



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

LaVonne Griffin-Valade, City Auditor
1900 SW 4th Avenue, Room 3100
Portland, Oregon 97201
Telephone: (503) 823-7307
Fax: (503) 823-4347
TDD: (503) 823-6868
www.portlandonline.com/auditor/hearings

HEARINGS OFFICER'S ORDER

APPEAL OF DAVID ZAAYER

CASE NO. 1090259

DESCRIPTION OF VEHICLE: Ford F350 Pickup (OR WTV828)

DATE OF HEARING: December 3, 2009

APPEARANCES:

Mr. David Zaayer, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Zaayer appeared at the hearing and testified on his own behalf. The Hearings Officer makes this decision based upon the testimony of Mr. Zaayer and the documents admitted into the evidentiary record (Exhibits 1 through and including 7, portions of 8 related to events occurring before the vehicle was ordered towed, 11, and 17 through and including 19). The Hearings Officer may only consider the events up to and including the order of a vehicle being towed; evidence related to events after the vehicle towed are not relevant to the Hearings Officer's decision in a tow appeal case.

Mr. Zaayer testified that a police officer told him, after his taking a breathalyzer test indicating a very low blood alcohol content, that the tow of his vehicle wouldn't cost him anything. Mr. Zaayer, in a written request for the tow appeal hearing stated that

"My truck was towed after I failed a 'walk the straight line test' and the arresting officer smelled alcohol in the truck. I had told the officer my feet were lame. He said 'ya, they all say that.' After I blew a .03 on the breathalyzer they dropped the charges, let me go, suggested I get a doctors note so I don't go through this again and told me there would be no charges for the tow. It did end up costing me a total of \$224.00 (and a whole day) to get my truck back. I am trying to recover those charges."

Exhibit 5 is a "special report" submitted by Police Officer Harris, the officer who first observed Mr. Zaayer on November 15, 2009 (Exhibit 5). Officer Harris' report, in summary, states that the officer observed Mr. Zaayer's vehicle pass by his patrol vehicle and the truck had "tinted license plate cover and non functioning license late lights." The officer noted, in the special report, that when he approached Mr. Zaayer's truck he observed Mr. Zaayer's actions to be "a little bit delayed and his eyes were droopy." The officer, per the special report, asked Mr. Zaayer if he had "any alcohol earlier and he said had had 'two beers.'" Officer Harris noted, in the special report, that Mr. Zaayer's "responses were slow, pronounced and deliberate." Officer Harris stated, in the special report, that he could smell an

odor of alcohol coming from the breath of Mr. Zaayer. Officer Harris noted, during the conduct of field sobriety tests (See Exhibit 10), Mr. Zaayer had problems with the Walk and Turn test.

The Hearings Officer must find a tow is valid if the Hearings Officer finds that the police officer who ordered the vehicle towed followed all relevant laws/rules. In this case the relevant laws/rules can be found in the Portland City Code ("PCC") title 16. PCC 16.30.220 K.4 authorizes a police officer to order, without prior notice to the owner, a vehicle towed when the police officer has probable cause to believe that the vehicle's operator was driving under the influence of intoxicants.

ORS 131.005 (11) defines probable cause as when "there is a substantial objective basis for believing that it is more likely than not an offense has been committed and a person to be arrested has committed it." Probable cause does not require certainty or proof beyond a reasonable doubt. *State v. Spicer*, 254 Or 68, 70 (1984) Admission of the consumption of alcohol, smell of alcohol on a person's breath and poor results on field sobriety tests are all considered objective factors for a police officer in making a probable cause decision. *State v. Bickford*, 157 Or App 386 (1998)

The Hearings Officer finds that Mr. Zaayer did not deny the officer smelled alcohol, that Mr. Zaayer admitted to the officer that he had consumed alcohol earlier in the day, and that Mr. Zaayer had difficulty in performing the field sobriety tests. The Hearings Officer, therefore, finds that the police officer, prior to ordering Mr. Zaayer's vehicle towed on November 15, 2009, did have probable cause to believe that Mr. Zaayer was driving under the influence of intoxicants. The Hearings Officer finds that the police officer who ordered Mr. Zaayer's vehicle towed followed the relevant laws/rules and the tow of Mr. Zaayer's vehicle on November 15, 2009 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: December 8, 2009
GJF:cb/rs



Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 22747

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Letter	Zaayer, David	Received
2	Tow desk printout	Hearings Office	Received
3	Hearing notice	Hearings Office	Received
4	Tow hearing info. sheet	Hearings Office	Received
5	Special Report	Police Records	Received
6	Custody Report	Police Records	Received
7	Special Report	Police Records	Received
8	Special Report	Police Records	Received
9	Breath Test Report	Police Records	Rejected
10	Field Sobriety Test Report	Police Records	Rejected
11	Oregon Driver License	Police Records	Received
12	Search by Consent	Police Records	Rejected
13	DMV Implied Consent	Police Records	Rejected
14	DUII Interview Report	Police Records	Rejected
15	Property/Evidence Receipt	Police Records	Rejected
16	Citation	Police Records	Rejected
17	Towed Vehicle Record	Police Records	Received
18	Oregon Driver License	Police Records	Received
19	Vehicle Release	Police Records	Received