



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF ROSLYN SHERMAN

CASE NO. 1080331

DESCRIPTION OF VEHICLE: Nissan Maxima (OR 048BVW)

DATE OF HEARING: November 13, 2008

APPEARANCES:

None

HEARINGS OFFICER: Mr. Gregory J. Frank

A letter requesting a hearing was received by the Hearings Office on November 12, 2008; Appellant Roslyn Sherman's vehicle believed to be in storage (Exhibit 1). Per Portland City Code 16.30.420 a hearing for vehicles believed to remain in storage (not yet released) must be scheduled within 72 hours. A hearing was scheduled for November 13, 2008 at 1:45 p.m. at 1900 SW 4th Avenue (Room 3000), Portland, Oregon. Appellant's request for a hearing (Exhibit 1) did not include a telephone number as required by Portland Policy Document 9.03 1-2 (Tow Hearings Officer Rules and Regulations). As such, only a written Notice of Hearing was sent to the address provided by the Appellant. Portland Policy Document 2-3 states that "Written notification of the time and place of hearing need not be provided. The time and place of hearing will be set at the time the Request for Hearing is filed, and it is the responsibility of the person or persons requesting the hearing to make inquiry, in person or by telephone, to determine the time and place set for hearing."

Appellant failed to appear at the hearing. The Hearings Officer makes this decision based upon the exhibits admitted into the evidentiary record (Exhibits 1 through and including 14).

Exhibit 1, Appellant's request for a hearing, sets forth reasons why Appellant believes that the tow of her vehicle on November 5, 2008 was not valid. The Hearings Officer summarizes the Appellant's reasons that the tow of her vehicle should be found not valid; Appellant stated (Exhibit 1) that she was "stopped because the officer thought I was under the influence of alcohol. But, I was just overly excited about history being made on that day and forgot to tell him I was under the influence of my medication at the time, Phenobarbital (which causes dizziness) and I should've waited at least 1 hour before driving."

Appellant claimed that her vehicle should not have been towed because there was a licensed driver in her vehicle at the time she was stopped. Appellant also claimed that her vehicle should not have been towed because she was not far from her home. Appellant complained that the police officer took her driver's license. Appellant claimed that she had difficulty with performing the field sobriety tests because she is "not in good shape."

Portland Police Officer Snitily submitted a written custody report related to the events leading up to Appellant's vehicle being towed (Exhibit 6). In summary, Officer Snitily's report stated that he observed Appellant's vehicle approaching him from the opposite direction on NE Fremont at what he/she believed to be a "high rate of speed." The report stated that the Appellant's vehicle was observed to swerve into the oncoming lane and the Officer swerved to the right to avoid a head-on collision. The report stated that the officer turned around and followed Appellant's vehicle and estimated Appellant's vehicle was traveling at 45 miles per hour in a 30 mph zone. The report stated that the Officer observed Appellant's vehicle swerve to the right towards the curb and head towards a parked car; Appellant's vehicle swerved again to avoid the collision.

The Officer's report (Exhibit 6) indicated that when contacted, Appellant stated she had been celebrating the election results and that she had been drinking alcohol. Officer Snitily stated that he/she smelled the odor of alcohol coming from Appellant's vehicle and the Appellant personally, and that Appellant's eyelids were droopy and she had bloodshot eyes. The report indicated that Appellant did poorly on the field sobriety tests. The report also indicates that Officer Snitily talked with a passenger in Appellant's vehicle (Allen) and was told by the passenger that the Appellant had "too much to drink." Allen also told Officer Snitily that "he believed they were going to crash into the parked car and only at the last second did SB Sherman swerve to miss it." Finally, upon an inventory of Appellant's vehicle Officer Snitily stated that he/she found a "half full 24 oz Steel Reserve beer behind the drivers seat. I also found two other empty 24 oz Steel Reserve beer cans on the floor behind the passenger seat."

The Hearings Officer finds the written statement by Officer Snitily to be more credible than the written statement by Appellant. In part, the Hearings Officer relied upon the passenger comments to Officer Snitily that contradicted Appellant's statements.

Appellant did not deny, in her written statement, the observations of Officer Snitily or her passenger that she was swerving and/or speeding. Appellant did not deny that an open and half-full beer can was found in her vehicle. Appellant did not deny that her eyes were bloodshot or that she emitted a smell of alcohol. Appellant admitted that she had difficulty in performing the field sobriety tests.

The Hearings Officer shall find a tow valid if the Hearings Officer finds that the officer who ordered the vehicle towed followed the relevant laws/rules. In this case, the relevant law is found in Portland City Code 16.30.220 K. This section of the Portland City Code permits a police officer to order a vehicle towed, without prior notice, if the officer has probable cause to believe the operator of the vehicle was driving under the influence of intoxicants and/or driving recklessly. A police officer has probable cause when there is a substantial objective basis for believing that more likely than not an offense has been committed, and the person to be arrested has committed it. (ORS 131.005[1])

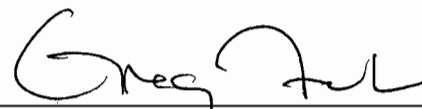
The Hearings Officer finds significant objective basis to support Officer Snitily's finding of probable cause that Appellant was driving under the influence of intoxicants and recklessly. The admission by Appellant that she had consumed alcohol that evening, her observed erratic driving, the smell of alcohol

emitted from her person, her bloodshot eyes, her difficulty in performing field sobriety tests, the presence of an open can of beer in the vehicle, and the statement by her passenger that she had too much to drink before driving, together provide a substantial evidentiary basis for Officer Snitily to form a subjective conclusion that the Appellant was under the influence and driving recklessly. The Hearings Officer finds Officer Snitily followed all relevant laws/rules in ordering Appellant's vehicle towed. The Hearings Officer finds the tow of Appellant's vehicle on November 5, 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: November 14, 2008
GJF: cb



Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 296616

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Sherman, Roslyn	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	Custody Report (3 pgs)	Police Bureau	Received
7	Notice of Impoundment	Police Bureau	Received
8	Field Sobriety Test Report (2 pgs)	Police Bureau	Received
9	DUII Interview Report (2 pgs)	Police Bureau	Received
10	Intoxilyzer Checklist	Police Bureau	Received
11	Breath Test Report	Police Bureau	Received
12	Implied Consent form	Police Bureau	Received
13	Back of Implied Consent form (mostly illegible)	Police Bureau	Received
14	Citations & Complaints (2 pages)	Police Bureau	Received

