



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF JAMES S. WERFELMANN

CASE NO. 1080353

DESCRIPTION OF VEHICLE: Nissan Sentra (OR 887CCU)

DATE OF HEARING: December 11, 2008

APPEARANCES:

Mr. James S. Werfelmann, Appellant

HEARINGS OFFICER: Mr. Ian Simpson

The Hearings Officer, on substantial evidence and based upon the record as a whole, and receiving Exhibits 1 through 12 into the record without objection, finds as follows:

The towing officers' reports (Exhibits 6-12) stated that two officers saw Adam J. Werfelmann and Douglass Stephen Scott sitting in the subject vehicle in a parking lot. Mr. Werfelmann was in the driver's seat and Mr. Scott was in the front passenger seat. When the officers approached, they saw Mr. Werfelmann in the process of using heroin. Both men admitted to the officers that they had just used heroin. The officers found heroin paraphernalia with heroin residue in the vehicle. In Mr. Scott's backpack, which was in the vehicle, the officers found what appeared to be a plastic bindle containing methamphetamine and a tin containing marijuana.

The appellant stated that the heroin charge against Mr. Werfelmann was later dropped, and that the officers did not find heroin on Mr. Werfelmann's person. It is not relevant to whether the officers' had good cause for towing the vehicle whether the charge against Mr. Werfelmann was dropped after the tow. Nor is it relevant whether there was heroin on Mr. Werfelmann's person. The legal basis for the tow concerns whether there were illegal drugs in the vehicle, not where in the vehicle.

The appellant witness, Mr. Adam Werfelmann, denied using heroin in the vehicle, but he did not deny that Mr. Scott was in the vehicle and had his backpack with him. Mr. Werfelmann stated that he did not know that Mr. Scott's backpack contained illegal drugs.

The City Code authorizes an officer to tow a vehicle if it has been used to possess or transport illegal drugs. The Code does not make an exception for when the driver or owner does not know that a passenger possesses illegal drugs. The Hearings Officer finds that there was sufficient evidence for the officers to have probable cause to believe the vehicle had heroin in it, and Mr. Scott's backpack contained illegal drugs.

Given these circumstances, this was a valid tow. Please note the relevant city code sections below concerning this matter.

16.30.220 Towing Without Prior Notice.

(Amended by Ordinance Nos. 165980, 170912, 176352, and 176442, effective May 1, 2002.) Any authorized officer may, without prior notice, order a vehicle towed, when:

L. A police officer has probable cause to believe that the vehicle has been used or is possessed for the purpose of being used to commit or conceal the commission of one or more of these offenses:

2. Unlawful delivery of imitation controlled substance (ORS 475.991), Unlawful possession, delivery, or manufacture of controlled substance (OR 472.992), Unlawful distribution of controlled substance to minors (ORS 475.995), Unlawful manufacture or delivery of controlled substance within 1,000 feet of school (ORS 475.999), or any attempt, solicitation, or conspiracy of one of these offenses.

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 12, 2008

IS: cb/rs


Ian Simpson, Hearings Officer

Bureau: Police
Tow Number: 32361

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Letter requesting hearing	Werfelmann, James S.	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 Records	Received
6	Custody Report	Police Records	Received
7	Custody Report	Police Records	Received
8	Special Report	Police Records	Received
9	Notice of Impoundment Towing	Police Records	Received
10	Property/Evidence Receipt	Police Records	Received
11	Property/Evidence Receipt	Police Records	Received
12	Property/Evidence Receipt	Police Records	Received