CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF JENNA L. GARSKE

CASE NO. 1080214

DESCRIPTION OF VEHICLE: Toyota Sequoia (OR 310BLK)

DATE OF HEARING: August 12, 2008

APPEARANCES:

Mr. Alex Hamalian, Attorney for the Appellant

HEARINGS OFFICER: Mr. Ian Simpson

The Hearings Officer, on substantial evidence and based upon the record as a whole, and receiving Exhibits 1-16, 18-23, and 26-28 into the record without objection, finds as follows:

Mr. Hamalian made objections to several exhibits. The Hearings Officer did not receive Exhibits 17, 24 and 25 into the record based on their not being relevant or being unduly repetitiousness.

The towing officers' reports stated that the appellant's vehicle was towed because the appellant was driving while under the influence of intoxicants. Officer Delenikos' report (Exhibit 10) stated that he was told by witness Helbig that Helbig was waiting in a Taco Bell drive-thru line when he saw the subject vehicle pass him and try to cut into the drive-thru line. Helbig said he watched as the driver, later identified as the Appellant, kept nodding off as if passing out. Helbig said that the Appellant got out of her vehicle, went to the driver's side of witness Tudella's vehicle, and attacked her. Helbig said that his friend Seth then took advantage of the Appellant not being in her vehicle and parked it, legally, on the street. Officer Delenikos then spoke with witnesses Rossi and Baranzano, whose versions of the incident were exactly the same as Helbig's.

Officer Weinberger's report (Exhibit 15) stated that he spoke with the Appellant. The officer stated that he smelled the odor of alcoholic beverages on her breath, she had very watery/bloodshot eyes, which were very red, and her speech was slurred. The Appellant told the officer that her vehicle was stolen. The Appellant failed three field sobriety tests the officer gave her to perform. When the officer asked the Appellant to take a breath test, the Appellant stated that she was not driving the vehicle and should not have to take the breath test. In the DUII Interview Report, the Appellant stated that she did not know who was driving her vehicle.

Mr. Hamalian suggested that there was little or no evidence that the Appellant was driving the vehicle, and that the Appellant's statements were more reliable than the officers' and witnesses statements based on the hearsay rules. Mr. Hamalian provided citations for three Oregon appellate cases which discuss the hearsay rules. The Hearings Officer examined these cases and found that they were not useful in this case. Hearsay

evidence is "second-hand" evidence – statements made by one person of what another person said. The officers' reports of their own observations are not hearsay, but are more akin to affidavits. The officers' reports of what the witnesses told them are hearsay. The Appellant's statement in Officer Weinberger's report is hearsay, while her statement in the DUII Interview Report is not hearsay.

The burden of proof is on the city to show that the officers had probable cause to believe that the Appellant was driving while under the influence of intoxicants. Since Mr. Hamalian raised the issue, the burden is also on the city to show that the Appellant was driving the vehicle. The Hearings Officer finds that Officer Weinberger's report concerning the Appellant's physical condition and behavior, coupled with the witness statements from Officer Delenikos' report concerning the Appellant's conduct, is ample evidence that she was intoxicated.

As to whether the Appellant was driving her vehicle, witness Helbig told Officer Delenikos that he saw the Appellant driving the vehicle and nodding off in it. The Appellant admitted to being in the vehicle, but denied driving it and said that she did not know who was driving it. The Appellant's statement that she was in her vehicle but was not driving it and did not know who was driving it is extremely implausible, and the Hearings Officer finds that she is most probably not being truthful. The Hearings Officer finds that more probably than not, the Appellant was driving the vehicle while intoxicated.

Given these circumstances, this was a valid tow. Please note the relevant city code sections below concerning this matter.

16.30.220 Towing Without Prior Notice.
(Amended by Ordinance Nos. 165980, 170912, 176352, and 176442, effective May 1, 2002.) Any authorized officer may, without prior notice, order a vehicle towed, when:

K. A police officer has probable cause to believe that the vehicle's operator has committed any of the following offenses:

4. Driving while under the influence of intoxicants (ORS 813.010);

Therefore, 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: August 22, 2008
IS: cb/rs

Ian Simpson, Hearings Officer

Bureau: Police
Tow Number: 20257

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Hamalian, A. Alexander	Received
2	Tow desk report	Hearings Office	Received
3	Hearing notice	Hearings Office	Received
4	Tow hearing info. sheet	Hearings Office	Received
5	Towed Vehicle Record	Police Records	Received
6	Release Form	Police Records	Received
7	Greg Garske Driver's License	Police Records	Received
8	Vehicle Release	Police Records	Received
9	Investigation Report	Police Records	Received
10	Custody Report	Police Records	Received
11	Fingerprints	Police Records	Received
12	FBI Criminal Justice Information Services Division	Police Records	Received
13	Custody Report	Police Records	Received
14	Citations	Police Records	Received
15	Special Report	Police Records	Received
16	Multnomah Circuit Court Affidavit of Probable Cause	Police Records	Received
17	Photos	Police Records	Rejected
18	Notice of Impoundment Towing	Police Records	Received
19	Implied Consent	Police Records	Received
20	Field Sobriety Test Report	Police Records	Received
21	DUII Interview Report	Police Records	Received
22	Intoxilyzer 8000 Operator's Checklist	Police Records	Received
23	Breath Test Report	Police Records	Received
24	Citations	Police Records	Rejected
25	Property/Evidence Receipt	Police Records	Rejected
26	Request to reschedule	Hamalian, A. Alexander	Received
27	Hearing Notice	Hearings Office	Received
28	Updated Mailing List	Hearings Office	Received