



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

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HEARINGS OFFICER'S ORDER

APPEAL OF ELISE ORBAN

CASE NO. 1100081

DESCRIPTION OF VEHICLE: Lexus RX300 (OR XQK051)

DATE OF HEARING: May 13, 2010

APPEARANCES:

Mrs. Elise Orban, Appellant

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

Mrs. Elise Orban appeared at the hearing and testified on her own behalf. Mr. George Orban also appeared and testified. No one appeared on behalf of the City. The Hearings Officer makes this decision based on substantial evidence upon the record as a whole, which includes the testimony of Mr. and Mrs. Orban, and the documents admitted into evidence (Exhibits 1 through and including 14).

Summary of Evidence:

Mrs. Orban testified that her son Jeremy was driving the above vehicle, turned on a red light, and was subsequently pulled over and arrested. Mrs. Orban explained that her son was young, had never been in trouble and was incredibly nervous when he got pulled over. Mrs. Orban testified that her son attempted to provide the officer with the registration and proof of insurance card for the vehicle, but the officer refused to accept the entire envelope, threw it back at him and told him he did not have time to look. Mrs. Orban testified while there were outdated proof of insurance cards in the envelope, it also contained the most current card, but her son was nervous and the officer did not give him enough time to produce it. Mrs. Orban also testified that her son and his friends had just returned from swimming, so their eyes were red. Mrs. Orban admitted Exhibit 13, which is a copy of the breathalyzer test later administered to her son, which indicates his blood alcohol content was 0.00% BAC. The Hearings Officer admitted this document solely for the purpose of determining the credibility of the witness's testimony. In her letter requesting a tow hearing, Exhibit 1, Mrs. Orban also states that while calling to locate their car with the City after this incident, they were told that the "arresting officer called to correct the record that the vehicle seizure had nothing to do with DUI."

Mr. Orban testified that what is not in the police report of the incident is how it was handled. He testified that four other officers were called to the scene and that his son's cell phone was taken away so he could not call home. Mr. Orban testified that he and his wife lived very close to the location where his son was pulled over, and he could have responded within 5 minutes. Mr. Orban contends that the officers were very aggressive and hostile toward his son, making him very nervous. Mr. Orban also testified that the proof of insurance was in the vehicle.

The Portland Police Bureau submitted a report from Officer Timothy G. Engstrom, Exhibit 9. This report indicates Jeremy Orban is 19 years old. The officer reports that after pulling over the vehicle for turning on a red light, where it is posted that such a turn is prohibited, he approached the vehicle and asked the driver, Jeremy Orban, to provide the registration and proof of insurance. Officer Engstrom states Jeremy held up a plastic holder full of paperwork and tried to hand it to him, but he asked him to remove the proof of insurance card and hand that to him. Officer Engstrom reports Jeremy handed him two pieces of paper from this folder from Safeco Insurance indicating coverage, but both were expired. The officer states he asked if Jeremy had current insurance and Jeremy told him he didn't think so. Officer Engstrom also reports the smell and odor of alcohol coming from Jeremy. He noticed his eyes were red and watery and that his speech had a slight slur. Jeremy refused to answer the officer's question about whether or not he had been drinking, but offered to take some field sobriety tests. Officer Engstrom then writes: "Officer Goodrich arrived and took over the investigation (see his report for details). After the SFST's, Officer Goodrich took Orban into custody and placed him in the rear seat of my patrol car." There is no report in the record from Officer Goodrich with details on the results of the field sobriety tests. The Bureau also submitted Exhibit 6, a Towed Vehicle Record, and at the top of this form the violation indicated is "PRIS PROP/DUII", however "DUII" has been lined through. There is no other information in the PPB reports or on the record to indicate the basis for the tow in this case.

Applicable Law:

The Hearings Officer must find a tow is valid if the person ordering the tow followed the relevant laws/rules. In this case, it is not clear from the record why the police officer ordered the tow, however, it appears from Officer Engstrom's report and Exhibit 6, that it was based on PCC 16.30.220K1 or PCC 16.30.220K4. PCC 16.30.220K1 permits a police officer, without prior notice, to order a vehicle towed when the officer has probable cause to believe that the vehicle's operator has committed the offense of driving uninsured in violation of ORS 806.010. ORS 806.010 requires any person who operates a motor vehicle in the state on any highway or public premises to be insured. ORS 806.011 requires proof of insurance be carried in each motor vehicle operating in the State. In addition, it states, "Failure of the driver of a motor vehicle to show a valid card or other proof of compliance when asked to do so by a police officer is reasonable grounds for the officer to believe that the person is operating the vehicle in violation of ORS 806.010." Additionally, PCC 16.30.220K4 permits a police officer, without prior notice, to order a vehicle towed when the officer has probable cause to believe that the vehicle's operator is driving while under the influence of intoxicants (ORS 813.010).

