

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the General Investigation)
of **Eric B. Smith of Paola, Kansas,**) Docket No. 17-GIMM-404-KHP
Pursuant to the Kansas Highway Patrol)
Issuance of a Notice of Violation(s) and)
Invoice for the Violations of the Kansas)
Motor Carrier Safety Statutes, Rules and)
Regulations.)

DIRECT TESTIMONY

OF

TROOPER JOSH WEBER

ON BEHALF OF

THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

August 11, 2017

1 **Q. Please state your full name and business address.**

2 A. Trooper Josh Weber

3 700 SW Jackson, Suite 704, Topeka, Kansas 66603

4 **Q. By whom and in what capacity are you employed?**

5 A. I am employed by the Kansas Highway Patrol as a State Trooper.

6 **Q. Please summarize your educational and professional background.**

7 A. I hold a Bachelors of Science from the Kansas State University. I began my career in law
8 enforcement with the Dickinson CO Sheriff's Department, Dickinson CO, KS in 1996. I
9 completed a part-time law enforcement academy at the law enforcement training center,
10 Hutchison, KS in 1996. After completing my Bachelor's degree in 1998 I was hired by
11 the Kansas Highway Patrol, where I attended the Kansas Highway Patrol academy in the
12 fall of 1998.

13 In training to become a Trooper, I completed 22 weeks of extensive law
14 enforcement training. This training included general law book, driving while intoxicated,
15 accident investigation and all other aspects of law enforcement training. General duties
16 included traffic enforcement, speed enforcement, vehicle safety, accident investigations
17 and driving while intoxicated enforcements.

18 I attended the American Standard Inspection (A-Week) training at the Kansas
19 Highway Patrol Academy in 1998. This training included the general requirements for
20 identifying a commercial vehicle, required commercial vehicle documentation, driver's
21 license requirements, physical requirements of the drivers and extensive training on log
22 books. This certification required on-the-job inspections of at least 32 logbooks.

1 The North American Standard Inspection-B (B-Week) came next. This week-
2 long training included detailed operating systems knowledge and inspection of those
3 systems. The systems in this training included the required lights, windshield and wiper
4 systems, tires, wheels, brake systems, suspension systems, steering systems and required
5 seatbelts. At least eight hours was dedicated to proper securement of numerous types of
6 loads. This certification required on-the-job inspections of at least 32 commercial
7 vehicles. Since the above listed training, I have gone on to complete numerous advanced
8 classes as both student and instructor completing over 3,000 hours of additional training
9 in various fields of law enforcement.

10 **Q. Please explain your duties and responsibilities in your current position.**

11 A. In addition to maintaining public safety by enforcing traffic and other laws of the state of
12 Kansas, I am a MCSAP Trooper responsible for inspecting commercial motor vehicles
13 and enforcing the federal motor carrier laws and regulations.

14 **Q. Have you previously testified before this Commission?**

15 A. Yes.

16 **Q. Please explain circumstances leading to the February 15, 2017, stop and the**
17 **subsequent inspection of the commercial motor vehicle.**

18 A. I was east bound in K-68 and noticed the vehicle, later identified as a 2002 Chevy truck
19 with a 1990 Eagle straight trailer driven by Eric B. Smith, with a load of palatized boxes
20 containing clay shooting targets. There was a total of six pallets, each containing about
21 42 boxes of 90 individual clay targets for a total of approximately 22,000 individual
22 targets. The plastic wrap holding the boxes together was flapping in the wind. February
23 15th was a Wednesday, the time was about 3 PM, I was in an area only four miles from

1 the KS/MO state line and the number of targets appeared to be way more than personal
2 use.

3 **Q. Are you familiar with the challenge raised by Eric B. Smith in this matter?**

4 A. In his request for hearing, Eric B. Smith appears to be contesting the violations on the
5 basis that he was trying to “help out” the gun range that he was hauling the clay pigeons
6 for and his turn signal actually worked.

7 **Q. Did you formally document the February 15, 2017, stop and inspection?**

8 A. Yes. This stop is documented in the Driver/Vehicle Examination Report Number
9 KSHP02550950. A true and correct copy of this report is attached hereto as Weber
10 Attachment “A”.

