



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

1900 S.W. 4th Avenue, Room 3100
Portland, Oregon 97201
Telephone: (503) 823-7307
FAX: (503) 823-4347
TDD (503) 823-6868

HEARINGS OFFICER'S ORDER

APPEAL OF JESSE DOBSON

CASE NO. 1080249

DESCRIPTION OF VEHICLE: Chevrolet TK (OR ZCP597)

DATE OF HEARING: September 4, 2008

APPEARANCES:

Mr. Joshua Gibbs, Attorney for Mr. Dobson

HEARINGS OFFICER: Mr. Gregory J. Frank

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

Mr. Joshua C. Gibbs, attorney, appeared and represented Mr. Dobson. Mr. Dobson did not appear or testify at the hearing. Mr. Gibbs objected to admission of Exhibits 12, 13 and 17 ("police officer reports") on the basis that the police officers who completed the reports were not present and therefore could not be questioned/cross-examined. The Hearings Officer treats these written report(s)/exhibit(s) as affidavits submitted by the person(s) who completed the report(s). The Hearings Officer's policy with respect to written police officer reports is to balance the statements made in the reports to any testimony or documentary evidence presented by an appellant. The Hearings Officer balances the credibility of the statements made by an appellant and/or appellant witnesses at the hearing against the written statements in the police reports.

The Hearings Officer generally admits documents into the evidentiary record if they relate (are relevant) to the issues raised in a case. In this case, Exhibits 12, 13, and 17 are written reports prepared by police officers who were in contact with Mr. Dobson and/or alleged witnesses of Mr. Dobson's driving on August 12, 2008; prior to Mr. Dobson's vehicle being towed. The Hearings Officer finds these reports to be relevant evidence in this tow hearing appeal. However, any section of the reports related to events occurring after Mr. Dobson's vehicle was ordered towed shall not be considered by the Hearings Officer. Further, the Hearings Officer finds that Exhibits 19, 20, 21, 22, 23, and 24 should not be admitted as they relate to events occurring after Mr. Dobson's vehicle was ordered towed.

The Hearings Officer makes this decision based upon the arguments presented by Mr. Gibbs and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 18, and 25 through and including 27).

Mr. Gibbs primary argument, as expressed at the hearing, was that the officer conducting the traffic stop of Mr. Dobson on August 11, 2008 did not have adequate "reasonable suspicion" to support a traffic stop for driving while under the influence of intoxicants.

In order for the Hearings Officer to respond to Mr. Gibbs lack of reasonable suspicion argument, the Hearings Officer must review the evidence in the record. In particular, the Hearings Officer refers to Exhibit 13 (Custody Report – Officer Kenney). The Hearings Officer summarizes the Kenney report (Exhibit 13) as follows:

Officer Kenney received a radio call of a white van ramming another vehicle in the vicinity of 909 N Blandena. Officer Kenney indicated he/she was told that the van had left southbound on Mississippi. Officer Kenney stated he/she observed a white van traveling towards him/her southbound on Mississippi and noticed, when the van passed, it appeared to have "scrapes/dents on the driver's side." At that time Officer Kenney initiated a traffic stop.

The Hearings Officer finds that a police officer has reasonable suspicion that Mr. Dobson's vehicle had been involved in striking other vehicles if the police officer is provided, by another person, a reasonably specific description of Mr. Dobson's vehicle. The Hearings Officer finds that the information provided to Officer Kenney, that the vehicle was a van, traveling southbound on Mississippi in the vicinity of NE Skidmore, and had struck vehicles, is sufficiently specific to avoid random stops of vehicles. Moreover, in this case Officer Kenney observed a white van, traveling southbound on Mississippi with scrapes which would be consistent with the van striking other vehicles. The Hearings Officer finds that the stop of Mr. Dobson's vehicle was reasonably close to the description provided to him/her by the radio call in physical characteristics and in time and space. No evidence was offered by Mr. Gibbs on behalf of Mr. Dobson. Therefore, based upon the evidence in the record, the Hearings Officer finds that Officer Kenney did have a reasonable suspicion that Mr. Dobson's vehicle had been involved in a hit and run incident. The Hearings Officer finds, for the purposes of this tow hearing, that the "stop" of Mr. Dobson's vehicle on August 11, 2008 by Officer Kenney is valid.

Portland City Code section 16.30.220 K permits the tow, by any authorized officer, without prior notice if a police officer has probable cause to believe that the vehicle's operator was driving under the influence of intoxicants and/or was driving recklessly. A police officer has probable cause if the officer has a substantial objective basis for believing that it is more likely than not that an offense has been committed and a person to be arrested has committed it. ORS 131.005 (11). Oregon courts have found that probable cause does not require certainty or proof beyond a reasonable doubt, which is necessary to convict an individual of a crime. *State v. Spicer*, 254 Or 68, 70 (1984).

