



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF BRYON BARGER

CASE NO. 1080383

DESCRIPTION OF VEHICLE: Chevrolet S10 (OR 069EBR)

DATE OF HEARING: December 23, 2008

APPEARANCES:

Mr. Garrett Mattson, Attorney for Mr. Barger

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Garrett Mattson, attorney, appeared and represented Mr. Barger at the hearing. The Hearings Officer makes this decision based upon the exhibits admitted into the evidentiary record (Exhibits 1 through and including 24) and the arguments presented by Mr. Mattson on behalf of Mr. Barger. The Hearings Officer finds Mr. Barger is the owner of the vehicle subject to this tow hearing and that Mr. Mattson is his attorney and lawful representative.

Mr. Mattson, for the purposes of this hearing, did not argue that the stop of Mr. Barger was not lawful. Mr. Mattson, for the purpose of this hearing, did not argue that the officer who cited Mr. Barger lacked probable cause to believe that Mr. Barger was driving under the influence of intoxicants. However, Mr. Mattson did argue that the tow of Mr. Barger's vehicle constituted an invalid search under *Miranda v. City of Cornelius*, 429 F.3d 858 (9th Cir)(2005).

Mr. Mattson asserted that the location where Mr. Barger was pulled over (SE Division in the vicinity of SE 136th) is a public roadway. Mr. Mattson argued that there is no evidence in the record to suggest that Mr. Barger's vehicle was towed to maintain its safety and no evidence in the record to suggest the vehicle was towed to preserve evidence. Mr. Mattson asserted that there is no evidence in the record to suggest that Mr. Barger's vehicle posed a risk to public safety.

The Hearings Officer reviewed the *Miranda* decision in light of the police officer's report (officer who ordered Mr. Barger's vehicle towed). The Hearings Officer agrees with Mr. Mattson that there is no evidence to support that Mr. Barger's vehicle was towed under the "community caretaking doctrine" as described in *Miranda*. The Hearings Officer agrees with Mr. Mattson that there is no evidence in the record that Mr. Barger's vehicle was towed to preserve evidence. The Hearings Officer finds no

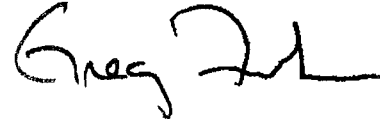
evidence to support, keeping in mind the *Miranda* decision, the police officer ordering Mr. Barger's vehicle towed. The Hearings Officer finds the tow of Mr. Barger's vehicle on December 13, 2008 not valid.

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: December 30, 2008

GJF: rs



Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 33397

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	Mattson, Garrett	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Ownership letter	Hearings Office	Received
6	Custody Report	Police Records	Received
7	Special Report	Police Records	Received
8	Intoxilyzer 8000 Operator's Checklist	Police Records	Received
9	Breath Test Report	Police Records	Received
10	Field Sobriety Test Report	Police Records	Received
11	DUII Interview Report	Police Records	Received
12	Oregon Driver's License - Bryon J. Barger	Police Records	Received
13	Implied Consent form	Police Records	Received
14	Photo - Bryon Joseph Barger	Police Records	Received
15	Multnomah County Sheriff's Office Property/Money Ledger	Police Records	Received
16	Notice of Impoundment Towing	Police Records	Received
17	Towed Vehicle Record	Police Records	Received
18	LEDS printout	Police Records	Received
19	Auto Records Release form	Police Records	Received
20	DMV Implied Consent form	Police Records	Received
21	Vehicle Release	Police Records	Received
22	Citations	Police Records	Received
23	Registration	Mattson, Garrett	Received
24	Receipt	Mattson, Garrett	Received