



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF STEVEN DIMICK

CASE NO. 1080347

DESCRIPTION OF VEHICLE: Mercury Sable (OR YZF529)

DATE OF HEARING: December 9, 2008

APPEARANCES:

None

HEARINGS OFFICER: Mr. Gregory J. Frank

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

Mr. Dimick requested a hearing to contest his tow (Exhibit 1). Mr. Dimick did not provide an address to mail a Notice of Hearing. A hearing was scheduled for December 9, 2008 at 9:00 am. A hearing clerk contacted Mr. Dimick by telephone on December 4, 2008 and informed Mr. Dimick of the date/time/place of the scheduled hearing. Mr. Dimick informed the clerk he may not be able to attend the hearing at the scheduled date/time, and the hearing clerk informed Mr. Dimick that if he wished the hearing date/time to be rescheduled he would need to provide, in writing, a request prior to noon on December 8, 2008. Mr. Dimick was informed, by the hearing clerk that the written request could be filed via fax and offered to give Mr. Dimick the Hearing Office fax number; Mr. Dimick did not want the fax number. Mr. Dimick did not appear at the hearing. The Hearings Officer makes this decision based upon the exhibits admitted into the evidentiary record (Exhibits 1 through and including 17).

Mr. Dimick's request for hearing (Exhibit 1) simply states that he "disputes tow fee." Mr. Dimick provided copies of prescription receipts for vicodin (11/25/08) and valium (11/24/08). Mr. Dimick also provided various court documents indicating that he had been arrested for possession of a controlled substance (Exhibit 5). Mr. Dimick also included a copy of a Notice of Impoundment Towing (Exhibit 7; duplicate submitted by Portland Police Bureau as Exhibit 16) indicating that his vehicle had been towed because Police Officer Mawdsley had probable cause to believe Mr. Dimick's vehicle had been used to commit or conceal the possession of a controlled substance in violation of ORS 475.840. Mr. Dimick also provided (Exhibit 8) a copy of a property evidence receipt listing a "Pall Mall Cig Pack w/ 10 viodin" and "red rubber coin purse w/ 23 vialum."

Officer Mawdsley submitted a "Custody Report" (Exhibit 14) stating that Mr. Dimick was contacted on November 28, 2008 and cited for violation of ORS 475.840 (PCS II – Vicodin) and ORS 475.840 (PCS IV – Valium). The narrative section of Officer Mawdsley's report states, in part, that Officer Mawdsley observed Mr. Dimick's vehicle traveling westbound on Sandy Boulevard. Officer Mawdsley stated that he observed Mr. Dimick's vehicle drift into the center turn lane and then back to the travel lane without signaling. Officer Mawdsley stated, in the report, that when he initiated a traffic stop Mr. Dimick was delayed in his response to roll his window down, did not make eye contact with the police officer and acted nervous. Officer Mawdsley stated a passenger occupied the right front seat. Officer Mawdsley stated that Mr. Dimick stated that he picked up the passenger (Wright) because he saw him in front of "Maddys"; Mr. Dimick told the officer he did not know Wright. Wright told Officer Mawdsley that he knew Mr. Dimick through a mutual friend and "known him for some years and that the friend had called Dimick regarding giving him a ride.

Officer Mawdsley, in his/her report, stated that he/she asked Mr. Dimick if he had any drugs and that Mr. Dimick replied "no." Officer Mawdsley stated that he asked Mr. Dimick if he could conduct a search of the vehicle and his person and Mr. Dimick consented. During the search Officer Mawdsley stated that he found, in Mr. Dimick's right front pocket a pack of Pall Mall cigarettes and inside the pack 10 vicodin pills. Officer Mawdsley stated he also found a coin purse with 23 valium pills. Officer Mawdsley stated that Mr. Dimick told him that he had a prescription at home for the pills and that he had Cerebral Palsy. Officer Mawdsley indicated that Mr. Dimick did provide a last name for a doctor, but was unable to provide the doctor's first name or phone number.

