



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 LURYE D. MUTCH

CASE NO. 1080312

DESCRIPTION OF VEHICLE: Honda Accord (OR CL15242)

DATE OF HEARING: October 28, 2008

APPEARANCES:

Ms. Lurye Denise Mutch, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Lurye Mutch, appellant, appeared and testified on her own behalf. Mr. Colin O'Shea and Mr. Christopher Hampton appeared and testified in support of appellant. The Hearings Officer makes this decision based upon the testimony of the appellant, Mr. O'Shea and Mr. Hampton, and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 20).

Appellant testified that on the date her vehicle was towed, October 5, 2008, she received a telephone call from Mr. O'Shea to pick him up. Appellant testified that when she arrived at the Cheers bar/tavern, Mr. O'Shea had already left but one of his friends, Mr. Hampton was still there. Appellant picked up Mr. Hampton and drove past a police car/officer that was involved in a traffic stop and arrived at the location where she was told Mr. O'Shea had gone. Appellant stated that she saw Mr. O'Shea in the front yard of a residence and that she had to go to the bathroom really bad and ran into the house to use the facilities. Appellant stated that she was in the house for 4 or 5 minutes when she looked out of the front window and saw Mr. O'Shea urinating on the front yard. Appellant stated that she observed a police car pull up and make contact with Mr. O'Shea. Appellant stated she did not go outside because she was afraid that the police would treat her badly as they had Mr. O'Shea. Appellant did not talk to any police officer at the scene who was in contact with Mr. O'Shea.

Mr. O'Shea stated that on the evening the appellant's vehicle was towed, he and Mr. Hampton decided to "go out drinking." He stated that they had a few drinks at a couple of locations and while at one tavern/bar it was announced "last call" and he and his friends decided to go to another friend's house. Mr. O'Shea stated that he called appellant to pick he and Mr. Hampton up. Before appellant arrived, Mr. O'Shea stated that he got a ride with someone else and Mr. Hampton waited for appellant to arrive. Mr. O'Shea testified that when he arrived at the friend's house, he really had to go to the bathroom bad and eventually he urinated on the front yard of the friend's house. Either during the time he was urinating or shortly thereafter, Mr. O'Shea stated that he heard someone shout "police officer" and ask "where is the driver" of appellant's vehicle. Mr. O'Shea testified that he responded to the police officer "I don't know." The officer, according to Mr. Shea, made physical contact with him and pushed him against a fence and eventually onto his stomach. Mr. O'Shea stated that he did holler out to his friends and that he "failed the attitude test." Mr. O'Shea testified that was drunk at the time he was contacted

by the police officers. The Hearings Officer was unsure if Mr. O'Shea stated that he intended to use marijuana or had used marijuana that evening. Mr. O'Shea stated that a police officer did find a set of keys in his pocket and that the officer did use one of the keys to unlock appellant's vehicle passenger door. Mr. O'Shea admitted that he did have, in his possession, a set of keys to appellant's vehicle.

Mr. Hampton testified that he did "go drinking" with Mr. O'Shea. Mr. Hampton stated that appellant did come and pick him up at the tavern/bar and take him to the "friend's house." He stated that when he arrived at the friend's house, he got out and made it to the front porch when he heard a screech of tires and turned around to see a police car. Mr. Hampton stated that he was unsure whether or not he had an outstanding warrant for failure to appear and he went inside the house and watched from inside. Mr. Hampton testified that he did not go outside to talk to the police.

Exhibit 8, a "special report" prepared by police officer Ables described his viewing a "green Honda" pass by his location, "speed up and I could hear the tires squeeling as it passed by me." (Exhibit 8). Officer Ables stated, in the written report, that he attempted to follow the Honda but lost sight of it. When Officer Ables approached 106/Mitchell he again saw the green Honda and "a white male close to the driver door of the Honda and then run into a yard east of the car." Officer Ables asked the white male to stop and the white male complied and told the officer he was "trying to pee." Officer Ables stated, in his report, that the white male identified himself as Mr. O'Shea and stated he was not driving. Officer Ables stated that Mr. O'Shea was "visibly intoxicated." Officer Ables checked Mr. O'Shea's driving status and determined his license was suspended.

