dash cam
7 video. I don't know if it's the same one or
8 not, but I was going to say that when I told you
9 that you couldn't do that right now, when you do
10 do that if there is some reason you want to ask
11 this Trooper about what's in the video I was
12 going to allow him to bring the Trooper back up
13 and testify when it's his turn about the video
14 he is presenting.

15 Maybe you both will be presenting
16 the same video. We will find that out.

17 MS. FELDKAMP: It should be the same
18 video that we sent you.

19 ATTORNEY EXAMINER: Is this actually
20 for purposes of the audio portion of the video?

21 MS. FELDKAMP: Just to show that we
22 have the video and to verify that it was the
23 dash cam video that was taken on that day.

24 ATTORNEY EXAMINER: Now, the main
25 thing is that the parties can agree to

1 authenticate this video. We can get that
2 resolved today and it becoming part of the
3 record.

4 So if everyone agrees that whatever
5 is left with me to see later on, today, but also
6 to have as part of the record for future review
7 to review the record. Are the parties in
8 agreement how that is going to come about in
9 this case?

10 MR. GRASS: I agree, it's probably
11 the same video I have.

12 ATTORNEY EXAMINER: And how is that
13 physically going to become part of the record?

14 MS. FELDKAMP: I have a flash drive
15 that I can give to you.

16 ATTORNEY EXAMINER: And you share
17 with them, right?

18 MS. FELDKAMP: Yes.

19 ATTORNEY EXAMINER: As long as we
20 are all agreed that the driver and Trooper is
21 using the same one that we are talking about and
22 viewing and using for purposes of evidence
23 today, I will allow you to proceed. I am seeing
24 that I have agreement from both sides about
25 proceeding that way today.

1 The transcript will note that it
2 was played and the flash drive will be in
3 evidence.

4 MS. FELDKAMP: All right. So it's
5 all right if I play the video now?

6 ATTORNEY EXAMINER: Yes.

7 MR. GRASS: I would like to see
8 the part where he comes up behind me. I
9 forgot -- I would like to have redress on him, I
10 have some more questions.

11 ATTORNEY EXAMINER: You are going to
12 get a chance to ask anything that comes up
13 related to this video. This is the area you
14 didn't get a chance before.

15 Again, I am not trying to rush
16 things, if it takes 20 minutes it takes 20
17 minutes. I just, you know, if it's not really
18 serving any purpose then we can cut to the parts
19 we need to see. But I am willing to sit here
20 and watch it.

21 MR. MARGARD: Can we go off the
22 record?

23 ATTORNEY EXAMINER: Yes, let's go
24 off the record.

25 (DISCUSSION OFF THE RECORD)

1 ATTORNEY EXAMINER: We will have
2 the video submitted as a Staff exhibit, and that
3 the parties agree that the video that both sides
4 want to use is the one that is being submitted
5 as Staff Exhibit 3. We are going to use this
6 period of time during the hearing to view it and
7 then after seeing the relevant portions of it I
8 am going to allow the Staff to go first in terms
9 of getting back to the portions of the video
10 they want to discuss and presenting the
11 testimony they want to help understanding what
12 it is we are seeing.

13 The Respondent will get a chance to
14 cross-examine the witness on those portions and
15 then later before we do anything else we will
16 also go back to whatever portions that the
17 Respondent wants to present. And he will get a
18 chance to present those subject to
19 cross-examination and redirect, and so forth.

20 So with that understanding we are
21 going forward. Thank you.

22 (The video was played)

23 MS. FELDKAMP: The rest of the
24 video was pretty audible. The only part that I
25 could understand was "Any reason why you weren't

1 wearing your seat belt, and I was wearing my
2 seat belt."

3 That was why I was introducing it.
4 And I would just like to verify with our
5 Trooper. Is this the dash cam that we have been
6 discussing today?

7 TROOPER DURBEN: It is.

8 MS. FELDKAMP: And this dash cam was
9 taken on October 29, 2021?

10 TROOPER DURBEN: Correct.

11 MS. FELDKAMP: And was Mr. Grass
12 driving the truck, vehicle?

13 TROOPER DURBEN: Correct.

14 ATTORNEY EXAMINER: Okay. So I was
15 going to extend to Mr. Grass the chance to ask
16 the Trooper about anything that we have seen so
17 far, or anything that you said about the video
18 so far.

19 FURTHER CROSS-EXAMINATION

20 By Mr. Grass:

21 Q. Trooper, when you pulled out and you
22 got into the left lane and you came down, you
23 were using your dash cam to point at my mirror;
24 correct?

25 A. No.

1 Q. Not my driving mirror?

2 A. No.

3 Q. Why were you in the left lane?

4 A. I was in the left lane getting your
5 license plate, where I actually entered your
6 license plate on the computer that we have
7 inside of the car. So I was actually entering
8 your plate on the MCT on the inside of the car
9 and I was waiting for the time to be able to go
10 with radio traffic, but as you can hear those
11 other people on the radio.

12 When I like to stop trucks I like to
13 go in the middle of both lanes. That way they
14 can see back at me, we can keep people out of
15 that left lane a little bit while we pull off to
16 the berm.

17 And I wasn't going to stop you on
18 that hill crest in the curve, so I was going to
19 wait until we got on a straight-away, that way
20 people could get over and people would be safer.

