

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF LOUISE GADDIS

CASE NO. 1110041

DESCRIPTION OF VEHICLE: Dodge Stratus (WA 247ZKT)

DATE OF HEARING: April 14, 2011

APPEARANCES:

Larry Riggins, on behalf of Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Larry Riggins appeared at the hearing and testified on behalf of Ms. Louise Gaddis. No one 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. Riggins and the documents admitted into evidence (Exhibits 1 through and including 22).

Summary of Evidence:

Ms. Louise Gaddis submitted a hand-written request for a Tow Hearing in which she authorized Mr. Larry Riggins to represent her at the tow hearing. The narrative portion of the written request appears to have been written by Mr. Riggins, and is signed by Mr. Riggins. In the request, Mr. Riggins indicates that he was stopped for making an improper lane change. He writes that the vehicle was towed for not having proper insurance, but that the officer did not ask him for proof of insurance. Mr. Riggins appeared at the hearing and testified that when he was signaled by the officer, he stopped his vehicle in a legal parking space. Mr. Riggins testified that he is very familiar with the area that he was in, having driven in the area during the course of his employment. Mr. Riggins testified that his vehicle is insured and that he had proof of insurance in the glove box. Mr. Riggins testified that the officer did not ask him for proof of insurance, but instead asked him for his license and then immediately began inquiring about whether Mr. Riggins had been drinking alcohol prior to driving. Mr. Riggins indicated that he was told by the officer that the vehicle did not have insurance, but that he did not argue with the officer because it would have been inappropriate. Mr. Riggins submitted Exhibits 2, 3, and 3a for the Hearings Officer's consideration. Exhibit 2 is titled Evidence of Coverage and indicates that Ms. Gaddis' vehicle has insurance coverage which is valid until May 14, 2011. Mr. Riggins indicated that the insurance card in Exhibit 9 is the card that was in the vehicle on the evening that it was towed.

The City submitted Exhibits 7 through, and including, 21 for the Hearings Officer's consideration. Exhibit 13 is a Special Report written by Officer T. Larson regarding his contact with and subsequent arrest of Mr. Riggins. The report indicates that Officer Larson stopped Mr. Riggins for violating ORS 811.340-Improperly Executed Left Turn. There is no indication in the report whether Mr. Riggins stopped his vehicle in a legal parking space, or whether his vehicle was parked in a hazardous manner. Upon contacting Mr. Riggins, Officer Larson noted signs indicative of alcohol consumption. Officer Larson writes that he asked Mr. Riggins for his driver's license and insurance card. Officer Larson writes that Mr. Riggins "fumbled" through papers in the glove box looking for his insurance card, but does not indicate whether Mr. Riggins did or did not produce a valid insurance card. The report indicates that a DUII investigation was done at the scene, and Mr. Riggins was ultimately arrested. The bottom of the report indicates that the vehicle was towed for "Driving Uninsured."

The Hearings Officer notes that it is unclear whether any further conversation occurred between Mr. Riggins and the officer related to insurance for the vehicle.

Applicable Law:

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 and the Oregon Revised Statutes ("ORS"). ORS 806.011 provides that;

"an unexpired card issued as provided in ORS 742.447, or other current proof of compliance with financial or future responsibility requirements approved by rule by the Department of Transportation, shall be carried in each motor vehicle that is operating in this state . . . Failure of the driver of a motor vehicle to show a valid card or other proof of compliance when asked to do so by a police officer is reasonable grounds for the officer to believe that the person is operating the vehicle in violation of ORS 806.010." (Emphasis added.)

ORS 806.010 indicates that a person commits the offense of driving uninsured if the person operates a motor vehicle without being insured under a motor vehicle liability insurance policy. PCC 16.30.220K1 authorizes an officer to tow a vehicle when the officer has probable cause to believe that the vehicle's operator has committed the offense of Driving Uninsured under ORS 806.010.

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that PCC 16.30.220K1 would, on its face, permit the tow of Ms. Gaddis' vehicle in the situation described in Exhibit 13 by Officer Larson; however, the 9th Circuit Court of Appeals case, *Miranda v. City of Cornelius*, 429 F.3d 858, 2005, has added an additional step to the analysis in such cases.

In *Miranda v. City of Cornelius*, 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 investigate 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. Riggins' testimony, which asserts the vehicle was parked in a legal parking space on 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 that Officer Larson was under the belief

that the vehicle was not insured, and as such Mr. Riggins 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. Riggins 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 tow of Ms. Gaddis' vehicle is not valid.

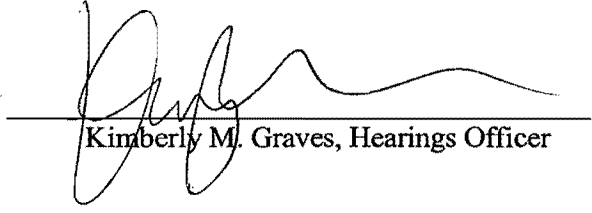
Order:

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.

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 May 16, 2011.

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

Dated: April 15, 2011
KMG:jeg


Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: PPB
Tow Number: 5453

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	Tow Hearing Request Form	Gaddis, Louise	Received
2	Evidence of Coverage	Gaddis, Louise	Received
3	WA State Title/Registration Certificate	Gaddis, Louise	Received
3a	WA Vehicle Registration Certificate	Gaddis, Louise	Received
4	Tow Desk printout	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Notice of Rights and Procedures	Hearings Office	Received
7	Towed Vehicle Record	Police Records	Received
8	WA State Driver's License	Police Records	Received
9	Insurance Identification Card	Police Records	Received
10	Automobile Policy Declarations	Police Records	Received
11	Vehicle Release	Police Records	Received
12	Custody Report	Police Records	Received
13	Special Report	Police Records	Received
14	Field Sobriety Test Report	Police Records	Received
15	DUII Interview Report	Police Records	Received

16	Intoxilyzer 8000 Operator's Checklist	Police Records	Received
17	Breath Test Report	Police Records	Received
18	Implied Consent Combined Report	Police Records	Received
19	Notice of Tow	Police Records	Received
20	Oregon Uniform Citation and Complaint	Police Records	Received
21	Image copy	Police Records	Received
22	Written Address	Larry Riggins	Received