11 **Q. Please describe the vehicle involved in this stop.**

12 A. The vehicle was a 2002 Chevy truck with City of Wichita plates, VIN ending in “03050”
13 pulling a 1990 Eagle Straight trailer with a Kansas plate 815EMF, VIN ending in
14 “8F111.” The actual weight of the combination by the bill of lading was 19,715 lbs. I
15 was unable to read the federal sticker on the driver’s door of the power unit, but by
16 running the VIN through CMV ID the assigned gross vehicle weight rating was 14,001 to
17 16,000 lbs. The federal certification on the trailer was also missing. I attempted to
18 contact the manufacture of the trailer but was unable to reach them at the time of stop.
19 Through my training and experience, the trailer should have been rated at 14,000 lbs.
20 with a minimum of 10,001 lbs.

21 **Q. Who was the driver operating the vehicle at the time of the stop?**

22 A. The driver was Eric B. Smith.

23 **Q. Why did the vehicle have a license plate from the City of Wichita?**

1 A. When I pulled the vehicle over I noticed the registration showed the vehicle belong to the
2 City of Wichita. I asked Mr. Smith why he had City of Wichita plates and he said that
3 there were some title issues preventing new plates from being issued. I noted there was a
4 sticker visible on the lower driver's side of the windshield with a Purple Wave auction
5 number. I called Purple Wave auction house where the truck had been sold and asked
6 them to look up the truck's auction number and VIN to see if this was true. I was told
7 that the truck was purchased by Mr. Smith in June of 2015 and the title for the truck was
8 picked up from the Manhattan office in August of 2015. Mr. Smith just left the plates
9 from the previous owner on the power unit and, in this case, the previous owner was the
10 City of Wichita.

11 **Q. Can you please explain the Kansas Highway Patrol's authority as it relates to the**
12 **stop and inspection of commercial motor vehicles?**

13 A. K.S.A. 74-2108 gives the Kansas Highway Patrol the authority to require the driver of
14 any motor vehicle operated by any motor carrier to stop and submit to an inspection to
15 determine compliance with the laws, rules and regulations relating to motor carriers.
16 Additionally, K.A.R. 82-4-2a gives the Kansas Highway Patrol the authority to examine
17 motor carrier equipment operating on the highways in Kansas, and examine the manner
18 of the motor carrier's conduct as it relates to the public safety and the operation of
19 commercial motor vehicles in Kansas.

20 **Q. At the time of the stop, how did you determine that the vehicle and its driver were**
21 **subject to the Federal Motor Carrier Safety Administration's (FMCSA) rules and**
22 **regulations?**

1 A. The actual weight of this combination was 19,715 lbs. and the gross combined weight
2 rating of the vehicle was 24,002 lbs., which exceeds the 10,001 pound threshold
3 definition of Commercial Motor Vehicle under K.A.R. 82-4-1 and 49 C.F.R. 390.5 as
4 adopted by K.A.R. 82-4-3f. The combination was a ton and a quarter truck pulling a
5 double axel flatbed trailer. The vehicle was loaded with six pallets about 22,000 clay
6 targets and was hauling this load on a Wednesday afternoon.

7 **Q. Is there any additional information that helped you determine this trip was subject**
8 **to the FMCSA's rules and regulations?**

9 A. Upon speaking with the driver, I was informed that the was traveling from Webb City,
10 MO to Hillsdale, KS, carrying a large load of clay pigeons, indicating this was a for-hire
11 transportation subject to FMCSA and Commission regulation. I spoke with the manager
12 of the gun range by telephone and was told that Mr. Smith often hauls for the range in
13 exchange for free membership and use of the range.