21 Q. Trooper, you did not use your right
22 hand to adjust the dash cam at my mirror?

23 A. I never touched the camera the whole
24 time we were on that traffic stop. That camera
25 mount is to the right of me, to the right of the

1 middle consul up on the window. I am not
2 reaching over there touching that camera for
3 recording any of you being in the outside of
4 your mirror, I have never done that in my whole
5 career.

6 Q. Trooper, you said I was loud and
7 rude when you pulled me over. When you were
8 talking you were loud; were you not? On the
9 video it sounds like you were loud.

10 A. Well, it sounds like I am loud
11 because the mike is right underneath me. So
12 with us being in that space, yes, it's going to
13 sound louder for me. That is the reason why we
14 can't hardly hear you, but I perceived you that
15 whole stop being loud.

16 Q. Loud. I am a loud person, so.
17 On this traffic stop you asked me,
18 as you said on the video, you can hear him say I
19 was wearing my seat belt; correct? On this
20 video you just watched you heard yourself say
21 how were you wearing your seat belt?

22 A. Correct.

23 Q. Show me. Correct?

24 A. Correct.

25 Q. And I did.

1 A. Correct.

2 Q. Okay. So the reason you were in the
3 left lane so long was to run my license plate?

4 A. Run your license plate and wait
5 until we got up to the spot where I was going to
6 stop you, yes.

7 Q. And then you said my seat belt was
8 down by my elbow; correct? That was on the
9 audio?

10 A. The seat belt was below your left
11 elbow.

12 Q. Okay. I did record some of this
13 while we were doing that. And me and -- but
14 I -- Officer, I opened the door; correct?

15 A. Correct.

16 Q. All right. And I had my seat belt
17 off and I put my seat belt back on when you
18 asked me how I was wearing it. Correct again?

19 A. Correct.

20 Q. But you did not, never, just going
21 to ask one more time, in the left lane you did
22 not move that dash cam with your right hand?

23 A. I did not touch the camera
24 the whole time we were on that traffic stop.

25 MR. GRASS: That's all.

1 ATTORNEY EXAMINER: Okay. Thank
2 you. Again, it sounds from what you were just
3 saying maybe you have other photos or other
4 video that you might be interested in presenting
5 when it's your turn to put on your case. But
6 do you have anything else about this particular
7 video that you want to bring up? Because I am
8 thinking of going out of turn and allow you to
9 just do that while we have it up there.

10 Is there something in this video
11 that --

12 MR. GRASS: Yes. At the end --

13 ATTORNEY EXAMINER: Was there any
14 objection of we do it that way?

15 MS. FELDKAMP: No.

16 MR. GRASS: Just go to the end where
17 the Trooper is walking around with the camera.

18 (The video was played)

19 MR. GRASS: Right there.

20 ATTORNEY EXAMINER: Do you want to
21 see it again before you ask questions?

22 MR. GRASS: I would like to show
23 the Trooper walking around using his camera.

24 ATTORNEY EXAMINER: We are watching
25 this and you are going to put on some testimony.

1 So, I think I am going to allow you to -- you
2 are describing about this video is your
3 testimony about it.

4 MS. FELDKAMP: I do have follow-up
5 questions for the Trooper.

6 ATTORNEY EXAMINER: Maybe we can
7 just pull this video back up when the time
8 comes. You will get the chance, but let's
9 finish up with your presentation of this video,
10 then give him his chance to present what he
11 wants to. Okay.

12 MS. FELDKAMP: Can I finish playing
13 this part?

14 ATTORNEY EXAMINER: We can do that
15 now.

16 REDIRECT EXAMINATION

17 By Ms. Feldkamp:

18 Q. Trooper Durben, is your dash cam
19 always on when you are in your car?

20 A. It's always powered on. The way the
21 camera works is when we activate our lights or
22 sirens it kicks on the camera. So we don't
23 manually do anything with the camera except stop
24 it at the end.

25 So when I kicked on my lights it

1 goes back one minute prior to. That is the way
2 it does with every traffic stop.

3 Q. And when does the audio turn on?

4 A. When I activate my lights.

5 Q. All right. And are you trained on
6 when your dash camera is on and when your audio
7 should be on?

8 A. Policy says it should be recording
9 every stop. If we find out that it is not
10 recording then it's supposed to be reported, the
11 tech guys will take a look at it. But we also
12 have a body or belt mike check to make sure that
13 it's working.

14 And at that day it was working.
15 Belt mike had just -- it goes out of range. We
16 can't help that.

17 MS. FELDKAMP: No further questions.

18 ATTORNEY EXAMINER: Let me ask you
19 this.

20 EXAMINATION

21 By the Attorney Examiner:

22 Q. When you said that the camera kicks
23 on when you turn the lights on, I am assuming
24 it's more than just your headlights, it's when
25 you are putting your flashers on to make a stop?

1 A. Right. Headlights or sirens will
2 activate the camera and it goes on and records
3 the previous minute of that too. That is why we
4 are recording him going down the hill.

5 Q. It records the previous minute of
6 something?

7 A. The camera is basically recording
8 all the time. It only stores one minute. So
9 when I hit the lights it goes back to that one
10 minute mark and records.

11 Q. All right. So it's recording all
12 along. The part that gets saved goes back one
13 minute?

14 A. Correct.

15 ATTORNEY EXAMINER: Okay. Any
16 questions for the Trooper.

17 MR. GRASS: Yes. I have one more.

18 FURTHER CROSS-EXAMINATION

19 By Mr. Grass:

20 Q. Officer, when you asked me to put
21 my seat belt back on to show you how I was
22 wearing it, did I tell you I had my comfort
23 strap set, and do you know what a comfort strap
24 is?

