



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF NORMA JEAN SCOTT

CASE NO. 1080197

DESCRIPTION OF VEHICLE: Cadillac DeVille (OR 599BDE)

DATE OF HEARING: August 5, 2008

APPEARANCES:

Ms. Norma Jean Scott, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

The Hearings Officer, on substantial evidence and based upon the record as a whole, and receiving Exhibits 1 through 29 into the record without objection, finds as follows:

Ms. Scott appeared and testified on her own behalf. Ms. Scott submitted two affidavits in support of her case (Exhibits 28 and 29). The Hearings Officer makes this decision based upon the testimony of Ms. Scott and the exhibits admitted into the evidentiary record.

The Hearings Officer takes note of Exhibit 22, a Traffic Violation Tow Report, and Exhibit 24, an Oregon Uniform Citation and Complaint. The Hearings Officer also notes that Exhibit 22 states, under "Classification" that the vehicle was towed for "SPD racing, Ins." Further down Exhibit 22 it states "Tow Charge(s) (check all that apply)" the only box checked is Speed Racing. On the back page of Exhibit 22 none of the blocks relating to driving uninsured are checked. Exhibit 28, an affidavit of the driver of the vehicle, states that "there was car insurance and he provided it to the officer. The officer replied that he would remove the non-insurance from the ticket and towing papers." Exhibit 24, the Citation, indicates two violations: speed racing and driving uninsured. The Hearings Officer finds the only narrative evidence in the record regarding insurance or lack thereof is provided by the driver (Exhibit 28) and passenger in the car (Exhibit 27). The Hearings Officer finds that there is no evidence in the record to support the officer having the vehicle towed for lack of insurance.

Exhibit 24, the Citation, states in the issuing officer's affidavit (where it is readable) the following:

"I was s/b MLK ->e/b Kill. Subject w/b Kill E/of MLK. Large group standing corner. Started talking to the driver. Light turned green but (SB) waited. Then started spinning/squelling tires. Turned to n/b MLK. Stopped. Said care fuel injected. Dry/warm. Showing off for people."

Ms. Scott testified that her vehicle has a problem with the accelerator causing it to "jump" if the driver is not careful. She stated she had a mechanic fix the problem after it was towed. The driver and passenger, in their affidavits (Exhibits 28 and 29) agreed that when the car stopped there was a group of people at the corner and that the passenger asked for directions. The driver and passenger also agreed that when the car left the corner it did so

quickly (the "car jumped"). The driver and passenger stated that the driver immediately took his foot off the gas pedal and the car slowed.

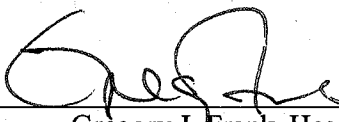
ORS 811.125, in part states that a person commits the offense of speed racing if the person drives a vehicle in such a manner as to be an "exhibition of speed or acceleration." The Hearings Officer finds that the police officer's affidavit describes conduct which, without any testimony from the driver and passenger, could possibly be considered as probable cause to believe that the driver was engaged in an exhibition of speed or acceleration. However, the statements by the owner, driver, and passenger all indicate that the vehicle had a mechanical problem that, for an inexperienced driver, could cause the vehicle to "jump." Further, the Hearings Officer finds that the police officer's affidavit states that the driver told the police officer that the vehicle was "fuel injected" suggesting that the vehicle may have been the problem. The Hearings Officer finds that although intent is not identified as a specific element of the crime of speed racing, that some element of intent is necessary to constitute a violation of the statute. For example, if a vehicle is in the sand and a person "spins" the wheels to free the vehicle, the Hearings Officer would not find speed racing. If a person is driving up a steep West Hills street and spins the wheels, the Hearings Officer would not find a violation of ORS 811.125. The Hearings Officer finds that inherent in the word "exhibition" is intent to show off. In this case, the Hearings Officer finds that the driver of the towed vehicle was not attempting to show off, but rather was an inexperienced driver of a vehicle with a mechanical peculiarity.

The Hearings Officer finds that the police officer did not have probable cause to believe that the driver of the towed vehicle was speed racing. Therefore, the Hearings Officer finds the tow not valid.

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: August 6, 2008
GJF: rs



Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 19176

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 2 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Scott, Norma Jean	Received
2	Benefit Amount	Scott, Norma Jean	Received
3	Receipt	Scott, Norma Jean	Received
4	Nationwide Ins. Co. Auto Policy	Scott, Norma Jean	Received
5	Passenger Registration Card	Scott, Norma Jean	Received
6	Notice of Impoundment Towing	Scott, Norma Jean	Received
7	Tow Desk printout	Hearings Office	Received
8	Hearing Notice	Hearings Office	Received
9	Tow Hearings Process Info. sheet	Hearings Office	Received
10	Letter requesting reschedule	Scott, Norma Jean	Received
11	Duplicate copy of Exh. 8	Scott, Norma Jean	Received
12	Copy of fax from Legacy Health System/Lori Farrell, MD	Scott, Norma Jean	Received
13	Legacy Health System data printout	Scott, Norma Jean	Received
14	Legacy Health System Staff Orders & Patient Instructions	Scott, Norma Jean	Received
15	Conditions of Patient Registration	Scott, Norma Jean	Received
16	Disposal Release Form from Rivergate Vehicle Storage	Scott, Norma Jean	Received
17	Meineke Car Care Center Check Report	Scott, Norma Jean	Received
18	Rescheduled hearing notice	Hearings Office	Received
19	Copy of appellant's fax confirmation of hearing reschedule request	Scott, Norma Jean	Received
20	Reschedule request from Dr. Farrell	Scott, Norma Jean	Received
21	Towed Vehicle Record	Police Records	Received
22	Traffic Violation Tow Report	Police Records	Received
23	Notice of Impoundment Towing	Police Records	Received
24	Citation	Police Records	Received
25	Driver's License	Police Records	Received
26	Vehicle Release	Police Records	Received
27	Hearing Notice	Hearings Office	Received
28	Affidavit from Marquise R. Harris	Scott, Norma Jean	Received
29	7/26/08 letter from Jonathan J. Scott	Scott, Norma Jean	Received

