

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

APPEAL OF Krisinda Lee Stewart

CASE NO. 1110055

DESCRIPTION OF VEHICLE: Landrover Discovery (OR 598ENX)

DATE OF HEARING: May 12, 2011

APPEARANCES:

None

HEARINGS OFFICER: Ms. Kimberly M. Graves

Ms. Krisinda Lee Stewart did not appear at the hearing or offer testimony on her own behalf. 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 documents admitted into evidence (Exhibits 1 through and including 9).

Summary of Evidence:

Ms. Stewart submitted a Tow Hearing Request Form, Exhibit 2, in which she writes "My vehicle was towed because of 'lack of insurance'. My vehicle has been insured by Liberty Mutual without lapse since date of purchase, which I believe I purchased in 2003. Attached is a copy of current insurance card/proof of insurance." On the Request Form, Ms. Stewart also writes that she authorizes Alexander Shields to represent her at the tow hearing. Mr. Shields did not appear at the hearing or offer any testimony on behalf of Ms. Stewart.

The City submitted Exhibits 5 through, and including, 9 for the Hearings Officer's consideration. Exhibit 8 is an Investigation Report submitted by Officer Sarah Payton. Officer Payton writes in the narrative portion of the report that on March 20, 2011 she responded to report of a non-injury accident at SW 18th /Jefferson. Three vehicles were involved in the accident. Mr. Shields was identified as the "suspect" as he had rear-ended a vehicle which was stopped at a traffic light, causing the 1st vehicle to strike the vehicle in front of it. The vehicles were on the roadway when the collision occurred, and the report does not indicate when/if the vehicles were removed from the roadway at any time during the investigation. Mr. Shields informed Officer Payton that the brakes on his vehicle were bad and that he believed the faulty brakes caused the collision. Mr. Shields is described as having "very slurred speech, heavy eyelids, glassy eyes and very slow, exaggerated body movements." The report indicates that the vehicle owner was called regarding "her lack of insurance for the vehicle." The vehicle was towed for "no insurance." Exhibit 9 is a Notice of Tow which indicates that the vehicle was towed because the driver was driving uninsured in violation of ORS 806.010.

Applicable Law:

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 and the Oregon Revised Statutes ("ORS"). ORS 806.011 provides that;

"an unexpired card issued as provided in ORS 742.447, or other current proof of compliance with financial or future responsibility requirements approved by rule by the Department of Transportation, shall be carried in each motor vehicle that is operating in this state . . . Failure of the driver of a motor vehicle to show a valid card or other proof of compliance when asked to do so by a police officer is reasonable grounds for the officer to believe that the person is operating the vehicle in violation of ORS 806.010." (Emphasis added.)

ORS 806.010 indicates that a person commits the offense of driving uninsured if the person operates a motor vehicle without being insured under a motor vehicle liability insurance policy. PCC 16.30.220K1 authorizes an officer to tow a vehicle, without notice, when the officer has probable cause to believe that the vehicle's operator has committed the offense of Driving Uninsured under ORS 806.010.

Findings of Fact and Conclusions of Law:

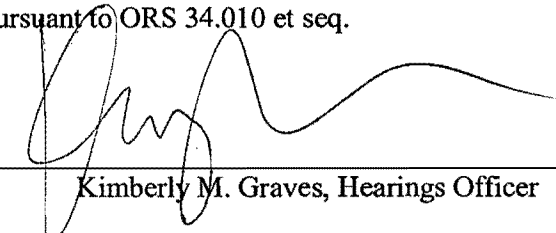
The Hearings Officer finds that on March 20, 2011 Ms. Stewart's vehicle, while driven by Mr. Shields, was involved in a collision near the intersection of SW 18th and SW Jefferson; a public right-of-way. The Hearings Officer finds that the vehicle remained in the roadway, following the collision, and created a hazard to other traffic. The Hearings Officer finds that Mr. Shields was unable to provide proof of valid insurance when requested to do so by a police officer. The Hearings Officer finds that Mr. Shields' failure to provide proof of insurance gave the officer probable cause to believe that Mr. Shields had committed the crime of Driving Uninsured under ORS 806.010. The Hearings Officer finds that the tow of Ms. Stewart's vehicle, being driven by Mr. Shields, is valid.

Order:

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: May 13, 2011
KMG:jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 5182

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Stewart, Krisinda Lee	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Notice of Rights and Procedures	Hearings Office	Received
5	Towed Vehicle Record	Police Records	Received
6	OR Police Traffic Crash Report	Police Records	Received
7	Custody Report	Police Records	Received
8	Investigation Report	Police Records	Received
9	Notice of Tow	Police Records	Received