The Hearings Officer incorporates the above-summary of Officer Kenney's report. Further, in Officer Kenney's report he/she states that when he contacted Mr. Dobson he detected the "odor of alcoholic beverage coming from the open driver side window." (Exhibit 13). Officer Kenney noted that Mr. Dobson's "mannerisms seemed a little off, as if he reacted to everything with a slight delay." Mr. Dobson admitted to having consumed 2 drinks "that night." Officer Kenney also noted that Mr. Dobson's voice was a "little thick and that his pronunciation, while not quite slurred, was not as clean as it could be." At that point, according to Officer Kenney, he believed that Mr. Dobson was "intoxicated and impaired." Officer Kenney observed that the "scrapes/dents" appeared to be fresh and other indications that Mr. Dobson's vehicle had contacted other vehicles/structures. Officer Kenney asked Mr. Dobson if he would take a "few tests to see if he ok to drive." According to Officer Kenney's

report, Mr. Dobson agreed. Officer Kenney administered various field sobriety tests and at the conclusion of those tests, took Mr. Dobson into custody and ordered Mr. Dobson's vehicle towed.

Another police officer, Anderson, contacted witness Thompson who told the officer that he saw an "old white van hit unit #2 and continue southbound." (Exhibit 12). Officer Anderson transported Thompson to the Dobson traffic stop, where Thompson identified Mr. Dobson's vehicle as the "old white van" he had seen hit another vehicle.

Another police officer, Simon, contacted other witnesses who generally corroborated that a van had hit parked vehicles and left the scene. (Exhibit 17).

The Hearings Officer finds, based only upon Officer Kenney's report, that a white van had hit one or more cars and continued driving, that Mr. Dobson's vehicle was a white van with evidence of recent damage (fresh paint from other vehicles), Mr. Dobson's vehicle was apprehended in the vicinity of the reported crashes, that Mr. Dobson smelled of alcohol, Mr. Dobson admitted consuming alcohol, Mr. Dobson's speech was "thick," Mr. Dobson's mannerisms were "off," and Mr. Dobson performed poorly on various field sobriety tests are all "objective" factors considered by Officer Kenney. The Hearings Officer finds that Officer Kenney stated that, based upon his consideration of the above referenced factors, he subjectively believed that Mr. Dobson was intoxicated and impaired.

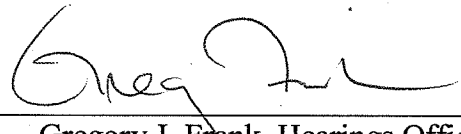
The Hearings Officer finds, based solely upon the evidence referenced above from the record, that Officer Kenney had probable cause to believe that Mr. Dobson was driving under the influence of intoxicants and driving recklessly. The Hearings Officer, therefore, finds that Officer Kenney followed the relevant rules/laws and this 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: September 9, 2008

GJF: cb/rs



Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 22480

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter for his client/Dobson	Gibbs, Joshua C.	Received
2	Tow desk report	Hearings Office	Received
3	Hearing notice	Hearings Office	Received
4	Tow hearing info. sheet	Hearings Office	Received
5	Copy of Exh. 1	Police Bureau	Received
6	Towed vehicle record	Police Bureau	Received
7	Breath test report	Police Bureau	Received
8	Formal Hold	Police Bureau	Received
9	Photo	Police Bureau	Received
10	Vehicle Release	Police Bureau	Received
11	Traffic Crash Report (2 pgs)	Police Bureau	Received
12	Continuation report (2 pgs)	Police Bureau	Received
13	Custody report #1 (4 pgs)	Police Bureau	Received
14	Fingerprint sheet	Police Bureau	Received
15	FBI/Oregon State Police report	Police Bureau	Received
16	Custody report #2 (2 pgs)	Police Bureau	Received
17	Special Report (non-connect) w/narrative (2 pgs)	Police Bureau	Received
18	Notice of Impoundment	Police Bureau	Received
19	Implied Consent DMV	Police Bureau	Rejected
20	Rights & Consequences sheet	Police Bureau	Rejected
21	Field Sobriety Test Report (2 pgs)	Police Bureau	Rejected
22	DUII Interview Report (2 pgs - 2nd pg. crossed-out)	Police Bureau	Rejected
23	Intoxilyzer checklist	Police Bureau	Rejected
24	Breath test report (3 pgs)	Police Bureau	Rejected
25	Copy of driver's license	Police Bureau	Received
26	Request to reschedule	Gibbs, Joshua C.	Received
27	Rescheduled hearing notice	Hearings Office	Received