



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

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

**HEARINGS OFFICER'S ORDER**

**APPEAL OF SHAWNA ATTAWAY-JEFFERSON**

CASE NO. 1090299

DESCRIPTION OF VEHICLE: Honda Accord (OR 571BTU)

DATE OF HEARING: January 14, 2010

**APPEARANCES:**

Shawna Attaway-Jefferson

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Attaway-Jefferson appeared at a hearing on January 4, 2010 and a continued hearing on January 14, 2010, and testified on her own behalf. Ms. Patricia Attaway appeared and testified on behalf of Ms. Attaway-Jefferson at the January 14, 2010 hearing. The Hearings Officer makes this decision based upon the testimony of Ms. Attaway-Jefferson, Ms. Attaway and the documents admitted into the evidentiary record (Exhibits 1 through and including 17). The Hearings Officer notes that statements and/or documents made in the admitted Exhibits relating to events occurring after Ms. Attaway-Jefferson's vehicle was ordered towed were given no weight in this decision.

Ms. Attaway-Jefferson testified that on December 19, 2009 she was at Club 720 when she received a telephone call informing her that her mother, who was babysitting Ms. Attaway-Jefferson's daughter, was ill. Ms. Attaway-Jefferson stated she left Club 720 and walked to her vehicle at SE 8<sup>th</sup>/SE Clay, entered her vehicle and pulled out into the traffic lane. Ms. Attaway-Jefferson admitted that initially she did not turn on her headlights, but a warning went off in her vehicle and she responded by turning on the lights. Ms. Attaway-Jefferson stated that she did not initially turn on her lights because she was anxious about the phone call that her mother was ill. Ms. Attaway-Jefferson stated that almost immediately thereafter she was pulled over by a police officer. Ms. Attaway-Jefferson noted, on the first page of Exhibit 17 (photos) the location where her vehicle was parked while she was at Club 720 (top photo), and where her vehicle was parked when she was pulled over by the police officer (Exhibit 17, page 2, bottom photo). Ms. Attaway-Jefferson testified that her vehicle was parked, after being pulled over by the police officer, in a legal location. Ms. Attaway-Jefferson stated that she was wearing "heels" when she took Field Sobriety Tests administered by the police officer and she believed that she followed all of the instructions given by the police officer. Ms. Attaway-Jefferson stated that she does suffer from an astigmatism and was unsure of its impact upon the "eye" portions of the Field Sobriety Tests (ie. "distinct and sustained Nystagmus at Maximum Deviation").

Ms. Adrienne Howard submitted a written statement (Exhibit 15) in support of Ms. Attaway-Jefferson. Ms. Howard's statement is generally consistent with Ms. Attaway-Jefferson's testimony at the hearing.

The police officer who ordered Ms. Attaway-Jefferson's vehicle towed submitted a written "Custody Report." (Exhibit 5). The police officer's statement described observations of Ms. Attaway-Jefferson's driving (prior to the traffic stop) and of Ms. Attaway-Jefferson's behavior after the traffic stop; including the conduct of Ms. Attaway-Jefferson in completing the Field Sobriety Tests.

The police officer's statement (Exhibit 5, page 2) indicates that she observed Ms. Attaway-Jefferson driving westbound on SE Clay without the vehicle's lights being on. The police officer's report indicates that when she approached Ms. Attaway-Jefferson's vehicle she could smell a "moderate odor of an unknown alcoholic beverage" coming from Ms. Attaway-Jefferson. The police officer's report indicates Ms. Attaway-Jefferson's eyes "were droopy, watery and red. Attaway-Jefferson's facial muscles were flaccid. As she spoke, I noticed her speech was thick, slow and slurred." The police officer's report indicated Ms. Attaway-Jefferson admitted that she "had come from the 720 Room located at 720 SE Hawthorne. She said that she 'only had one drink.'"

The police report (Exhibit 5, page 2) states that Ms. Attaway-Jefferson's vehicle was "pulled over and parked in a no parking zone in front of a business's garage."

The Hearings Officer must find a tow valid if the Hearings Officer finds that the person ordering the tow followed the relevant laws/rules. In this case, the relevant laws/rules are found in the Portland City Code ("PCC") Title 16. The specific section of Title 16 is found in 16.30.220 K.4. This section states that a vehicle may be ordered towed, without prior notice to the vehicle owner, if a police officer has "probable cause to believe that the vehicle's operator" was "driving under the influence of intoxicants." In addition, the Hearings Officer finds that the decision set forth in *Miranda v. City of Cornelius*, 429 F 3d 858 (2005) is also relevant in this case.