25 A. Well, I did know what a comfort --

1 yes, you did say you had a comfort strap set.
 2 I did know what it was before I spoke with you.
 3 But when you pointed up to that adjustable
 4 clicker up on the B pillar that is when I
 5 figured that is what it was.

6 Q. And do you know what proper law
 7 covers that?

8 A. Law covers what?

9 Q. The use of the comfort strap in a
 10 DOT vehicle.

11 A. No. I know what the law says about
 12 the seat belt, and it's got to be properly
 13 adjusted and properly worn.

14 Q. But is a comfort strap illegal in a
 15 ODOT vehicle, commercial vehicle?

16 A. No.

17 Q. So you do not know what law covers
 18 the use of a comfort strap?

19 MS. FELDKAMP: That is a
 20 misstatement of his testimony.

21 MR. GRASS: I asked him if he new
 22 what a comfort strap was. He said he did not
 23 know.

24 A. There is no law --

25 Q. I mentioned it, DOT or comfort

1 straps are commonly used.

2 ATTORNEY EXAMINER: You are asking
3 him questions. I do think from what I heard was
4 a mischaracterization of what I heard him
5 answer. And I am going to just allow you to
6 continue, but do it in the form of asking him
7 questions and allow what comes out here to come
8 out from him in response to the questions you
9 have.

10 You were putting words in his mouth.
11 Just ask him questions that allow him and you to
12 two to come to some kind of understanding what
13 it is he is saying in response.

14 MR. GRASS: I asked him if he knew
15 what a comfort strap was. He said he did not
16 know.

17 ATTORNEY EXAMINER: I heard that
18 part.

19 Q. I asked him what regulation or law
20 covers the comfort strap. He said he did not
21 know; correct?

22 A. There is no law against a comfort
23 strap, that adjustable thing up there. But
24 there is a law about how to wear the seat belt
25 properly.

1 Now, you can use that comfort strap
2 and still have the seat belt on properly by
3 putting a little bit of slack on it. So there
4 is nothing illegal about it. But how you use
5 it, that is what makes everything with the seat
6 belt illegal.

7 Q. Officer, do you know how the comfort
8 strap works, how it activates, how it takes
9 the tension off or takes -- releases the slack
10 and tightens up? Do you know how that works?

11 A. You fold it down and that basically
12 slips that shoulder strap into that position
13 where it doesn't move.

14 Q. But there is slack in it; that is
15 the purpose?

16 A. You can put as much slack in it as
17 you want. So then clip that thing down so you
18 can -- I have seen drivers where it's a whole
19 lot worse than what you have stated you had it
20 on. So, it's adjustable.

21 Q. It is adjustable. But do you know
22 how the mechanism works?

23 A. No, I do not know how the mechanism
24 works.

25 Q. And is it covered in the FMCFR?

1 A. I don't know what FMCFR --

2 Q. Federal Motor Carrier Regulations.

3 A. No, I do not.

4 ATTORNEY EXAMINER: Do you have
5 anymore?

6 MR. GRASS: Go ahead, sir.

7 FURTHER EXAMINATION

8 By the Attorney Examiner:

9 Q. We have had several times testimony
10 about when you asked him to show you how he was
11 wearing it and you described that -- testimony
12 was about that the seat belt came down to near
13 his left elbow.

14 A. Correct.

15 Q. Again, even understanding what this
16 testimony is about, this is when you asked him
17 to show you how he was wearing it, this is
18 demonstration of how he was wearing it
19 demonstrated that he was wearing it slack on the
20 belt down to his left elbow. Is that the gist
21 of your testimony?

22 A. That's correct.

23 Q. Okay. And it's important to see
24 that not necessarily the way he was wearing it
25 at the time that you first observed him not

1 wearing the seat belt, but it is the way that he
2 showed you when you asked him to show you how he
3 wears his seat belt?

4 A. Correct. And with him having that
5 much slack in it, that could be easily why I
6 didn't see him have that seat belt on because it
7 was not coming on the shoulder going across the
8 chest from the B pillar like it should. It was
9 lying straight down going down below the elbow
10 so, yes.

11 ATTORNEY EXAMINER: You can ask
12 more especially in relation to what I just
13 asked.

14 MR. GRASS: Well, he is saying
15 the slack and not seeing the belt, but on
16 the previous question --

17 ATTORNEY EXAMINER: I am not asking
18 you to testify, but if you want to ask him
19 questions --

20 MR. GRASS: No.

21 ATTORNEY EXAMINER: Okay. Anymore
22 questions?

23 MS. FELDKAMP: Just one moment.

24 I am sorry.

25 I have no further questions for

1 the witness.

2 ATTORNEY EXAMINER: Okay. Well,
3 then I don't have anymore questions. And you
4 don't have anymore questions. So I am going to
5 let the witness be done with testifying for now
6 on the first direct examination of this witness
7 as the staff witness. You may come back up
8 later.

9 And I am wanting to rule on the
10 exhibit if you -- since you already moved it, do
11 you have any objection to the admission of that?

