



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

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HEARINGS OFFICER'S ORDER

APPEAL OF DAVID REED

CASE NO. 1100010

DESCRIPTION OF VEHICLE: Ford F150 (OR XKR062)

DATE OF HEARING: January 21, 2010

APPEARANCES:

Mr. David Reed, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Reed appeared at the hearing and testified on his own behalf. The Hearings Officer makes this decision based upon the testimony of Mr. Reed and the documents admitted into the evidentiary record (Exhibits 1 through and including 9).

Mr. Reed testified that on January 1, 2010, he was pulled over by a police officer while driving his vehicle. Mr. Reed stated that, when requested by the police officer, he provided his driver's license, registration and "insurance information." Mr. Reed stated the insurance information he handed to the police officer would be best described as a group of papers. Mr. Reed stated that in the "insurance information" included an "expired" insurance card and also a copy of "current" information from Geico Insurance Co. Mr. Reed, at the hearing, showed the Hearings Officer the "insurance information" package and at the request of the Hearings Officer pulled out the "current" information from Geico (Exhibit 9). Mr. Reed denied the police officer statement that he was "unable to show proof of insurance."

The police officer who conducted the traffic stop of Mr. Reed on January 1, 2010 supplied a written narrative (Exhibit 8). In relevant part, the police officer's statement says: "Driver David Reed was unable to show proof of insurance. I cited Reed for no insurance..."

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 sections of PCC Title 16 that are relevant to this case are found in PCC 16.30.220 K.1. This section of the Portland City Code permits a police officer to order a vehicle towed and held at the owner's expense if the police officer has probable cause to believe the vehicle operator was driving uninsured.

The Hearings Officer finds that Mr. Reed and the police officer statements are in conflict regarding what insurance information was provided to the police officer at the traffic stop. The Hearings Officer finds the police officer statement is conclusory; no explanation was provided by the police officer of what documents were provided to him/her at the traffic stop and his/her basis for finding the documents inadequate. The Hearings Officer finds that Mr. Reed's testimony was credible. The Hearings Officer finds that Mr. Reed provided the police officer the insurance information package as displayed to the Hearings Officer during the hearing. The Hearings Officer finds that the insurance information package included current insurance information. The Hearings Officer finds the City, through the police officer's narrative (Exhibit 8), did not carry its burden of persuasion that the police officer had probable cause to believe Mr. Reed was driving uninsured.

The Hearings Officer also finds that the police officer submissions (Exhibit 7 and 8) indicated that Mr. Reed was pulled over on NE 7th Avenue / San Rafael. There is no indication whatsoever, in Exhibits 7 and 8, that the location where Mr. Reed parked his vehicle was an unlawful parking spot or that his vehicle itself was at risk or his vehicle created a safety risk to other vehicles. The Hearings Officer takes note of *Miranda v. City of Cornelius*, 429 F 3d 858 (2005) and finds that because the police officer offered no comments/observations regarding the location where Mr. Reed's vehicle was parked, the Hearings Officer cannot find the impoundment of Mr. Reed's vehicle was lawful.

The Hearings Officer finds, for the reasons stated above, that the police officer ordering Mr. Reed's vehicle towed on January 1, 2010, did not follow all relevant laws/rules. The Hearings Officer finds that the tow of Mr. Reed's vehicle on January 1, 2010 is not valid.

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 22, 2010

GJF:cb/rs

Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 32

Enclosure

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	Letter	Reed, David	Received
2	Geico insurance card	Reed, David	Received
3	Tow desk printout	Hearings Office	Received
4	Hearing notice	Hearings Office	Received
5	Tow hearing info. sheet	Hearings Office	Received
6	Towed Vehicle Record	Police Bureau	Received
7	Traffic Violation Tow Report	Police Bureau	Received
8	Officer's Narrative	Police Bureau	Received
9	Copy of Geico insurance information	Reed, David	Received
10	Receipt	Reed, David	