In order for the Hearings Officer to find a tow valid the Hearings Officer must find that the police officer who ordered the tow followed the relevant laws/rules. In this case, the relevant law is Portland City Code 16.30.220 L. 2. This section of the Portland City Code states that a police officer may, without providing prior notice, order a vehicle towed if the officer has probable cause to believe that the vehicle was used in connection with the possession of a controlled substance in violation of ORS 475.840.

ORS 475.840 states that it is unlawful for any person to knowingly or intentionally possess a controlled substance unless the substance was obtained from, or pursuant to, a valid prescription.

Mr. Dimick provided a copy of what appears, to the Hearings Officer, to be two valid prescriptions (one for vicodin and the other for valium (Exhibit 3)). However, the Hearings Officer finds that this information was not shown to Officer Mawdsley at the time of the traffic stop/tow and therefore, finds this evidence not to be relevant in this case. The Hearings Officer is required to determine if the police officer, at the time the vehicle was towed, had probable cause to believe Mr. Dimick was in violation of ORS 475.840. To be sure, in a court of law, if the prescriptions shown in Exhibit 3 are found to be valid Mr. Dimick will, in all likelihood be found not guilty of violation of ORS 475.840.

The question before the Hearings Officer is, at the time the vehicle was ordered towed, did Officer Mawdsley have probable cause to believe that Mr. Dimick was in violation of ORS 475.840. Probable cause is defined by ORS 131.005 (11) as "there is a substantial objective basis for believing that more likely than not that an offense has been committed and a person to be arrested has committed it." Probable cause does not require certainly beyond a reasonable doubt, which is necessary to convict an individual of a crime. *State v. Spicer*, 254 Or 68, 70, 456 P2d 602 (1984)

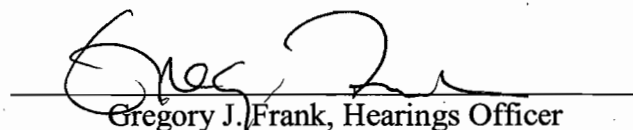
The Hearings Officer found Officer Mawdsley's written narrative to be credible. No evidence testimony or evidence, related to the events occurring at the time of the traffic stop/tow, was presented by Mr. Dimick. The Hearings Officer considered Mr. Dimick's driving (drifting from the turn lane to travel lane without signaling), Mr. Dimick's delay in rolling down his window, Mr. Dimick's avoidance of making eye contact with the police officer, Mr. Dimick's conflicting account (from passenger Wright's) of his prior acquaintance with Wright, Mr. Dimick's denial he had any drugs on his person or in the vehicle, the keeping of vicodin pills in a cigarette pack and coin purse, and the lack of complete information given by Mr. Dimick regarding his physician, as all being objective observations by police officer Mawdsley. The Hearings Officer finds, although it is a relatively close call in this case, that Officer Mawdsley did have sufficient objective observations to form a subjective belief that Mr. Dimick was unlawfully in possession of the vicodin and valium.

The Hearings Officer finds that Officer Mawdsley did follow the relevant laws/rules and therefore the tow of Mr. Dimick's vehicle on November 28, 2008 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: December 10, 2008
GJF: rs/cb


Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 31726

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Dimick, Steven	Received
2	Notes	Dimick, Steven	Received
3	Prescriptions	Dimick, Steven	Received
4	Receipt	Dimick, Steven	Received
5	Release Agreement	Dimick, Steven	Received
6	Release Order and Agreement	Dimick, Steven	Received
7	Notice of Impoundment Towing	Dimick, Steven	Received
8	Property/Evidence Receipt	Dimick, Steven	Received
9	Citation	Dimick, Steven	Received
10	Tow Desk printout	Hearings Office	Received
11	Hearing Notice	Hearings Office	Received
12	Tow Hearings Process Info. sheet	Hearings Office	Received
13	Towed Vehicle Record	Police Records	Received
14	Custody Report	Police Records	Received
15	Special Report	Police Records	Received
16	Notice of Impoundment Towing	Police Records	Received
17	Property/Evidence Receipt	Police Records	Received