12 MR. GRASS: Of the dash cam video,
13 no.

14 ATTORNEY EXAMINER: I am talking
15 about the inspection report, Staff Exhibit 1.

16 MR. GRASS: I do not.

17 ATTORNEY EXAMINER: It will be
18 admitted into evidence.

19 (EXHIBIT HEREBY ADMITTED INTO
20 EVIDENCE)

21 ATTORNEY EXAMINER: This is labeled
22 as Staff Exhibit 3. You want to move this too?

23 MS. FELDKAMP: Yes, please.

24 MR. GRASS: Since I am testifying
25 can I use the video that you have hooked up

1 so --

2 ATTORNEY EXAMINER: Well, you are
3 not testifying yet. We will bring this back up
4 when it's your turn to testify.

5 MR. GRASS: Thank you.

6 ATTORNEY EXAMINER: But I am going
7 to take this time for -- I think you said, yes,
8 you want to move Staff Exhibit 3 into evidence.
9 And if there is no objection I will allow this
10 video, Staff Exhibit 3, to be part of the record
11 in this case. So it will be admitted into the
12 record.

13 And again my understanding, I think
14 we are all clear, that when it's your turn to
15 testify you want to use Staff Exhibit 3, you can
16 ask them to put it back up on the screen and use
17 it in your case.

18 MR. GRASS: Thank you.

19 (EXHIBIT ADMITTED INTO EVIDENCE)

20 ATTORNEY EXAMINER: But for now, we
21 have Staff Exhibit 1, Staff Exhibit 3, and the
22 first witness' testimony all admitted into the
23 record at this time.

24 You don't object to the -- we
25 dismissed the witness, so I think his testimony

1 is already in the record. So do you have
2 another witness?

3 MS. FELDKAMP: I do, yes

4 ATTORNEY EXAMINER: Okay.

5 MS. FELDKAMP: I would like to call
6 our Staff witness Rod Moser.

7 (WITNESS SWORN)

8 - - -

9 ROD MOSER

10 called as a witness, being first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Feldkamp:

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

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

17 Q. And where are you employed?

18 A. I am employed by the Public
19 Utilities Commission of Ohio as specifically I
20 am the Chief of the Compliance and Registration
21 Sections within the Transportation Department.

22 Q. How long have you been in that
23 position?

24 A. Approximately five and a half years.

25 Q. How long have you worked for

1 the Public Utilities Commission?

2 A. Five and a half years.

3 Q. What are your duties?

4 A. As relates to this case my duties
5 are to basically shepherd the civil forfeiture
6 process for the PUCO. We see that inspections
7 that are submitted to us undergo the civil
8 forfeiture assessment process, mail letters,
9 arrange hearings, just basically the whole
10 process.

11 Q. And what are your expert
12 qualifications in the violations for the subject
13 matter of these violations?

14 A. I was a State Trooper for just shy
15 of 30 years. During that time I had extensive
16 experience in commercial enforcement. I ended
17 my career the Commercial Enforcement Coordinator
18 for the District 6 area which is Franklin County
19 and surrounding counties.

20 I also trained in North America
21 Standards Parts A and B, motor coach, hazmat,
22 general hazmat, bulk and nonbulk.

23 Q. And do you take part in any
24 continuing education?

25 A. Yes. We have annual in-service

1 programs that I attend.

2 Q. And if we have functional questions
3 on how the calculation that would be written in
4 the Notice of Preliminary Determination, if we
5 have any questions about the calculations in
6 that, do you have training that you would be
7 able to answer those questions?

8 A. Absolutely.

9 Q. And are you able to explain how you
10 determine the amount of a forfeiture?

11 A. Sure. So in general our violations
12 are divided into groups. For non-hazmat
13 inspections, which this was, those violations
14 are divided into five different groups.

15 Group zero, Groups 1, 2, 3 and 4.
16 Group zero -- the groups that are zero through 3
17 are mechanical violations. And zero violations
18 never get a fine.

19 Groups 1, 2 and 3 may be assessed a
20 civil forfeiture depending on whether or not
21 they are as out of service. Those violations
22 are, in descending order, likely to cause a
23 crash. Most likely Group 1, least likely Group
24 3.

25 Group 4 violations always are

1 assessed a civil forfeiture amount. Those
2 violations are driver behavior, insurance and
3 authority, that kind of thing.

4 This particular violation is a
5 safety belt violation, it is a Group 4. It
6 always gets a civil forfeiture. And in each
7 case our system for non-hazmat violations is
8 automated, so each respondent is treated
9 the same as the last. So anybody getting this
10 violation would receive a \$100 civil forfeiture
11 assessment for that violation.

12 Q. Okay. Just to clarify, does the
13 Commission apply this process uniformly to
14 everyone?

15 A. Yes. It is an automated process.

16 MS. FELDKAMP: May I hand the
17 witness an exhibit?

18 ATTORNEY EXAMINER: Sure.

19 MS. FELDKAMP: I am handing the
20 witness what has been marked as Staff Exhibit 2.

21 (EXHIBIT MARKED FOR THE PURPOSE OF
22 IDENTIFICATION)

23 Q. This is a notice of Preliminary
24 Determination. Do you recognize this document?

25 A. I do.

1 Q. What is it?

2 A. Well, it is entitled a Notice of
3 Preliminary Determination. We commonly refer to
4 as an NPD.

5 It is a statement from the
6 Commission that says there was an unsuccessful
7 attempt to resolve these issues during a
8 telephone conference with the assigned
9 compliance officer. And this notice tells the
10 respondent they can either pay the fine or they
11 can request a formal administrative hearing.
12 And gives them instructions on how to do so.

