



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

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HEARINGS OFFICER'S ORDER

APPEAL OF MABLE SMITH

CASE NO. 1100002

DESCRIPTION OF VEHICLE: Ford Escort (OR 592DBG)

DATE OF HEARING: January 7, 2010

APPEARANCES:

Ms. Mable Smith, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Smith appeared and testified at the hearing. Mr. Gerald Burell appeared at the hearing and testified as a witness for Ms. Smith. The Hearings Officer makes this decision based upon the testimony of Ms. Smith and Mr. Burell and the documents admitted into the evidentiary record (Exhibits 1 through and including 21). The Hearings Officer noted to Ms. Smith that many of the documents admitted related, in part or entirely, to events that occurred after the police officer ordered her vehicle towed and that the Hearings Officer would place very little reliance, or no reliance, on those documents (or portions of documents) in reaching a decision in this case. Documents falling into this category included Exhibits 12, 15, 16, 17, 18, 19, 20, and 21.

Ms. Smith testified that Mr. Burell's intoxilizer test results were .03 indicating Mr. Burell was not intoxicated. Ms. Smith testified that it was her understanding that the intoxilizer test was given to Mr. Burell at the location of the traffic stop and before the vehicle was ordered towed. Ms. Smith also testified that it was her understanding that there was another licensed driver at the traffic stop scene who could have driven the car and thereby avoiding the tow.

Mr. Burell testified that after he left a "club" he drove Ms. Smith's vehicle in a manner so that he could catch up with "friends" who were in another car. Mr. Burell stated that when he did catch up to the "friends" he was stopped in the bike lane next to the "friends" car. Mr. Burell stated the police stopped him at that location, he was arrested and taken to jail where he took the intoxilizer test; and passed.

The Hearings Officer asked Mr. Burell if he had any disagreements with the second, third, fourth and fifth full paragraph on page 2 of 3 on Exhibit 10. Mr. Burell stated the police officer's comments in the second paragraph (starts "The vehicle continued Northbound...") were accurate. Mr. Burell disagreed with two statements made by the police officer in the third paragraph (starts "After the traffic light turned green..."). Mr. Burell stated that he was not mumbling and that it did not take him three attempts to recover his driver's license from his wallet. Mr. Burell disagreed with two statements made by the

police officer in the fourth paragraph (starts "I told Burell I could smell an odor of alcoholic beverage..."). Mr. Burell stated that he did not tell the police officer he was coming from the 720 club and that he told the officer he had been drinking "earlier in the day." Mr. Burell disagreed with one statement made by the police officer in the fifth paragraph (starts "I checked Burell's status..."). Mr. Burell stated that at the time of the traffic stop he did not know his license had been suspended.

Mr. Burell testified that the vehicle that he wanted to catch up with had one or more licensed drivers that could have driven Ms. Smith's vehicle, avoiding it being towed. Mr. Burell also stated that he did not mention that fact to the police officer and the persons in the other vehicle did not get out of their vehicle and communicate with the police officer.

Ms. Smith's vehicle was towed, on December 26, 2009, on the basis that the operator, Mr. Burell, was driving under the influence of intoxicants (ORS 813.010) and driving recklessly (ORS 811.140).

The Hearings Officer must find a tow valid if the Hearings Officer finds that the person ordering the tow followed the relevant laws/rules. In this case the relevant laws/rules are found in the Portland City Code ("PCC") Title 16. The specific sections of PCC Title 16 that are relevant to this case are found in PCC 16.30.220 K.4. and K.7. PCC 16.30.220 K states that a police officer may order a vehicle towed and held at the owner's expense, without prior notice, if the police officer has probable cause to believe that the operator of the vehicle was driving under the influence of intoxicants (PCC 16.30.220 K.4.) and/or was driving recklessly (PCC 30.220.K 7.)

The Hearings Officer finds that the statements made by the police officer in Exhibit 10 regarding observations of Mr. Burell's driving on December 26, 2009 are credible and accurately reflect the events leading up to the traffic stop of Ms. Smith's vehicle. Mr. Burell did not deny the police officer's statements regarding his driving activities before being stopped. Mr. Burell admitted that he was driving in a manner so that he could catch up with his "friends" and when he finally stopped, the car was in a bike lane.

The Hearings Officer finds that the police officer who ordered Ms. Smith's vehicle towed had probable cause to believe Mr. Burell drove Ms. Smith's vehicle, on December 26, 2009, in violation of ORS 811.140.

The Hearings Officer finds that Mr. Burell did dispute the police officer's statements that he mumbled and took three attempts to retrieve his driver's license. However, the Hearings Officer also finds that Mr. Burell did not dispute the police officer statements (Exhibit 10) related to a strong odor of alcohol, Burell's eyes were red and watery, admission of Burell that he had consumed alcoholic beverages, and problems Burell had with performing field sobriety tests. The Hearings Officer finds that Mr. Burell's driving behavior prior to the traffic stop, his admission of consuming alcohol earlier, the smell of alcohol, and Mr. Burell's red and watery eyes were sufficient to give the police officer probable cause that Mr. Burell was driving under the influence of intoxicants.

The Hearings Officer finds that the police officer who ordered Ms. Smith's vehicle towed had probable cause to believe that Mr. Burell, the operator of Ms. Smith's vehicle on December 26, 2009, had violated ORS 813.010.

The Hearings Officer finds that Ms. Smith's vehicle was parked in an unlawful location (over a bike lane) when stopped on December 26, 2009 by the police officer.

The Hearings Officer finds that the police officer who ordered Ms. Smith's vehicle towed on December 26, 2009 followed the relevant rules/laws. The Hearings Officer finds the tow of Ms. Smith's vehicle on December 26, 2009 is valid.

Ms. Smith testified that her vehicle was no longer in storage; it had been released to her possession.

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: January 8, 2010
GJF:rs


Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 25542

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Smith, Mable	Received
2	Receipt and letter	Smith, Mable	Received
3	Circuit Court Misdemeanor Judgment	Smith, Mable	Received
4	Tow Desk printout	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Tow Hearings Process Info. sheet	Hearings Office	Received
7	Fax cover sheet w/copies of Exh. 1-3 only	Police Bureau	Received
8	Towed Vehicle Record	Police Bureau	Received
9	LED printouts (2 pgs)	Police Bureau	Received
10	Custody Report	Police Bureau	Received
11	Special Report (Non-Connect)	Police Bureau	Received
12	Continuation Report	Police Bureau	Received
13	Notice of Impoundment	Police Bureau	Received
14	Field Sobriety Test Report	Police Bureau	Received
15	DUII Interview Report	Police Bureau	Received
16	Implied Consent	Police Bureau	Received
17	Intoxilyzer 8000 Checklist	Police Bureau	Received
18	Breath Test Reports (3 pgs/appear to be similar/identical)	Police Bureau	Received
19	Driver's license for Mable Smith	Police Bureau	Received
20	Police Bureau Formal Hold form	Police Bureau	Received
21	Vehicle Release	Police Bureau	Received