Findings of Fact and Conclusions of Law:

If the tow was based on PCC 16.30.220K1, which again is not clear from the record, the Hearings Officer finds, based on the credible testimony of Mr. and Mrs. Orban, that mirrors most of the facts and circumstances as reported in Officer Engstrom's report, that Officer Engstrom did not have probable cause to believe Jeremy Orban was driving uninsured. Based on the testimony of the Orban's, the Hearings Officer finds it credible that the current insurance card was in fact in the vehicle and in the envelope Jeremy attempted to hand to the officer. The Hearings Officer finds it credible that Jeremy was nervous after having been pulled over and that he attempted to provide all relevant documents to the police officer. The Hearings Officer finds it reasonable that Jeremy could have produced the current insurance information for his mother's vehicle if the officer had given him further time to review the documents in the envelope, or reviewed the documents himself. Therefore, the Hearings Officer finds based on the evidence in the record, and under these specific circumstances, that Officer Engstrom did not have probable cause to think Jeremy Orban was driving uninsured.

If the tow was based on PCC 16.30.220K4, the Hearings Officer also finds, based on the evidence in the record, that Officer Engstrom did not have probable cause to believe that Jeremy Orban was driving while intoxicated. While his report does mention the smell of alcohol, that Jeremy's eyes were red and watery, and that he was shaking and had a slight slur, the Hearings Officer does not find these observations alone enough to amount to

probable cause for DUII. It is unclear from Officer's Engstrom's report the result of the field sobriety tests. Officer Engstrom's report mentions the details are in another officer's report, but that report is not a part of this record. Had the results of this test been included in the record, providing evidence of a failed field sobriety test, the Hearings Officer may have been able to find the tow was valid because the officer had probable cause to believe Jeremy was DUII. However, with no further evidence in the record of Jeremy's intoxication, other than a breathalyzer test that indicates just less than 2 hours after having been arrested his BAC was 0.00%, which supports the credibility of Ms. Orban's testimony that her son was simply nervous and had red eyes from swimming, the evidence does not support such a conclusion.

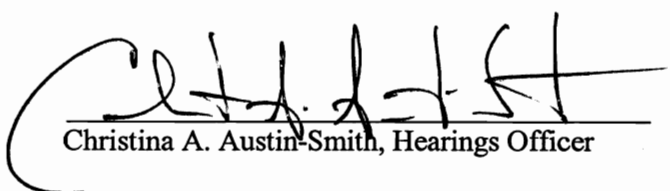
Accordingly, the Hearings Officer finds, based on the evidence in the record, that there was no probable cause to suspect the driver was uninsured or intoxicated, therefore the tow without prior notice was not valid under PCC 16.30.220K1 or 4.

Order:

Therefore, the Hearings Officer finds that the owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

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

Dated: May 17, 2010
CAAS:rs/cb


Christina A. Austin-Smith, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 8498

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Orban, Elise	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing request letter (slightly different than Exh. 1)	Orban, Elise	Received
4	Hearing Notice	Hearings Office	Received
5	Tow Hearings Process Info. sheet	Hearings Office	Received
6	Towed Vehicle Record	Police Bureau	Received
7	Data printouts (3 pgs)	Police Bureau	Received
8	Citation	Police Bureau	Received
9	Custody Report for Nathan Greenberg by Officer Engstrom (3 pgs)	Police Bureau	Received
10	Custody Report for Jack Rossing by Officer Engstrom (3 pgs)	Police Bureau	Received
11	Custody Report for Christopher Allport by Officer Engstrom (3 pgs)	Police Bureau	Received
12	Special Report for Jeremy Orban by Officer Engstrom (3 pgs)	Police Bureau	Received
13	Breath Test Report	Orban, Elise	Received
14	Receipt	Orban, Elise	Received