13 Q. And was this document sent to the
14 Respondent?

15 A. Yes, it was.

16 Q. Did you review this document in
17 preparation for this hearing?

18 A. I did.

19 Q. Is this document a Commission
20 record?

21 A. Yes, it is.

22 Q. And is it kept in the ordinary
23 course of business?

24 A. Yes.

25 Q. So you already touched on this, but

1 could you please explain how the civil
2 forfeiture in this case was derived?

3 A. Sure. Once the inspection was
4 uploaded and came into our system our system
5 recognized it as a non-hazmat inspection. The
6 only violation is a Group 4 violation.

7 As I say, a Group 4 always is
8 assessed a civil forfeiture. And in this case
9 the civil forfeiture amount for a seat belt
10 violation is \$100.

11 Q. Is this penalty consistent with
12 the recommended fine schedule, recommended civil
13 penalty procedure adopted by the Commercial
14 Motor Vehicle Alliance and Commission rules?

15 A. It's the Commercial Vehicle Safety
16 Alliance. But, yes.

17 Q. And you stated that forfeiture
18 amount is \$100; correct?

19 A. That's correct.

20 Q. Is that the correct forfeiture
21 amount for this case?

22 A. It is.

23 Q. Would you recommend this amount to
24 the Commission?

25 A. I do, yes.

1 Q. Could you please tell me about your
2 understanding of what comfort straps are
3 especially in relation to seat belt regulations?

4 A. I really don't have any familiarity
5 with that at all. My familiarity with safety
6 belt was as a Trooper. I wrote them if we felt
7 there was an egregious violation involved. But
8 I don't have any familiarity with comfort
9 straps.

10 Q. And is there anything else important
11 that we should note that we haven't discussed
12 that you would like the Commission to note for
13 the record?

14 A. No, ma'am.

15 MS. FELDKAMP: I have no further
16 questions for this witness at this time. And I
17 would like to move all of Staff's evidence into
18 the record.

19 ATTORNEY EXAMINER: Okay. It's been
20 moved, but I will let him do cross-examination
21 and then make a ruling on the exhibits.

22 Actually, I believe there is only
23 three exhibits, and two of them are already
24 admitted. So really talking about Staff Exhibit
25 2 at this point.

1 But, do you have any questions for
2 this witness?

3 MR. GRASS: Yes, I do.

4 CROSS-EXAMINATION

5 By Mr. Grass:

6 Q. Sir, on this letter, it was a
7 forfeiture of \$100, and I talked to a young lady
8 about it on the phone on the appointment. And I
9 denied, and I never admitted that I did
10 something wrong; correct? That is what she
11 wrote down?

12 A. I don't recall her specific notes on
13 this case, no.

14 Q. But the reason we are here is
15 because I am fighting the process to prove my
16 innocence; correct?

17 A. I would say so, yes.

18 MR. GRASS: Okay. Thank you.

19 ATTORNEY EXAMINER: All right. Do
20 you have any, I don't have any questions, do you
21 have any objection to admission of Staff Exhibit
22 2?

23 MR. GRASS: No, I don't.

24 ATTORNEY EXAMINER: It is admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE)

1 ATTORNEY EXAMINER: Thank you. Do
2 you have any other witnesses or exhibits?

3 MS. FELDKAMP: No.

4 ATTORNEY EXAMINER: Okay. At this
5 point then the Staff rests in terms of its
6 presentation of evidence, which means it's your
7 turn to present evidence. And you can do that
8 by testimony and/or exhibits.

9 Let's go off the record for a
10 minute.

11 (DISCUSSION OFF THE RECORD)

12 (WITNESS SWORN)

13 - - -

14 DAVID D. GRASS
15 called as a witness, being first duly sworn,
16 testified as follows:

17 DIRECT TESTIMONY

18 MR. GRASS: On the day I was coming
19 back from Cambridge the officer pulled me over.
20 He was sitting in the middle. Just the normal
21 place where the DOT sits.

22 He came out of the middle and
23 followed me down the road as the video -- as we
24 see. And he stood in left lane.

25 I knew I was going to get pulled

1 over, it's standard procedure. As he was going
2 down, as we were going down we were doing about
3 65 miles an hour, I was. And he was behind me
4 in the left lane. And he had his right hand up
5 on the dash cam trying to point it -- he was in
6 the left lane, he was trying to point the dash
7 cam, move it, because I am looking in the
8 mirror, wondering why he is over there, and he
9 is pointing it in the mirror trying to get
10 the reflection of the inside of the cab of me in
11 there to gather proof that I didn't have my seat
12 belt on.

13 After that he did pull me over and
14 we did talk. In the video you saw where he --

15 ATTORNEY EXAMINER: Let the record
16 reflect that we have the video, we are watching
17 the video projected in the room and he is moving
18 through various parts of the video to
19 demonstrate what he wants us to understand
20 about.

21 (Video was played)

22 MR. GRASS: He is going down
23 the road and he is in the left lane. And he
24 comes up, goes -- I didn't go far enough. As he
25 is coming up on me he is in the left lane. And

1 he is following me up.

2 And you will see as you look at the
3 time how long he stays in the left lane.

4 MS. FELDKAMP: Just for clarity of
5 the record if you could tell us what time is on
6 the video so we know what is happening that
7 would be helpful.

