



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

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HEARINGS OFFICER'S ORDER

APPEAL OF ROBERT B. RATTS

CASE NO. 1100040

DESCRIPTION OF VEHICLE: Mitsubishi Eclipse (TX R68FLD)

DATE OF HEARING: March 11, 2010

APPEARANCES:

Mr. Robert B. Ratts

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

Mr. Ratts appeared at the hearing and testified on his own behalf. No person 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. Ratts and the documents admitted into evidence (Exhibits 1 through and including 13).

A police report submitted by Sergeant R. Steinbronn, Portland Police Bureau (Exhibit 7), indicates that he initiated a traffic stop on February 18, 2010, against Mr. Ratts. The officer indicates "Ratts told me that he currently has no insurance for the listed vehicle. I cited Ratts for fail(sic) obey traffic control device and driving without insurance." Accordingly, Sgt. Steinbronn ordered the vehicle towed pursuant to PCC 16.30.220.

Mr. Ratts testified that he was in fact pulled over by the officer because the officer told him he had failed to stop at a red light. Mr. Ratts testified that when he saw the flashing lights he pulled into a parking lot. Mr. Ratts stated it was a public parking lot for a strip mall, off the street. Mr. Ratts admits he did not have proof of insurance with him, but did provide a copy of an insurance card which indicates coverage for the vehicle on February 18, 2010, Exhibit 2. Mr. Ratts challenged the validity of the tow under the "community caretaker" function. He offered Exhibit 13 into evidence, which is a 9th Circuit Court of Appeals case, *Miranda v. City of Cornelius*, 429 F.3d 858, 2005.

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 16.30.220K1 permits a police officer, without prior notice, to order a vehicle towed when the officer has probable cause to believe that the vehicle's operator has committed the offense of driving uninsured in violation of ORS 806.010.

In *Miranda v. City of Cornelius*, however, the 9th Circuit reviewed the validity of a city ordinance that permitted an officer to tow a vehicle, without prior notice, if the officer had a reasonable belief that the driver was operating the vehicle without a license. The ordinance was challenged as an unreasonable seizure in violation of the Fourth Amendment. The Court concluded that probable cause was a standard peculiar to criminal investigations, not routine non-criminal procedures. As such, the Court stated that "the police's authority to search and seize

property when acting in its role as "community caretaker" has a different source than its authority to search and seize property to investigation criminal activity." The court concluded that when in their "community caretaking" function, police officers may impound vehicles that "jeopardize public safety and the efficient movement of vehicular traffic." The Court continued that the validity of impoundment in such cases turns "on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft."

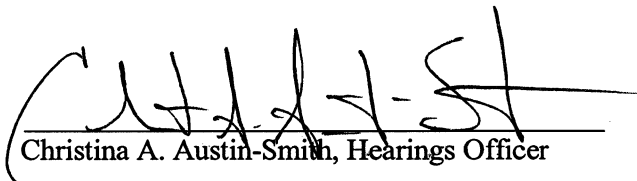
The Hearings Officer finds that the only evidence in the record of the exact location of the vehicle in this case is Mr. Ratts' testimony, which asserts the vehicle was parked in a public, strip mall parking lot, off the street. There is no evidence on the record that the vehicle, where parked, posed a threat to public safety, was a hazard to other drivers or a target for vandalism or theft. While the evidence does reflect Sgt. Steinbronn was under the belief from Mr. Ratts' statement that he had no insurance, and as such he would have been unable to legally remove the vehicle from the public location at that time, the Hearings Officer finds there is no evidence Mr. Ratts could not have legally removed it in a reasonable amount of time (either by obtaining insurance or retrieving his proof of insurance).

Accordingly, the Hearings Officer finds that based on the evidence in the record, the order to tow this vehicle under PCC 16.30.220K1, under these facts, was not sufficient under the "community caretaker" doctrine, therefore the owner is 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.

In order for the appellant to receive reimbursement, a complete and legible copy of the towing and storage bill must be furnished to the Hearings Officer by April 12, 2010.

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

Dated: March 12, 2010
CAS:rs/cb


Christina A. Austin-Smith, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 3207

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

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Ratts, Robert B.	Received
2	Illinois Insurance Card	Ratts, Robert B.	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	Traffic Violation Tow Report	Police Records	Received
8	Notice of Impoundment Towing	Police Records	Received
9	Texas Driver License	Police Records	Received
10	Driver License Confirmation	Police Records	Received
11	Illinois Insurance Card and Passport	Police Records	Received
12	Vehicle Release	Police Records	Received
13	Miranda v. City of Cornelius	Ratts, Robert B.	Received