



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF AUTUMN BROWN

CASE NO. 1100054

DESCRIPTION OF VEHICLE: Oldsmobile Alero (OR 696EAF)

DATE OF HEARING: March 30, 2010

APPEARANCES:

Autumn Brown, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Brown appeared at the hearing and testified on her own behalf. Ms. Brown submitted a letter from her husband into the record (Exhibit 14). The Hearings Officer makes this decision based upon the testimony of Ms. Brown and the documents admitted into the evidentiary record, Exhibits 1, 2, 4-10, 11 (page 2, Officer Koolhoven's report) 13-15. The Hearings Officer did not admit documents related to events occurring after the police officer ordered Ms. Brown's vehicle towed, Exhibits 3, 11 (page 1, Officer James' report) and 12.

Ms. Brown stated that her husband, Marcus Bolds, was the driver of her vehicle on March 24, 2010. Ms. Brown appealed the March 24, 2010 tow of her vehicle (Exhibit 1). In his letter (Exhibit 14), Mr. Bolds stated that on March 24, 2010, while he was driving, he came upon a traffic accident. Mr. Bolds stated that he slowed the vehicle down and came to a stop. Mr. Bolds noticed, according to his letter, a person standing on the side of the roadway who asked Mr. Bolds a question. Mr. Bolds responded with "is everything alright?" Mr. Bolds stated that the person then showed him a police badge and ordered him to exit the vehicle. Mr. Bolds said that a uniformed police officer approached him and asked him if he had been drinking, to which he replied that he had not been drinking. Mr. Bolds stated that the uniformed police officer told him that he smelled of alcohol. Mr. Bolds stated that he was asked to perform tests.

Ms. Brown's testimony related one or more conversations she had with her husband, Marcus Bolds. Ms. Brown stated that she was not present on March 24, 2010 when her husband was taken into custody and her vehicle towed. Ms. Brown stated that her husband informed her that while driving in the "fast lane" on the freeway he observed flares and he brought the vehicle to a stop. Ms. Brown stated her husband told her that one car was parked directly in front of where he stopped. Ms. Brown stated that a person, not in uniform, came back to Mr. Bolds' location and Mr. Bolds told the person to have the car in front of him move. Ms. Brown stated that her husband told her that the person who talked with him called to a uniformed police officer who walked to his location. Ms. Brown stated that Mr. Bolds told her that the uniformed officer told him that his eyes were bloodshot. Ms. Brown stated that Mr. Bolds told her that he had consumed one beer about 11:00 a.m. Ms. Brown said that her husband told her that he performed tests for the police officer and "everything was negative." Ms. Brown stated that Mr. Bolds has a blood disorder that causes Mr. Bold's eyes to always be red and bloodshot.

Police Officer Koolhoven submitted a written report (Exhibit 11, page 2) Officer Koolhoven's report included the following information:

- Mr. Bolds had driven Ms. Brown's vehicle into flares that were placed around the scene of a traffic accident on the freeway; and
- Her observations of/that:
 - Mr. Bolds' eyes were very red
 - Mr. Bolds was "dazed looking"
 - Smell of "moderate odor of an alcoholic beverage emanating from him"
 - Mr. Bolds "swayed slightly while he stood"
 - Performance of HGN test, two times, resulted in "four of six clues"
 - Mr. Bolds passed a balance test.

Ms. Brown's vehicle was towed on March 24, 2010 for allegedly violating Portland City Code ("PCC") 16.30.220 K.4. A violation of PCC 16.30.220 K.4 occurs if a police officer has probable cause to believe that a person was operating a vehicle while intoxicated (violation of ORS 813.010). The Hearings Officer finds the statements made by Officer Koolhoven credible. The Hearings Officer finds no disagreement between Ms. Brown's testimony and Officer Koolhoven regarding Mr. Bolds' eyes appearing red. The Hearings Officer finds Ms. Brown's testimony and Officer Koolhoven's statements disagree that Mr. Bolds drove over flares. The Hearings Officer finds Mr. Bolds' statement and Officer Koolhoven's statement disagree as to whether Mr. Bolds "passed" the field administered "tests." The Hearings Officer finds Mr. Bolds attempted to explain Officer Koolhoven's statement that she smelled an alcoholic beverage odor on Mr. Bolds; he stated that Officer Koolhoven smelled alcohol on another person who was seated in the back of a police car. The Hearings Officer finds that Mr. Bolds did not dispute that he "swayed slightly when he stood." The Hearings Officer finds that Mr. Bolds did not deny Officer Koolhoven's observation that he appeared "dazed looking."

The Hearings Officer finds, based upon the statements and testimony that Mr. Bolds, on March 24, 2010, did drive across flares marking an accident, his eyes were very red, he was "dazed looking," he swayed slightly while he stood, during two separate HGN tests there were four of six clues, and Mr. Bolds emitted a moderate smell of alcoholic beverage. The Hearings Officer finds that probable cause exists if a police officer has a substantial objective basis for believing that it is more likely than not that an offense has been committed, and the person to be arrested committed it. ORS 131.005 (11). The Hearings Officer finds that there are sufficient objective factors to provide Officer Koolhoven, prior to the ordering of Ms. Brown's vehicle towed, a subjective basis that Mr. Bolds had operated Ms. Brown's vehicle while intoxicated (violation of ORS 183.010). The Hearings Officer finds that Officer Koolhoven followed the relevant laws/rules, in particular PCC 16.30.220 K.4., and the tow is valid.

It is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.

This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: March 31, 2010
GJF:rs/cb



Gregory J. Frank, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 5412

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Brown, Autumn	Received
2	Notice of Impoundment Towing	Brown, Autumn	Received
3	Breath Test Report	Brown, Autumn	Rejected
4	Receipts	Brown, Autumn	Received
5	Tow Desk printout	Hearings Office	Received
6	Hearing Notice	Hearings Office	Received
7	Tow Hearings Process Info. sheet	Hearings Office	Received
8	Oregon Vehicle Certificate of Title	Brown, Autumn	Received
9	Towed Vehicle Record	Police Bureau	Received
10	Vehicle Release	Police Bureau	Received
11	Special Report	Police Bureau	Rejected Pg.1
12	Breath Test Report	Police Bureau	Rejected
13	Notice of Impoundment	Police Bureau	Received
14	Notarized letter from husband	Brown, Autumn	Received
15	Proof of Ownership letter	Hearings Office	Received