8 ATTORNEY EXAMINER: Because there is
9 numbers at the bottom of the video so when we
10 watch this and we will have time references
11 based on that. We will know where on the video
12 to watch to fit in with the description that you
13 are giving. I was going to ask you the same
14 thing.

15 MR. GRASS: This will be about
16 the 42 mark. You see the Trooper is about 42
17 mark, Trooper is behind me in the left lane.

18 As he is in the left lane I am
19 looking in the mirror wondering what he is
20 doing. Maybe I had a flat tire or something.
21 I am looking, and I can see him adjusting the
22 dash cam up at the mirror with his right hand as
23 I am going down the road.

24 As I am going on down he keeps
25 going. And then this is the usual place where

1 we get pulled over. This is -- we as truck
2 drivers know the spots. And then he will slidd
3 over and the audio will come on.

4 ATTORNEY EXAMINER: When you
5 mentioned the mirror, which mirror are you
6 talking about?

7 MR. GRASS: Talking about this
8 mirror here (indicating).

9 ATTORNEY EXAMINER: You are saying
10 that he is trying to adjust the dash cam in his
11 vehicle so that it's focused on the mirror on
12 your left-hand --

13 MR. GRASS: It's a big flat
14 mirror --

15 ATTORNEY EXAMINER: I understand
16 it's your mirror, I thought you were talking
17 about the mirror inside of his --

18 MR. GRASS: No. He is trying to get
19 the reflection to see people in the mirror and
20 he was trying to record to see evidence that I
21 didn't have my seat belt on.

22 And that didn't go. And then
23 approximately we have gone -- that is about 62
24 he is pulling me over. As he walks up --

25 MS. FELDKAMP: At 220.

1 MR. GRASS: And asks me for my
2 license and registration, which I gave him. And
3 sorry about this.

4 ATTORNEY EXAMINER: That is all
5 right. We have got time.

6 MR. GRASS: Now we are having a
7 conversation about Friday.

8 ATTORNEY EXAMINER: What is the time
9 stamp on what you are showing?

10 MR. GRASS: 3 minutes 12 seconds.
11 Now, right there you can see he asked me
12 the question why I wasn't wearing my seat belt.

13 ATTORNEY EXAMINER: What is the time
14 stamp?

15 MR. GRASS: Two minutes and 53
16 seconds. And you will hear my response I was
17 wearing my seat belt. Then you just heard him
18 say show me how you had it on.

19 So, now he is admitting that I had
20 my seat belt on. And I tell him I had my seat
21 belt on, I had my comfort strap set.

22 Then he says it's down by my elbow.
23 And then he reads the rules that cover the use
24 of a seat belt, no slack, blah, blah. But, on
25 that part.

1 Now on this part you will see him
2 walking around taking pictures.

3 ATTORNEY EXAMINER: Give the time
4 stamp of the spot you want it on.

5 MR. GRASS: 1654 you can see
6 the Officer walking around taking pictures.
7 Identifying the markings of the truck and that.
8 And putting the form up for the citation,
9 alleged citation.

10 At this time he is telling me about
11 the violation, how long I had, and gives me the
12 paper. I try to ask him questions and follow
13 up. He asked me if I had any questions at 1748,
14 and I did. And the Officer walked away and
15 went on with our life until now.

16 I would like to testify on my own
17 behalf. On this day, I always wear my seat
18 belt. I am a 16 and a half year veteran of the
19 United States Air Force. Anybody that's been in
20 the military knows any time you are on base you
21 wear your seat belt. I have always wore my seat
22 belt.

23 I drove over 30 years with
24 commercial vehicle, I have used my comfort
25 strap, I have gone over a thousand scales, weigh

1 scales, never been pulled over for seat belt
2 violations.

3 I have six tickets, I think, five
4 maybe, two of them are headlights out, and a
5 couple of them was speeding in 51 years, 50
6 years of driving almost. November I will be 66.
7 Drove over 50 years.

8 I am not reckless, I obey the law.
9 If you look at my last ticket I got as the
10 Officer said there is none for 20 years.

11 The reason I am fighting this is
12 because I was wearing my seat belt, I did have
13 my comfort strap on, it was going across my
14 shoulder. And the operation of a comfort strap
15 is to take the tension off your body, you set it
16 by putting you hand between your chest and
17 the strap. It usually gives you a little play
18 and takes the tension off so it's there.

19 When you hit the brakes that comfort
20 strap will release and it tightens up just like
21 a regular seat belt.

22 I was mad because it's Friday, I was
23 heading home after a 60-hour week and I finally
24 got off early. But -- I lost my train of
25 thought.

1 I asked the Officer to explain this.
 2 I think the Officer made a mistake and manhood
 3 and pride would not let him back out of it.
 4 And he still wanted to give me a ticket.

5 When the Officer asked me to put my
 6 seat belt on I did the way I was wearing it. I
 7 did not argue with him, I wanted to prove to him
 8 that I was wearing my seat belt. Anybody else
 9 would have said no. And if I was very rude I
 10 would have told him to get lost, but I didn't.

11 I was cooperating with the Officer
 12 at the time showing that I was wearing my seat
 13 belt. And I was wearing it correctly.

14 As the Officer testified, he did not
 15 know what a comfort strap is, how to use it, and
 16 the purpose of it. I do.

17 I want the Commission to look at my
 18 driving record for the last 50 years. I
 19 imagine the State of Ohio has got it. My
 20 license has been here. I have drove all 50
 21 states and Europe, I have never had any problem.