The Hearings Officer finds that ORS 131.005 (11) defines "probable cause" to exist when there is a substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it." To prove "probable cause" does not require proof beyond a reasonable doubt, which is necessary to convict an individual of a crime. *State v. Spicer*, 254 Or 68, 70 (1984)

In this case, the Hearings Officer finds that there were a number of "objective factors" observed by the police officer. The officer observed Ms. Attaway-Jefferson driving without headlights at approximately 1:00 a.m., Ms. Attaway-Jefferson's emitting a smell of an alcoholic beverage, having droopy, watery and red eyes, flaccid muscles and thick, slow and slurred speech. The officer also noted Ms. Attaway-Jefferson had some difficulty in performing Field Sobriety Tests. The Hearings Officer finds that there is a sufficient objective basis by considering the preceding observations, for the police officer to subjectively believe Ms. Attaway-Jefferson was driving under the influence of intoxicants. The Hearings Officer finds that the police officer did have probable cause to believe that Ms. Attaway-Jefferson was driving in violation of ORS 813.010 (driving while under the influence of intoxicants).

The court in *Miranda v. City of Cornelius*, in summary, held that a vehicle could not be towed unless, as a result of the location of the parked vehicle, the vehicle itself was at a safety risk or other vehicles were placed at risk. Application of *Miranda* in this case involves a significant disagreement between a

statement by the police officer who ordered Ms. Attaway-Jefferson's vehicle towed (Exhibit 5) and Ms. Attaway-Jefferson's testimony (including the photos in Exhibit 17). The Hearings Officer's resolution of this factual dispute is necessary to determine if the police officer who ordered Ms. Attaway-Jefferson's vehicle towed followed the relevant laws/rules.

The police officer's report contains one sentence regarding the location from where Ms. Attaway-Jefferson's vehicle was towed. The police officer stated "the car was pulled over and parked in a no parking zone in front of a business's garage."

Ms. Attaway-Jefferson testified, in detail, regarding the location where her vehicle was parked. She provided photos to assist the Hearings Officer in understanding the location where she allegedly parked (Exhibit 17). Ms. Attaway-Jefferson identified (Exhibit 17, page 2, bottom photo) where she believes her vehicle was parked upon being pulled over on December 19, 2009 (see white SUV, circled and noted as the location of "my car"). Ms. Attaway-Jefferson stated that the white SUV is not her vehicle, but only represented the location where her vehicle was parked. At the request of the Hearings Officer Ms. Attaway-Jefferson marked the location of the "closest driveway." The Hearings Officer notes that the "closest driveway" is approximately two car lengths in front of the white SUV.

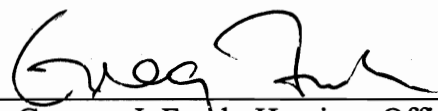
The Hearings Officer finds that the City has the burden of persuasion with respect to proving facts supporting the location of Ms. Attaway-Jefferson's parked vehicle. The Hearings Officer finds no reason to disbelieve the police officer's statement, but also finds no reason to disbelieve Ms. Attaway-Jefferson's statement and notations on the photos. The Hearings Officer, therefore, finds that the City has not persuaded the Hearings Officer that Ms. Attaway-Jefferson's vehicle was parked in a driveway and a "no parking zone." The Hearings Officer finds that if Ms. Attaway-Jefferson's vehicle was legally parked at the location identified on Exhibit 17 her vehicle itself was not at a safety risk and did not constitute a safety risk to other vehicles. The Hearings Officer finds, based upon *Miranda v. Cornelius* that Ms. Attaway-Jefferson should not have been towed.

The Hearings Officer finds that although the police officer who ordered Ms. Attaway-Jefferson's vehicle towed did have probable cause to believe Ms. Attaway-Jefferson violated ORS 813.010 (driving under the influence) the officer did not have the right to order the vehicle towed under *Miranda v. Cornelius*.

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: January 15, 2010  
GJF: cb

  
Gregory J. Frank, Hearings Officer

Bureau: Police  
Tow Number: 25202

**Enclosure**

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Letter	Attaway-Jefferson, Shawna	Received
2	Tow desk printout	Hearings Office	Received
3	Hearing notice	Hearings Office	Received
4	Tow hearing info. sheet	Hearings Office	Received
5	Custody Report	Police Records	Received
6	Notice of Impoundment Towing	Police Records	Received
7	Field Sobriety Test Report	Police Records	Received
8	DUII Interview Report	Police Records	Received
9	DMV Implied Consent	Police Records	Received
10	Intoxilyzer 8000 Operator's Checklist	Police Records	Received
11	Breath Test Report	Police Records	Received
12	Oregon Uniform Citation and Complaint	Police Records	Received
13	Affidavit of Probable Cause	Police Records	Received
14	Receipts	Attaway-Jefferson, Shawna	Received
15	Witness statement from Adrienne Howard	Attaway-Jefferson, Shawna	Received
16	Verizon printout	Attaway-Jefferson, Shawna	Received
17	Photos (6 pages)	Attaway-Jefferson, Shawna	Received