



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF DEREK MCCULLOCH

CASE NO. 1080219

DESCRIPTION OF VEHICLE: Toyota Tacoma (OR ZXY926)

DATE OF HEARING: July 31, 2008

APPEARANCES:

None

HEARINGS OFFICER: Mr. Gregory J. Frank

The Hearings Officer, on substantial evidence and based upon the record as a whole, finds as follows:

Mr. Mcculloch was contacted by telephone on July 29, 2008 by a hearings clerk and informed of the hearing date, time and place. Mr. Mcculloch contacted the hearings office at approximately 2:00 pm on July 31st; within 1 hour of the scheduled hearing date/time. Mr. Mcculloch requested his hearing be rescheduled/postponed because he was driving on I-5 in the vicinity of Salem, Oregon. The Hearings Officer denies Mr. Mcculloch's request to postpone/reschedule his hearing. The Hearings Officer finds that Mr. Mcculloch's request was not timely received.

The Hearings Officer makes this decision based upon the exhibits admitted into the evidentiary record (Exhibits 1 through and including 30).

In Mr. Mcculloch's request for a hearing he stated that "I believe the tow was invalid when I was pulled over I was in front of my residents where I usually park my vehicle." (Exhibit 1).

Mr. Mcculloch's vehicle, according to the City, was towed for "Driving Under the Influence (DUII)." (Exhibit 11). Portland Police Officer Fleming's written report (Exhibit 19) states, in part, that on July 22, 2008 at approximately 10:56 in the evening, he observed a Toyota Tacoma pickup (Oregon Plate ZXY926). Officer Fleming's report stated that he observed the vehicle drifting towards parked cars and then make last second corrections. Officer Fleming observed the vehicle turn east on SE Tibbets Street without signaling. Officer Fleming stated that Mr. Mcculloch appeared to have a dazed expression, watery eyes and slurred speech. Mr. Mcculloch admitted, according to the Fleming report, that he had

"one beer." Portland Police Officer Sessum assisted Officer Fleming and noted, in his/her report (Exhibit 10), that he/she smelled a "moderate odor of alcoholic beverage" on Mr. McCulloch's breath.

The Hearings Officer will find a tow valid if the Hearings Officer finds that the officer ordering the tow followed the relevant rules/laws/procedures. In this case the relevant law is Portland City Code 16.30.220 K.4. This section of the Code allows a police officer to order a vehicle towed, without prior notice, if the police officer has probable cause to believe that the vehicle's operator was driving while under the influence of intoxicants (ORS 811.010). ORS 131.005 (11) defines probable cause as when "there is a substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it."

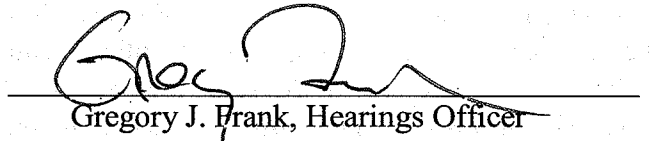
The Hearings Officer finds there is an objective basis for the police officer to believe Mr. McCulloch was driving under the influence of an intoxicant (alcohol). The police officers' observations of Mr. McCulloch driving (swerving and drifting in such a manner to come in close proximity to parked cars and failure to signal prior to a turn movement), his watery eyes, dazed expression, problems with balance, and slurred speech constitute, in the opinion of the Hearings Officer, to be sufficient objective evidence to support probable cause in this case. The Hearings Officer finds that the police officer ordering the tow had probable cause to believe Mr. McCulloch was driving in violation of ORS 811.010 and therefore the tow is valid.

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 1, 2008

GJF: cb/rs


Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 20530

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Mcculloch, Derek	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 Bureau	Received
6	Formal Hold record	Police Bureau	Received
7	DMV Implied Consent form #1	Police Bureau	Received
8	Vehicle Release	Police Bureau	Received
9	Custody Report #1 (2 pgs)	Police Bureau	Received
10	Continuation Report - Officer Sessum	Police Bureau	Received
11	Notice of Impoundment	Police Bureau	Received
12	Citations & Complaints	Police Bureau	Received
13	Duplicate copy of Exh. 9	Police Bureau	Received
14	Duplicate copy of Exh. 10	Police Bureau	Received
15	Fingerprints sheet #1	Police Bureau	Received
16	FBI Identification report	Police Bureau	Received
17	Custody Report #2 (1 pg) Officer Sessum	Police Bureau	Received
18	Fingerprints sheet #2	Police Bureau	Received
19	Special Report non-connect	Police Bureau	Received
20	Inspection Instructions sheet	Police Bureau	Received
21	Continuation Report #3 (2 pgs) Officer Fleming	Police Bureau	Received
22	DMV Implied Consent form #2	Police Bureau	Received
23	Rights & Consequences info sheet	Police Bureau	Received
24	DUII Interview Report	Police Bureau	Received
25	Interview	Police Bureau	Received
26	Field Sobriety Test Report (2 pgs)	Police Bureau	Received
27	Intoxilyzer Checklist	Police Bureau	Received
28	Breath test report	Police Bureau	Received
29	Duplicate of Exh. 11	Police Bureau	Received
30	Duplicate of Exh. 12	Police Bureau	Received