22 I know how to follow the law and I
 23 do follow the law. That is why I am here. As
 24 you see, we have the first preliminary hearing
 25 that they submitted and the lady told me \$100

1 fine, I told her she didn't listen to me.

2 And I told her I wouldn't plead
3 guilty to something I didn't do. When I talked
4 to the young lady over here, when we had
5 the pretrial, the same thing. I will not plead
6 guilty to something I didn't do. I did not do
7 this, I was following the law and I want
8 the Commission to look at all the evidence that
9 was presented today.

10 The Officer could not see the buckle
11 on the beam, which he said he could see the
12 beam. He did not take pictures, which he had
13 ample equipment and training to do that. He had
14 that camera which he could have took the picture
15 of me with that seat belt on.

16 If it was down by my elbow, and he
17 said that might not be the way that I was
18 wearing it, he could have still took a picture
19 to show how I was wearing my seat belt. My seat
20 belt was not down by my elbow. It was across my
21 shoulder with some slack in it. He had a camera
22 and that camera is equipped with video, he could
23 have took pictures or video of it. He could
24 have secured evidence to prove his allegation.
25 He could have proved what he was talking about.

1 This is why this equipment is
2 bought. The dash cam, the body cam and the
3 cameras are all bought to use to prove
4 allegations. Like I said, if I was missing a
5 lug nut, had a flat tire, broken windshield, he
6 would have took a picture.

7 What is the difference, why did he
8 not take a picture of my seat belt if I was not
9 wearing it right. This would prove
10 automatically that I was guilty. But he didn't.

11 Like I said before, he would have
12 took a picture of any other defect to prove that
13 I was guilty. This he did not.

14 The officer made a mistake. He did
15 not want to back off of it. His pride, and
16 that, and me, what he says, but he said I was
17 rude, would not let him back away. And he made
18 sure I got this violation.

19 I told him I would see him in court,
20 he snickered and left away. This has been a
21 long process. And I will not plead guilty to
22 something I didn't do.

23 Thank you for your time.

24 ATTORNEY EXAMINER: Did you have
25 anything else that you wanted to present?

1 MR. GRASS: No. I will keep that to
2 myself.

3 ATTORNEY EXAMINER: Okay. Any
4 cross-examination?

5 MS. FELDKAMP: I have no cross for
6 the witness. Thank you, your Honor.

7 ATTORNEY EXAMINER: Thank you. I
8 don't think -- so let me think. No, I don't
9 think I am going to ask any questions either. I
10 appreciate your testimony. And I think that's
11 it, you are off the stand.

12 And now I think you rest in terms of
13 your presentation?

14 MR. GRASS: Yes, I do.

15 ATTORNEY EXAMINER: So I think both
16 sides have rested. I think that brings
17 the hearing to -- well, go ahead.

18 MS. FELDKAMP: I am sorry. Can I
19 make a closing statement?

20 ATTORNEY EXAMINER: Yes. I was just
21 going to say I think it's done, we have brought
22 the hearing to a close. I guess we will stay on
23 the record.

24 It's possible, I know you are
25 getting ready to leave in the next few days, if

1 the parties wanted to they could file briefs in
2 the case, which basically means you put together
3 some kind of -- I am going to explain it to you
4 because you may not understand what a brief is.
5 I am sure the other side does.

6 But it will be another chance for
7 you to make arguments rather than present
8 evidence that helps the Commission understand
9 what it is that you think you proved here today,
10 and they do the same thing.

11 But rather than do briefs, which
12 adds extra time to the decision and it's a lot
13 of work for you to do, instead of doing that if
14 you want to make an argument about what you
15 think you just proved to the Commission I will
16 allow both sides to make a closing statement,
17 which is basically not testimony, not evidence,
18 but the Commission would consider anything that
19 either side wants to present now as a closing
20 argument that -- and again the most useful
21 closing argument that I would think would be one
22 that helps the Commission understand what it is
23 each side feels they presented and how
24 the Commission should decide the case.

25 So I think because what I am

1 understanding, I don't think the parties have
2 that much interest in doing briefs, but I will
3 allow them if both parties want to do that, but
4 in lieu of briefs I am going to allow before we
5 close today each side beginning with the Staff
6 to make a closing argument in the case.

7 MS. FELDKAMP: Thank you.

8 ATTORNEY EXAMINER: And then after
9 closing arguments then I will bring the hearing
10 to a close. The record will be closed. Go
11 ahead.

12 MS. FELDKAMP: Okay. Today the
13 Staff has shown by a preponderance of the
14 evidence that the driver, Mr. Grass, was in
15 violation of 49 Code of Federal Regulations,
16 Section 392.16, failing to properly wear his
17 seat belt.

18 Inspector Durben has particular
19 expertise in motor vehicle inspections and has
20 prepared a report and testified that the driver
21 violated these sections. Inspector Durben
22 testified that in his professional opinion Mr.
23 Grass was in violation of 49 CFR Section
24 392.16(a) because Mr. Grass was driving a
25 commercial motor vehicle while not wearing his

1 seat belt.

2 This section states "No driver shall
3 operate a commercial motor vehicle and a motor
4 carrier shall not require or permit a driver to
5 operate a commercial motor vehicle that has a
6 seat belt assembly installed at the driver's
7 seat unless the driver is properly restrained by
8 the seat belt assembly."

