



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF GARY DENNIS HILL

CASE NO. 1080272

DESCRIPTION OF VEHICLE: Ford Ranger (OR YJF796)

DATE OF HEARING: September 5, 2008

APPEARANCES:

Mr. Gary Dennis Hill, appellant

HEARINGS OFFICER: Mr. Ian Simpson

The Hearings Officer, on substantial evidence and based upon the record as a whole and receiving Exhibits 1 through 11 into the record without objection, finds as follows:

After the hearing, the appellant's attorney, Mr. Benjamin Haile, submitted additional argument (Exhibit 11). Given that the Hearings Officer had offered to Mr. Haile the opportunity to submit additional legal argument after the hearing, it is appropriate that Exhibit 11 be admitted into the record without objection. Mr. Haile also stated during the hearing that the subject vehicle was no longer in storage.

The towing officer's report (Exhibits 6 through 10) stated that he received a call concerning the appellant's vehicle. It was parked on a residential street, and had a male driver and a female passenger, the latter who was taking her clothes off. When the officer arrived at the scene he immediately recognized the female, who was actually a male prostitute who dresses as a female. The officer had seen the prostitute earlier that day and recognized the clothing he was wearing. The male driver, who was the appellant, admitted to the officer that he had hired the prostitute and had sex with him. The officer had the appellant's vehicle towed because the vehicle was used to facilitate the crime of prostitution.

The appellant was represented in the hearing by his attorney, Benjamin Haile. Mr. Haile stated that the appellant did not dispute the prostitution allegation. Mr. Haile argued, via Exhibits 1 and 11, and in the hearing, that the tow violated the protections against unreasonable searches and seizures in the Oregon Constitution, Article 1, Section 9. He stated that there is no exception to the warrant requirement in Article 1, Section 9 that would make the tow legal. Mr. Haile discussed the community care-taking exception to the warrant requirement and suggested that, based on *Miranda v. City of Cornelius*, 429 F.3d 858 (2005), the exception did not apply in this case. When the appellant was arrested his vehicle was legally parked in a residential neighborhood where it did not create a hazard for other vehicles and was not in any significant danger of being vandalized. Therefore, suggests Mr. Haile, the community caretaking exception did not apply.

Mr. Haile argued that, based on *Miranda*, a vehicle may not be towed at the scene of an arrest for punitive purposes. In addition, Mr. Haile stated that he is not aware of any case law creating an exception to the warrant requirement to impound a vehicle based on the officer having probable cause to believe that a specific crime had been committed.

The Hearings Officer finds that there is no evidence in the record that the appellant's vehicle was causing or likely to cause a hazard for other vehicles, or that it was in an area where it was at a high risk of being vandalized. Therefore, the Hearings Officer agrees with Mr. Haile that, based on *Miranda*, the appellant's vehicle could not be validly impounded based on the community caretaking exception to the warrant requirement. The Hearings Officer finds that Mr. Haile's arguments that a vehicle may not be towed for punitive purposes, nor because a specific crime such as prostitution was committed in it, are not well developed. However, the City has not provided any argument that there is an exception to the warrant requirement in Article 1, Section 9 that would make the tow in this case legal.

Given these circumstances, this was an invalid tow. Please note the relevant City Code sections below concerning this matter.

16.30.220 Towing Without Prior Notice.

(Amended by Ordinance Nos. 165980, 170912, 176352, and 176442, effective May 1, 2002.) Any authorized officer may, without prior notice, order a vehicle towed, when:

L. A police officer has probable cause to believe that the vehicle has been used or is possessed for the purpose of being used to commit or conceal the commission of one or more of these offenses:

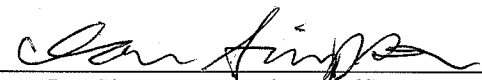
1. Prostitution (ORS 167.007), Promoting prostitution (ORS 167.012), or Compelling prostitution (ORS 167.017) or any attempt, solicitation or conspiracy of one of these offenses; or

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.

In order for the appellant to receive reimbursement, a copy of the towing and storage bill must be furnished to the Hearings Officer by October 13, 2008.

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

Dated: September 12, 2008
IS:cb


Ian Simpson, Hearings Officer

Bureau: Police
Tow Number: 24101

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 2 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter for client	Haile, Benjamin	<u>Received</u>
2	Tow desk report	Hearings Office	<u>Received</u>
3	Hearing notice	Hearings Office	<u>Received</u>
4	Tow hearing info. sheet	Hearings Office	<u>Received</u>
5	Towed vehicle record	Police Bureau	<u>Received</u>
6	Custody report for appellant	Police Bureau	<u>Received</u>
7	Custody report for Terry Haynes	Police Bureau	<u>Received</u>
8	Continuation report	Police Bureau	<u>Received</u>
9	Notice of Impoundment	Police Bureau	<u>Received</u>
10	Property evidence receipt	Police Bureau	<u>Received</u>
11	Request to reopen record	Haile, Benjamin	<u>Received</u>