14 **Q. What were the vehicle's origin and destination?**

15 A. The trip originated in Webb City, Missouri, and was destined for Hillsdale, Kansas.

16 **Q. For the sake of clarification, where did the initial stop take place?**

17 A. The initial stop took place on west-bound K-68 highway at mile post 56 in Miami
18 County, Kansas.

19 **Q. What type of inspection did you conduct? Please explain.**

20 A. I conducted a Level I Full inspection. This inspection includes at a minimum,
21 examination of the driver's license, medical examiner's certificate and Skills
22 Performance Evaluation Certificate (if applicable); alcohol and drugs; driver's record of
23 duty status as required; hours of service; seat belt systems; frames; fuel systems; lighting

1 devices (headlamps, tail lamps, stop lamps, turn signals and lamps/flags on projecting);
2 securement of cargo; steering mechanisms; suspensions; tires; van and open-top trailer
3 bodies; wheels, rims and hubs; windshield wipers; emergency exits and/or electrical
4 cables and systems in engine and battery compartments (buses), and Hazardous
5 Materials/Dangerous Goods (HM/DG) requirements as applicable. HM/DG requires
6 items will be inspected by a certified HM/DG inspectors.

7 **Q. Did you identify any out of service violations during the February 15, 2017, Level I**
8 **Inspection?**

9 A. Yes, I identified three (3) out of service violations of motor carrier safety rules and
10 regulations. The violations are as follows:

- 11 1. No/Improper breakaway or emergency braking;
- 12 2. Inoperative turn signal;
- 13 3. No driver record of duty status.

14 **Q. How did you determine the driver had no or improper breakaway or emergency**
15 **braking?**

16 A. I visually observed that the cable was connected to safety chains and not independent of
17 them. In this case if the trailer was to break free of the power unit the breakaway
18 protection would not be activated as required. If the trailer breaks free from the towed
19 unit and the safety chain fails, the breakaway brakes also fail.

20 **Q. Please explain the rule relevant to no or improper breakaway or emergency**
21 **braking.**

22 A. FMCSR 49 C.F.R. § 393.43(d) as adopted by K.A.R. 82-4-3i states:

1 “Every trailer required to be equipped with brakes shall have brakes which apply
2 automatically and immediately upon breakaway from the towing vehicle. With the
3 exception of trailers having three or more axles, all brakes with which the trailer is
4 required to be equipped must be applied upon breakaway from the towing vehicle. The
5 brakes must remain in the applied position for at least 15 minutes.”

6 **Q. How did you determine the vehicle had an inoperative turn signal?**

7 A. I visually observed the turn signals during the walk around section of the inspection. I
8 prompted the driver to activate the turn signal and it did not function. After reviewing
9 the video footage of the stop when I was up at the driver’s window and the driver turned
10 off his tail lights and the turn signal began to function. I was not in a position to observe
11 this when the driver turned off his lights. I also noted that during a later conversation
12 with the driver he stated that he thought the nonfunctioning turn signal was a ground
13 issue. Mr. Smith stated that when he leaves at night, it sometimes takes two miles or so
14 before these lights start working indicating to me the driver is aware there is an electrical
15 problem with these lights.

16 **Q. Please explain the rule relevant to an inoperative turn signal.**

17 A. FMCSR 49 C.F.R. § 393.9(a) as adopted by K.A.R. 82-4-3i states:

18 “All lamps required by this subpart shall be capable of being operated at all times.”

19 **Q. How did you determine the driver did not have any record of duty status?**

20 A. I asked the driver for documents demonstrating his record of duty status and he claimed
21 that because he did not believe he was operating a commercial motor vehicle he did not
22 need to have them. The driver did not claim a short haul provision for his hours of

1 service and stated he did not maintain a time record as required in this provision. The
2 driver was unable to produce the current day's log or previous seven days as required.

3 **Q. Please explain the rule relevant to an inoperative turn signal.**

4 A. FMCSR 49 C.F.R. § 395.8(a) as adopted by K.A.R. 82-4-3a states:

5 "Except for a private motor carrier of passengers (nonbusiness), as defined in 390.5 of
6 this subchapter, a motor carrier subject to the requirements of this part must require each
7 driver used by the motor carrier to record the driver's duty status for each 24-hour
8 period..."