9 Inspector Durben testified that the
10 violations at issue are safety issues to protect
11 the citizens and travelers of Ohio from
12 accidents that harm property and life.

13 Trooper Durben testified that from
14 his understanding as a qualified expert in the
15 field the violations are valid.

16 Staff witness Rod Moser testified
17 that the forfeiture amount was accurate and
18 consistent with the recommended fine schedule
19 and recommended civil penalty procedure adopted
20 by the Commercial Motor Vehicle Safety Alliance.

21 Staff seeks a civil forfeiture
22 derived from a method nationally authorized by
23 USDOT and used by the Commission. Staff applies
24 the system to everyone.

25 There is case law on this topic.

1 Case No. 08-734 involving Lyden Oil Company and
2 Leslie Bardo. In this case Bardo admits to not
3 wearing a shoulder belt, but claimed that a lap
4 belt was sufficient. While wearing a lab belt
5 the shoulder strap was under the Respondent's
6 arm.

7 In this case the Commission found
8 that if the seat belt is equipped with both a
9 lap and shoulder belt then both must be worn.

10 I would also point the Commission to
11 Case No. 09-1926 involving Rickard. It has a
12 similar opinion.

13 The Commission should find by a
14 preponderance of the evidence that Mr. Grass was
15 in violation of the Code of Federal Regulations
16 Title 49, Section 392.16 because he was not
17 wearing his seat belt properly when he was
18 driving. Thank you.

19 ATTORNEY EXAMINER: Thank you. You
20 don't have to make a closing statement, but if
21 you want to this is your chance.

22 MR. GRASS: I will. I proved today
23 that I was wearing my seat belt; that
24 the Officer was confused at the beginning as
25 when he pulled me over and asked me why I was

1 not wearing my seat belt.

2 And when I told him I was he
3 admitted by saying how were you wearing your
4 seat belt. So he did not know if I was wearing
5 the seat belt or not, but he asked me how I was
6 wearing my seat belt. So he admitted after
7 talking to me that I was wearing my seat belt.

8 Also the officer did not know what a
9 comfort strap was, and how it's used and what he
10 thought was too much slack or not enough. He
11 cannot -- didn't know how the comfort strap is
12 set. And he took it as I was wearing it wrong.

13 I take it as I was wearing it right.
14 When I set my comfort strap for the last 30
15 years of driving, and as I said before, I have
16 been across a thousand scales and I have been
17 past a thousand Troopers on the side of
18 the road, I always bring my comfort strap down
19 and lock it in. I put my hand in between my
20 chest and the strap and I lock the fitting.
21 It gives you about half an inch play, takes the
22 tension off your shoulder.

23 The comfort strap works, when you
24 hit the brakes it releases back into its
25 restraining process.

1 I would also like the Commission to
2 realize that I have been fighting this since the
3 very day that I got this ticket. I called the
4 barracks on the day and asked them to review it.
5 I sent notes and letters to the PUCO. I don't
6 know who has got them, but I sent them on this
7 that I was innocent.

8 February when I was at the
9 conference with the lady I told her that -- I
10 gave her my story and she said that she sided
11 with the Officer. I told her I will not plead
12 guilty to something I didn't do. I did the same
13 thing at pretrial. And the reason is I believe
14 in the justice system to work; that the justice
15 system has to hear everybody.

16 We have equipment that is used to
17 show the evidence. Not one word against the
18 other. We have video evidence, we have cameras.
19 This proves what the Officer is saying or what
20 the witness is saying. Neither one of these
21 were used. The camera was not used to take
22 pictures of me sitting there with the seat belt
23 on.

24 If it was down to my elbow this
25 would be proof that I was wearing it wrong, but

1 it wasn't. This is why I am fighting is because
2 I think the justice, you have to be heard and
3 that we just can't be run over by just one word
4 against the other.

5 And that is why this equipment has
6 been made possible so the officer when he
7 believes what is happening that the court system
8 can see and rule on that. And now they only get
9 half the picture of what really happened out
10 there.

11 I want -- if I was loud, it's
12 because of the traffic out there. It's a long
13 distance down there and it's hard to hear him
14 too. I am a loud person anyhow. I have a deep
15 voice. From that distance and the road traffic
16 I speak up. That is how you hear. Death people
17 speak loud because they can't hear.

18 You have noise from traffic and
19 that. You bring your level of your voice up.

20 I just ask the Commission to look at
21 everything. The Officer said he didn't see the
22 buckle when I went by. He said he could see the
23 pillar. He didn't see the buckle. If he was
24 looking at the pillar where the seat belt was he
25 should have been able to see the chrome buckle.

1 Because he said it wasn't across my strap, the
2 buckle would be right there (indicating), right
3 above my left shoulder. He never said he saw
4 it, and he said he didn't notice it.

5 So, I had my seat belt on. I think
6 I will keep quiet now and let the Commission go
7 on.

8 ATTORNEY EXAMINER: Thank you. And
9 that brings this hearing to a close. Thank you
10 very much.

11 And we will get the decision out as
12 soon as I can, but I do think it will be a while
13 before that happens.

14 (At 11:50 A.M. the hearing was
15 concluded)

16 - - -

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
October 7, 2022, and carefully compared with my
original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

- - -

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

10/31/2022 1:38:05 PM

in

Case No(s). 22-0085-TR-CVF

Summary: Transcript October 7th 2022 In the Matter of David D. Grass, 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.