



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF CHARLES NWEREM

CASE NO. 1110060

DESCRIPTION OF VEHICLE: BMW 740i (OR CU04911)

DATE OF HEARING: May 24, 2011

APPEARANCES:

Mr. Charles Nwerem, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Nwerem appeared at the hearing and testified on his own behalf. 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. Nwerem and the documents admitted into evidence (Exhibits 1 through and including 12).

Summary of Evidence:

Mr. Nwerem submitted a handwritten Tow Hearing Request form, Exhibit 1, in which he writes that he "had insurance." Mr. Nwerem writes that he provided proof of insurance and "the police officer said I don't have insurance and towed the car." Mr. Nwerem appeared at the hearing and testified that he was stopped on NE Killingsworth. When asked about where he was stopped and how his vehicle was parked, Mr. Nwerem testified that his vehicle was stopped parallel to the curb in the same manner that he would park it if he was visiting someone in the area. Mr. Nwerem testified that he was not aware of any parking restriction in the area and believed that it is lawful to park his vehicle where he stopped. Mr. Nwerem testified that he did not have an insurance card in his car, but that he had a bill for insurance which contained his insurance policy number. Mr. Nwerem testified that he provided the bill to the officer as proof of insurance. Mr. Nwerem testified that the officer informed him that his insurance had been terminated that that the vehicle would be towed.

The City submitted Exhibits 5 through, and including, 12 for the Hearings Officer's consideration. Exhibit 5 is a Traffic Violation Tow Report indicating that Mr. Nwerem's vehicle was towed because Mr. Nwerem did not have valid insurance or had inadequate insurance information leading the officer to believe that Mr. Nwerem was driving uninsured. Exhibit 6 is a Special Report written by Officer Burns indicating that on April 30, 2011, Mr. Nwerem was stopped on NE Killingsworth for failing to yield to pedestrians in a crosswalk. Officer Burns writes that he was provided with a "notice of termination letter" as proof of insurance and that a search of DMV records showed that Mr. Nwerem's policy was terminated on March 21, 2011. The Officer's report reads, "I ordered a 'no insurance' tow." The report does not indicate any other basis for the tow aside from lack of insurance. The

report does not note any concerns about the safety of the vehicle in the location it was stopped or concerns for the safety of the public related to 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, without notice, 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 Mr. Nwerem's vehicle in the situation described in Exhibit 6 by Officer Burns; 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. The Court held that probable cause to believe that a driver committed a traffic violation is not sufficient justification by itself to make impoundment of a vehicle reasonable under the 4th Amendment. 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. Nwerem's testimony, which asserts the vehicle was parked in a legal parking space on the street. There is no evidence in 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 Burns was under the belief that the vehicle was not insured, and as such Mr. Nwerem would have been unable to legally remove the vehicle from the public location at that time, the Hearings Officer finds there is no evidence that Mr. Nwerem 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 Mr. Nwerem's vehicle is not valid.

Order:

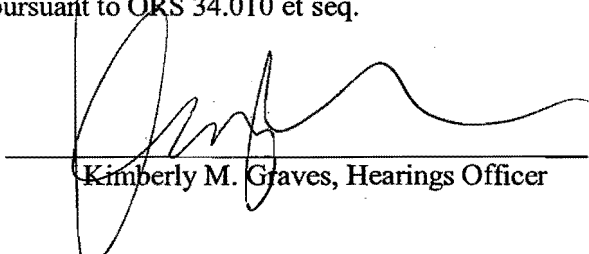
Therefore, the Hearings Officer finds that the owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage 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 June 27, 2011.

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

Dated: May 26, 2011

KMG:jeg/rs


Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 7876

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Nwerem, Charles	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Statement of Rights and Procedures	Hearings Office	Received
5	Traffic Violation Tow Report	Police Records	Received
6	Special Report	Police Records	Received
7	Notice of Tow	Police Records	Received
8	Towed Vehicle Record	Police Records	Received
9	Police printout	Police Records	Received
10	State Farm Certificate of Insurance	Police Records	Received
11	OR Driver's License copy	Police Records	Received
12	Vehicle Release	Police Records	Received