9 **Q. Thank you, Trooper Weber. Does this conclude your testimony?**

10 A. Yes, it does.

11

DRIVER/VEHICLE EXAMINATION REPORT

Kansas Highway Patrol
MOTOR CARRIER SAFETY ASSISTANCE
700 SW Jackson, Ste 704
Topeka, KS 66603
Phone #: (785)298-7189 Fax #: (785)298-2858
truckinspection@khp.ks.gov

Report Number: KSHP02550950
Inspection Date: 2/16/2017 Certification Date: 03/03/2017
Time Started: 15:15 Time Ended: 15:58
Inspection Level: I - Full Inspection
HM Inspection Type: No HM Inspection

ERIC B. SMITH

Driver: SMITH, ERIC B

License #:

State: KS

Date of Birth:

PAOLA, KS 66071

USDOT #:

Phone #:

MC/MX #:

Fax #:

State #: S00000016624

Location: MIAMI COUNTY - 121

MilePost: 57

Highway: K-68

Origin: WEBB CITY, MO

Bill of Lading: 97004

County: MIAMI

Destination: HILLSDALE, KS

Cargo: CLAY TARGETS

Shipper: HILLSDALE RANGE

VEHICLE IDENTIFICATION:

Unit	Type	Make	Year	State	License#	Equipment ID	Unit VIN	GVWR	CVSA #	CVSA Issued #	OOS Stkr.#
1	TR	CHEVY	2002	KS	NONE	1	103050	14,001			
2	ST	EAGLE	1990	KS		1T	111	10,001			

BRAKE ADJUSTMENTS:

Axle #	1	2	3	4
Right	N/A	N/A	N/A	N/A
Left	N/A	N/A	N/A	N/A
Chamber	HYDR	HYDR	ELEC	ELEC

VIOLATIONS :

Vio Code	Section	Unit	OOS	State Citation Number	Verify*	Crash	Violation Description
385.301A	385.301(a)	1	N		N	N	Failing to register with FMCSA to obtain a USDOT number
390.21B	390.21(b)	1	N		N	N	Carrier name and/or USDOT Number not displayed as required; None
391.41A-F	391.41(a)	D	N		N	N	Operating a property-carrying vehicle without possessing a valid medical certificate: None
396.17C	396.17(c)	1	N		N	N	Operating a CMV without proof of a periodic inspection: No stickers or paperwork
396.17C	396.17(c)	2	N		N	N	Operating a CMV without proof of a periodic inspection: No stickers or paperwork
393.95A	393.95(a)	1	N		N	N	No/discharged/unsecured fire extinguisher: None
393.95F	393.95(f)	1	N		N	N	No / Insufficient warning devices: None
395.8A	395.8(a)	D	Y		N	N	No drivers record of duty status: No Log on 2/16/2017 Driver did not have current day, previous 7 and was not recording time for short haul, driver claimed to not need a log
393.9	393.9(a)	1	N		N	N	Inoperable Required Lamp: front center ID and right front clearance INOP
393.43	393.43	2	Y		U	N	Not in proper breakaway or emergency braking: Cable was connected to safety chains and not independent of
393.9TS	393.9(a)	2	Y		U	N	Inoperative turn signal: Left rear turn signal INOP
393.9	393.9(a)	2	N		N	N	Inoperable Required Lamp: Left rear stop light INOP
393.76C	393.76(c)	1	N		N	N	Tire-other tread depth less than 2/32 of inch: #2 axle right side outside tire
393.76B	393.76(b)	1	N		N	N	Tire-front tread depth less than 4/32 of inch: #1 right side at 2/32
393.76B	393.76(b)	1	N		N	N	Tire-front tread depth less than 4/32 of inch: #1 left side at 1/32
392.82A1	392.82(a)(1)	D	N		N	N	Using a hand-held mobile telephone while operating a CMV: When escorting to OOS location driver was talking on cell phone not hands free
392.2RG	392.2	1	N	E001323728	N	N	State vehicle registration or License Plate violation: Vehicle was unregistered

* N - Non-OOS or Driver OOS Violation; U - Unknown

Hazard: No HM Transported,

Placard: NA

Cargo Tank:

Report Prepared By:

Badge #:

Copy Received By:

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J.J. WEBER

0256

SMITH, ERIC B



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KSHP02550950

DRIVER/VEHICLE EXAMINATION REPORT

Kansas Highway Patrol
 MOTOR CARRIER SAFETY ASSISTANCE
 700 SW Jackson, Ste 704
 Topeka, KS 66603
 Phone #: (785)296-7189 Fax #: (785)296-2858
 truckinspection@khp.ks.gov

Report Number: KSHPO2550950
 Inspection Date: 2/15/2017 Certification Date: 03/03/2017
 Time Started: 16:16 Time Ended: 16:58
 Inspection Level: I - Full Inspection
 HM Inspection Type: No HM Inspection

ERIC B. SMITH

Driver: SMITH, ERIC B
 License #: State: KS
 Date of Birth:

PAOLA, KS 66071

USDOT #: Phone #:
 MC/MX #: Fax #:
 State #: S00000016624

Special Checks:

<input type="checkbox"/> Alcohol/Controlled Substance Check	<input type="checkbox"/> Traffic Enforcement	<input type="checkbox"/> Post Crash Inspection
<input type="checkbox"/> Conducted by Local Jurisdiction	<input type="checkbox"/> PASA Conducted Inspection	<input type="checkbox"/> PBBT Inspection
<input type="checkbox"/> Size and Weight Enforcement	<input type="checkbox"/> Drug Interdiction Search	Arrests:
<input type="checkbox"/> EScreening		

Inspection Notes: Was hauling clay targets to State of KS Hillsdale range. Driver stated he gets free membership to range for compensation. This was confirmed with range manager. Truck was purchased on purple wave in June of 2015 (Unit # H8612). Owner stated he had not gotten title. I called purple wave talked to Elaine who confirmed the title was relieved at the Manhattan office on Aug 20th 2015. Driver who is owner also deals in auction items and has large storage area in Hillsdale. Trooper has dealt with him on other occasions and he needs USDOT number for his business. Trooper forgot to add UCRs. Did not put down common authority on this one although he was a common carrier. He is normally a private carrier.

Special Study Fields:

Special Study1:	Special Study6:
Special Study2:	Special Study7:
Special Study3:	Special Study8:
Special Study4:	Special Study9:
Special Study5:	Special Study10:

* Pursuant to the authority contained in Title 49, CFR; K.S.A. 68-1,129; K.C.C. Reg. 82-4-3, I hereby declare ERIC B. SMITH "OUT OF SERVICE". No person and/or carrier shall permit and/or require this driver to operate any commercial vehicle until: Eligibility to drive is re-established. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials _____

* Pursuant to the authority contained in Title 49, CFR; K.S.A. 68-1,129; K.C.C. Reg. 82-4-3, I hereby declare the above marked unit(s) as "OUT OF SERVICE". No person and/or carrier shall permit and/or require the removal of the "OUT OF SERVICE" stickers or the operation of this motor vehicle until ALL out of service defects have been corrected. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials _____

"I" DRIVER: THIS FORM IS REQUIRED TO BE RETURNED TO THE CARRIER BY REGULATION. "I" "CARRIER CERTIFICATION: All defects on this sheet must be corrected or acknowledged PRIOR TO RE-DISPATCH and then certified by a responsible carrier official who must sign below. RETURN THIS FORM WITHIN 15 DAYS to the Motor Carrier Division of the KANSAS HIGHWAY PATROL at the address listed at the top of this form.

Signature of Carrier Official: X Date: _____

* NOTE TO MECHANIC: The undersigned certifies that all mechanical defects listed on this report HAVE BEEN CORRECTED at the time of signature.

Signature of Repairer: X Facility: _____ Date: _____

Report Prepared By:
 J.J. WEBER

Badge #:
 0265

Copy Received By:
 SMITH, ERIC B

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KSHPO2550950

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CERTIFICATE OF SERVICE

17-GIMM-404-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Direct Testimony of Trooper Josh Weber was served via electronic service this 11th day of August, 2017, to the following:

ERIC B. SMITH, OWNER/OPERATOR
ERIC B. SMITH
1406 N PEARL LOT 1
PAOLA, KS 66071
erictheredgerkin@yahoo.com

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov



Vicki Jacobsen