



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF BEN ATMORE

CASE NO. 1080239

DESCRIPTION OF VEHICLE: Honda S2000 (OR 637BCE)

DATE OF HEARING: August 26, 2008

APPEARANCES:

Mr. Ben Atmore, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

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

Mr. Atmore appeared at the hearing and testified on his own behalf. The Hearings Officer makes this decision based upon the testimony of Mr. Atmore and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 20). The Hearings Officer notes that no consideration was given to references to eye tests in Exhibit 13. The Hearings Officer did not consider relevant to this decision Exhibits 14, 15, and 16 (related to intoxilizer test which was administered after Mr. Atmore's vehicle was towed) and therefore gave these exhibits no weight in making this decision.

Mr. Atmore testified that prior to his vehicle being towed, he had played in an indoor soccer game and visited the Gladstone Pub to have 1.5 beers with his friends. Mr. Atmore admitted that he owns a "sports car" and on occasion drives too fast. On this evening, Mr. Atmore stated that after he left the Gladstone Pub, he drove "up 39th and then Powell towards Tualatin." Mr. Atmore stated that he believed he was pulled over by the Police for speeding; he did not dispute that he was driving in excess of the posted speed. Mr. Atmore testified that a second police officer arrived and asked Mr. Atmore to perform various field sobriety tests. Mr. Atmore thought he did just fine on the field sobriety tests.

Portland Police Officer Engstrom filed a written "special report" describing his contact with Mr. Atmore on July 29, 2008. (Exhibit 11). Officer Engstrom's report stated that he observed Mr. Atmore's vehicle "turn north on SE 39th Av. The car then accelerated at a high rate of speed." Officer Engstrom stated, in his report, that he could smell "alcohol on his breath and I could see his eyes were bloodshot." Officer Engstrom stated that Mr. Atmore told him he was on his way home from a pub where he drank 1.5 beers. Officer Engstrom stated that "based on Atmore's driving, his statements to me, and my observations, I believed he was impaired." (Exhibit 11).

Portland Police Officer Roberts submitted a "Custody Report" describing his interaction with Mr. Atmore. (Exhibit 10). Officer Roberts noted, in his report, that he also "smelled the odor of alcoholic beverage and noticed his red/watery eyes." Officer Roberts also noticed Mr. Atmore's fumbling actions, thick speech, and flushed face.

Portland City Code 16.30.220 K.4 permits, without prior notice, a police officer to order a vehicle towed if the police officer has probable cause to believe that the vehicle's operator was driving under the influence of intoxicants. ORS 131.005 (11) defines probable cause as existing when there is a substantial objective basis for believing that it is more likely than not that an offense has been committed and the person to be arrested has committed it. Probable cause does not require certainty or proof beyond a reasonable doubt, which is necessary to convict an individual of a crime. Oregon courts have identified objective factors which may be considered in determining if probable cause exists. Factors identified included excessive speed, watery/bloodshot eyes, smell of alcohol, flushed appearance and admission of the consumption of alcohol.

The Hearings Officer finds that Mr. Atmore admitted at the hearing that he had been drinking alcohol prior to the traffic stop, that he was speeding, may have smelled of alcohol, and may have had bloodshot/watery eyes and a flushed appearance. Based on these admissions, the Hearings Officer finds that the officer who ordered the tow did have probable cause to believe Mr. Atmore was driving his vehicle under the influence of intoxicants. Therefore, the Hearings Officer finds that the tow of Mr. Atmore's vehicle on July 30, 2008 is valid.

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 28, 2008
GJF:rs


Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 21112

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Atmore, Ben	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	Data printout	Police Bureau	Received
7	Copy of driver's license	Police Bureau	Received
8	Vehicle release	Police Bureau	Received
9	Formal Hold form	Police Bureau	Received
10	Custody report	Police Bureau	Received
11	Special report - non-connect	Police Bureau	Received
12	Implied Consent	Police Bureau	Received
13	Field Sobriety	Police Bureau	Received
14	DUII Interview report	Police Bureau	Received
15	Intoxilyzer checklist	Police Bureau	Received
16	Breath Test report	Police Bureau	Received
17	Notice of Impoundment	Police Bureau	Received
18	Citation & complaints	Police Bureau	Received
19	Request to reschedule	Atmore, Ben	Received
20	Rescheduled hearing notice	Hearings Office	Received

