



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

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HEARINGS OFFICER'S ORDER

APPEAL OF SCOTT LOMAX

CASE NO. 1100020

DESCRIPTION OF VEHICLE: Volvo 850

DATE OF HEARING: January 28, 2010

APPEARANCES:

Scott Lomax, appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Scott Lomax, the vehicle owner and appellant in this case, appeared at the hearing and testified on his own behalf. The Hearings Officer makes this decision based upon the testimony of Mr. Lomax and the documents admitted into the evidentiary record (Exhibits 1 through and including 20).

Mr. Lomax testified that his mother-in-law ("Ms. Cheronés"), the driver of the vehicle immediately prior to it being towed, suffers from a multitude of physical and psychological problems which give persons coming in contact with her false impressions that she is under the influence of intoxicants. Mr. Lomax stated that the pill container found by the police officer in the vehicle, prior to its being towed, had been purchased that evening and Ms. Cheronés had not taken any of the pills. Mr. Lomax stated that the location where she parked his vehicle, prior to its being towed, was a lawful space for the time the vehicle was parked. Mr. Lomax stated that the location where the vehicle was parked did not present any danger to his vehicle or passing vehicles. Mr. Lomax admitted that Ms. Cheronés probably should not be drinking, in any amount, and driving.

The police officer who ordered Mr. Lomax's vehicle towed submitted documents into the record (Exhibits 7 through 19). The Hearings Officer finds Exhibit 7 and Exhibit 17 to be most relevant to this case. The Hearings Officer finds that the police officer observed Ms. Cheronés travel through an intersection in violation of the traffic light. The Hearings Officer finds that the traffic stop of Ms. Cheronés was lawful. The Hearings Officer finds that Ms. Cheronés admitted to having consumed a "margarita." The Hearings Officer finds that the police officer detected a smell of alcohol being emitted from Ms. Cheronés. The Hearings Officer finds that Ms. Cheronés had in her possession medications which warned her not to mix them with alcohol. The Hearings Officer finds Ms. Cheronés had difficulty with field sobriety tests administered by the police officer. The Hearings Officer finds that the police officer, based upon his observations, as discussed above, had probable cause to believe that Ms. Cheronés was operating Mr. Lomax's vehicle while under the influence of intoxicants.

The police officer, in Exhibit 7, stated that "I turned on the vehicle and stopped it at SE 12th Ave and SE Division St." The police officer included no additional narrative regarding the location of the vehicle.

The Hearings Officer finds that the court in *Miranda v. Cornelius*, 429 F 3d 858 (2005) held that a tow of a vehicle is not lawful if the location of the vehicle (where it is parked) presents no danger to the vehicle itself or presents no danger to other vehicles/pedestrians. Based upon the testimony of Mr. Lomax that the vehicle was parked on SE Division Street in a lawful space and the lack of explanation of the location of the vehicle by the police officer, the Hearings Officer must find that the location of Mr. Lomax's vehicle did not present any danger to itself or other vehicles. The Hearings Officer, therefore, finds that the tow of Mr. Lomax's vehicle, on January 22, 2010, is not valid.

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: January 29, 2010
GJF:rs/cb



Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 1396

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Hearing request form	Lomax, Scott	Received
2	Letter	Lomax, Scott	Received
3	Tow Desk printout	Hearings Office	Received
4	Hearing Notice	Hearings Office	Received
5	Tow Hearings Process Info. sheet	Hearings Office	Received
6	Towed Vehicle Record	Police Records	Received
7	Custody Report	Police Records	Received
8	Special Report	Police Records	Received
9	Waiver of Probable Cause Hearing Before a Judge	Police Records	Received
10	Citation	Police Records	Received
11	Notice of Impoundment Towing	Police Records	Received
12	Implied Consent form	Police Records	Received
13	Search by Consent	Police Records	Received
14	Intoxilyzer 8000 Operator's Checklist	Police Records	Received
15	Breath Test Report	Police Records	Received
16	DUII Interview Report	Police Records	Received
17	Field Sobriety Test Report	Police Records	Received
18	Oregon Driver License	Police Records	Received
19	Property/Evidence Receipt	Police Records	Received
20	Notification of Invalid Tow form	Hearings Office	Received