



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF CHRISTOPHER FORREST BERTHOLF

CASE NO. 1100151

DESCRIPTION OF VEHICLE: Kia Sedona (OR 975BWY)

DATE OF HEARING: October 1, 2010

APPEARANCES:

John Henry Hingson, III, Attorney for Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. John Henry Hingson, III appeared at the hearing on behalf of Mr. Christopher Bertholf. Mr. Christopher Bertholf was also present at the hearing. Mr. Bertholf provided sworn testimony in response to questions directed at him by his attorney, Mr. Hingson, and the Hearings Officer. No one appeared on behalf of the City. The Hearings Officer makes this decision based on substantial evidence upon the record as a whole, which includes the testimony of Mr. Bertholf and the documents admitted into evidence (Exhibits 1 through and including 26).

A police report submitted by Officer Sorensen, Portland Police Bureau (Exhibit # 8), indicates that Mr. Bertholf was stopped for suspicion of Driving Under the Influence of Intoxicants (DUII) on September 26, 2010 at approximately 3:30 p.m. The report indicates that "he stopped approximately three feet from the curb, extending out into the northbound number two lane." Mr. Bertholf was ultimately arrested for DUII and a tow was ordered for his vehicle under PCC 16.30.210(A)(2).

In response to questions posed to him by his attorney, Mr. Bertholf testified to the following: He was stopped by Officer Sorenson on NE 102nd Ave. just North of the Interstate 84 overpass. Mr. Bertholf stated that he was traveling Northbound and pulled his vehicle to the right hand curb; parking in an area that he believed was an unrestricted parking zone. Mr. Bertholf testified that he is familiar with the area and has lived for many years just four blocks from the area in which he stopped. Mr. Bertholf further testified that his vehicle was parked approximately 12 to 18 inches from the curb and was parked 6-7 feet behind a pick-up truck. In response to questions posed to him by the Hearings Officer, Mr. Bertholf testified that during his contact with Officer Sorenson he stood on the curbside of his vehicle while talking with the Officer. During that time he had an opportunity to observe how his vehicle was parked in relation to the curb. Mr. Bertholf, by and through his attorney, challenged the validity of the tow on the basis of whether his vehicle was parked in a fashion which made it a danger to public safety.

The Hearings Officer must find a tow is valid if the person ordering the tow followed the relevant laws/rules. In this case, the relevant laws/rules can be found in the Portland City Code ("PCC") Title 16. PCC 16.30.210(A)(2) permits a police officer, without prior notice, to order a vehicle towed when the vehicle is parked in a manner that may be hazardous to traffic.

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that the area in which Mr. Bertholf parked his vehicle was a legal parking area. The vehicle was parked on the East side of NE 102nd Ave. facing North. Northeast 102nd is a four-lane road, with a marked center turn lane; the road runs North-South and has parking on both sides of the street. The issue in this case is whether Mr. Bertholf's vehicle was parked in a manner which made it hazardous to traffic in violation of PCC 16.30.210. Mr. Bertholf's testimony regarding the location of his vehicle is the only oral testimony provided about whether the vehicle was parked in a hazardous manner. While Mr. Bertholf was ultimately arrested for DUII, there is no indication in the Officer's report that Mr. Bertholf was so intoxicated that he would be unable to testify accurately about the positioning of his vehicle. Mr. Bertholf is familiar with the area in which his vehicle was parked and had an opportunity to observe the vehicle on the curbside. The Hearings Officer therefore, considers Mr. Bertholf's testimony to be an accurate reflection of how his vehicle was parked. The Officer's report (Exhibit #8) lacks sufficient detail to allow the Hearings Officer to find that the manner in which the vehicle was parked was substantially different than how Mr. Bertholf described the vehicle, and therefore created a hazard to other traffic.

Order:

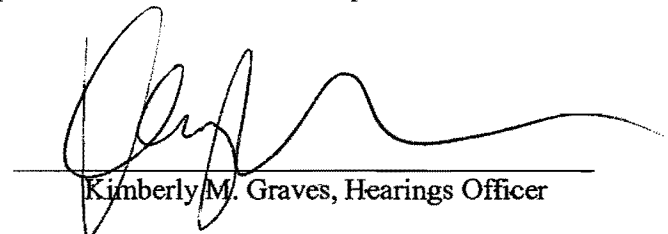
Therefore, the Hearings Officer finds that the owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 1, 2010

KMG:cb

Enclosure



Kimberly M. Graves, Hearings Officer

Bureau: Police
Tow Number: 17419

Exhibit #	Description	Submitted by	Disposition
1	Letter received by fax	Hingson, John Henry	Received
2	Tow desk printout	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 by Officer Sorensen	Police Bureau	Received
7	Investigation Report by Officer Gunderson	Police Bureau	Received
8	Investigation Report and Continued Report by Officer Sorensen	Police Bureau	Received
9	Special Report Non-Connect by Officer Hamm	Police Bureau	Received
10	Special Report Non-Connect by Officer Voepel	Police Bureau	Received
11	Force Data Collection Report by Officer Gunderson	Police Bureau	Received
12	Implied Consent	Police Bureau	Received
13	DUII Interview Report	Police Bureau	Received
14	Interview sheet	Police Bureau	Received
15	Traffic Division Search Warrant Checklist	Police Bureau	Received
16	Affidavit in Support of Telephonic or Electronic Search Warrant w/attachments	Police Bureau	Received
16a	Narrative	Police Bureau	Received
16b	Blood Sample Request for Blood Alcohol Content (BAC)	Police Bureau	Received
16c	Urine Sample Request	Police Bureau	Received
16d	Blood Sample Request for Controlled Substances & Deoxyribonucleic Acid (DNA) Sample Trace Evidence Request	Police Bureau	Received
16e	Hospital Blood Evidence Request	Police Bureau	Received
16f	Consensual Blood Evidence Analysis Request; Consensual Urine Evidence Analysis Request; Vehicle Examination Request	Police Bureau	Received
16g	Electronic Devices Evidence Request	Police Bureau	Received
16h	Probable Cause	Police Bureau	Received
16i	Prayers sheet & signed statement sheet	Police Bureau	Received
17	Search Warrant & signed statement sheet	Police Bureau	Received
18	Copy of Appellant's driver's license	Police Bureau	Received
19	Citation and Complaint	Police Bureau	Received
20	Complaint and Summons	Police Bureau	Received
21	Notice of Tow	Police Bureau	Received
22	Oregon State Police Forensic Services Requests (2 pgs)	Police Bureau	Received
23	Property Evidence Receipts (2 pgs)	Police Bureau	Received
24	Duplicate copy of Exh. 1 received by mail	Hingson, John Henry	Received
25	Request for hearing	Hingson, John Henry	Received
26	Notification of Invalid Tow form	Hearings Office	Received

