



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF KRISTINA L. LEACH

CASE NO. 1080221

DESCRIPTION OF VEHICLE: Isuzu Rodeo (OR 837CCP)

DATE OF HEARING: July 31, 2008

APPEARANCES:

Ms. Kristina Leach

HEARINGS OFFICER: Mr. Gregory J. Frank

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

Ms. Leach appeared and testified on her own behalf. No one appeared at the hearing on behalf of the City. The Hearings Officer makes this decision based upon the testimony of Ms. Leach and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 12).

The Hearings Officer will find a tow valid if the Hearings Officer finds that the police officer who ordered the tow followed the relevant laws/rules/procedures. In this case Ms. Leach's vehicle was towed because "a police officer has probable cause to believe that the vehicle has been used or is possessed for the purpose of being used to commit or conceal...possession/delivery/manufacture of a controlled substance." (Exhibit 9).

Ms. Leach, in her testimony, stated she was pulled over by a police officer for failing to properly signal for a turn. She admitted that she was on her way to a court in Scappoose, Oregon related to her suspended driver's license. Had the police officer ordered her vehicle towed for driving while suspended, the Hearings Officer would have, at that point, found the tow valid. The police officer's report suggests that he considered towing the vehicle for driving while suspended (see Exhibit 7) but did not indicate that was the reason for the tow on the Notice of Impoundment Towing (Exhibit 9). However, since the vehicle was towed for possession of a controlled substance, the Hearings Officer was required to determine if the police officer had probable cause to believe Ms. Leach was in possession of a controlled substance.

Ms. Leach testified that immediately upon her being pulled over the by the police officer, she was requested to give permission for a search of her vehicle. Ms. Leach denied giving permission to search the vehicle or any of its contents. Ms. Leach then stated that the police officer conducted an "inventory search" of her vehicle. The police officer's report contradicts Ms. Leach's testimony in that it states that Ms. Leach gave permission to search a small black purse found on the floor of rear seats.

The Hearings Officer must determine if there is adequate objective information, legally obtained, for the police officer to decide there was probable cause to believe the vehicle was used as part of the possession or concealment of a controlled substance. The police officer, in this case, stated that he "asked Leach to stand in front of the car while I conduct an inventory of the vehicle for purposes of towing it." (Exhibit 7). The police officer found a small black purse and when he looked inside he found a "meth pipe, a bag with meth, and a glass bowl with meth inside." (Exhibit 7).

The Hearings Officer finds that Ms. Leach did not give permission to the police officer to search the black bag. The Hearings Officer makes this ruling in part because the Hearings Officer found no reason to disbelieve Ms. Leach's testimony (she did admit driving while suspended; an admission potentially against her interest) and also because the police officer was not present to testify and be subject to cross-examination. As a consequence of the search being conducted without consent, the Hearings Officer considers whether the inventory search permitted the police officer to investigate the purse prior to the tow. While it is constitutional for a police officer to conduct an inventory search for the protection of the police officer or protection of the City from assertion of false claims, it is not constitutional, under the Fourth Amendment, to conduct a search for the purposes of finding evidence of a crime. Considering the facts in the record of this case, the Hearings Officer finds that the search of the small black purse was for the purpose of searching for evidence of a crime, and not to protect the contents of the purse.


Because the search of the black bag was found to be improper, that evidence cannot be considered when determining if the police officer had probable cause to believe the vehicle operator was in possession or the vehicle concealed a controlled substance. The Hearings Officer applies the same analysis to the police officer's search of Ms. Leach's own purse.

The Hearings Officer finds that if the evidence of the meth found in the small black bag and Ms. Leach's purse is not considered, there simply is not sufficient evidence in the record to support the police officer's determination of probable cause of the possession and/or concealment of meth. Therefore, the Hearings Officer finds that the tow must be found invalid.

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 4, 2008
GJF: rs



Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 205547

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Leach, Kristina L.	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Towed vehicle record	Police Bureau	Received
6	Custody report	Police Bureau	Received
7	Continuation report	Police Bureau	Received
8	Special report non-connect	Police Bureau	Received
9	Notice of Impoundment	Police Bureau	Received
10	Citation & Complaint	Police Bureau	Received
11	Property evidence receipt	Police Bureau	Received
12	Her copy of original Custody Report from Officer Gandy	Leach, Kristina L.	Received