Exhibit 7 is a "continuation report" prepared by police officer Taylor. Officer Taylor responded to a request for assistance from Officer Ables. Officer Taylor stated that Mr. O'Shea stated that he had not been driving the appellant's vehicle. Officer Taylor reported that Officer Ables told him that he had seen the green Honda pass him by with a sole occupant and that he saw Mr. O'Shea closing the driver's door as Officer Ables arrived. Officer Taylor's report indicated that he felt Mr. O'Shea was intoxicated. Officer Taylor, in his report, stated that when he did an inventory he located keys in Mr. O'Shea's pants pocket; "the keys unlocked the door to the Honda and started the motor."

Exhibit 13 is a Notice of Impoundment Towing. This form indicates that appellant's vehicle was towed because (1) Mr. O'Shea was driving uninsured, (2) Mr. O'Shea was driving while suspended, and (3) driving under the influence of intoxicants. The Hearings Officer finds there is no evidence in any of the police reports to provide a basis of the police officer having probable cause to believe the vehicle was uninsured. There is little if no evidence in the police reports discussing the status of Mr. O'Shea's driver's license. However, there is evidence in the record that Mr. O'Shea was under the influence of intoxicants. There is objective evidence in the record to support that the police officer had probable cause to believe that Mr. O'Shea was driving the appellant's vehicle. The objective observations of the police officers include: the police officer observing a single person in the green Honda as it passed by him, the observation of Mr. O'Shea appearing to get out of the driver's side of the appellant's vehicle, Mr. O'Shea's having in his possession keys which opened the door and started the engine of appellant's vehicle, and Mr. O'Shea being the only person in close proximity to the vehicle when the police officer approached.

The Hearings Officer noted, at the hearing, that both appellant and Mr. Hampton were in close proximity to Mr. O'Shea and the appellant's vehicle but neither communicated to the police officers that Mr. O'Shea was not the driver of the vehicle that evening. The Hearings Officer finds that the failure of these people to come forward is important in any attempt to determine if the police officer had probable cause to believe that Mr. O'Shea was the driver. The Hearings Officer finds that all of the evidence in the record, that was available to the police officers, indicates that Mr. O'Shea was the driver.

The Hearings Officer must find a tow valid if the Hearings Officer finds that the officer ordering the tow followed the relevant laws/rules. In this case, a police officer may order a vehicle towed, without prior notice, if the police

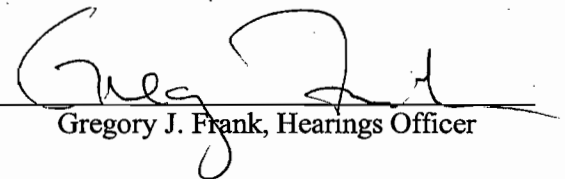
officer believes the vehicle's operator was driving while under the influence of intoxicants. (See Portland City Code 16.30.220 K.4). The Hearings Officer finds that Mr. O'Shea admitted that he was drunk. The Hearings Officer finds that there is a substantial objective basis for the officer who ordered the vehicle towed that Mr. O'Shea was the driver. On that basis, the Hearings Officer finds that the officer ordering the tow did follow the relevant laws/rules and that therefore, the tow 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: October 30, 2008

GJF: cb/rs


Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 26887

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter (without specification not in storage)	Mutch, Lurye D.	Received
2	Hearing request letter (with specification Not in storage)	Mutch, Lurye D.	Received
3	Hearing request letter (not owner)	O'Shea, Colin Peter	Received
4	Tow desk report printout	Hearings Office	Received
5	Hearing notice	Hearings Office	Received
6	Tow hearing info. sheet	Hearings Office	Received
7	Custody Report	Police Records	Received
8	Special Report	Police Records	Received
9	Special Report	Police Records	Received
10	DMV Implied Consent form	Police Records	Received
11	Intoxilyzer 8000 Operator's Checklist	Police Records	Received
12	DUII Interview Report	Police Records	Received
13	Notice of Impoundment Towing	Police Records	Received
14	Constitutional Rights Advice (Miranda)	Police Records	Received
15	Citation	Police Records	Received
16	Property/Evidence Receipts	Police Records	Received
17	Towed Vehicle Record	Police Records	Received
18	Formal Hold - OK to Release	Police Records	Received
19	Insurance card and Oregon Driver's License for Lurye Mutch	Police Records	Received
20	Vehicle Release	Police Records	Received

