



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF MARTIN LOUIS CAPUTO

CASE NO. 1110073

DESCRIPTION OF VEHICLE: Ford Taurus (OR 595DKH)

DATE OF HEARING: June 2, 2011

APPEARANCES:

Mr. Martin Caputo, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Caputo 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. Caputo and the documents admitted into evidence (Exhibits 1 through and including 13).

Summary of Evidence:

Mr. Caputo submitted a Tow Hearing Request Form, Exhibit 1, in which he writes "On the mentioned date, I was exiting stadium F. Meyer's. Almost at my residence ½ blk away. Officer Yakots of the P.P.D turned on his lights for me to pull over. I did so immediately was asked to step out of the car, & was placed under arrest with a tow coming. I was told that I was under arrest for Trespass II from F. Meyer. I explained that was cleared up over a week ago and that I could go F.M.'s. The officer made 1 feeble phone call, got a busy signal, and arrested me & my car was towed." Mr. Caputo appeared at the hearing and testified that he was shopping at the Stadium Fred Meyer on Memorial Day. Mr. Caputo stated that he lives very close to the store and that as he exited the parking lot a block from his home, he received a signal to stop from a police officer. Mr. Caputo testified that he stopped immediately in the roadway and that his vehicle was blocking parked cars from exiting. Mr. Caputo testified that the officer, Officer Yakots, told him that he was under arrest for trespassing at the Fred Meyer store. Mr. Caputo testified that he attempted to explain that he was no longer excluded from the store. He testified that the officer made one attempt to contact the store by phone, but that after receiving a busy signal he simply continued with the arrest and subsequent tow of his vehicle. Mr. Caputo testified that he has had problems with Officer Yakots in the past, and that he believes the officer could have handled the situation differently. Mr. Caputo testified that approximately 9 days prior to the contact on May 30, 2011, Officer Yakots had "initiated" the "trespass" which Mr. Caputo received from Fred Meyer stores. Mr. Caputo testified that he was able to get the "trespass" dismissed by talking with the store manager and security. Mr. Caputo testified that between the time that he had the trespass dismissed and when he was stopped on May 30, 2011 he did not have any contact with Officer

Yakots. Nonetheless, Mr. Caputo testified that he did not believe that he should have been arrested, or that his vehicle should have been towed.

The City submitted Exhibits 5 through, and including, 13 for the Hearings Officer's consideration. Exhibit 6 is an Investigation Report completed by Officer Yakots in which he writes that on May 30, 2011 he was on patrol when he spotted Caputo driving near the bottle return in the parking lot. Officer Yakots writes that he knows that Mr. Caputo had been trespassed from Fred Meyer and that he was present when Mr. Caputo was "trespassed from all Fred Meyer property, including parking lots" on May 21, 2011. Officer Yakots writes that he initiated a traffic stop. Officer Yakots writes that Mr. Caputo told him that the trespass had been lifted. Officer Yakots indicates that he attempted to contact Fred Meyer Loss Prevention but received no answer. Officer Yakots notes that the traffic stop was initiated at NW 20th/Flanders and that the car was blocking the entire lane of NW 20th Ave. Officer Yakots writes that he had the vehicle towed as a hazard. Exhibit 9 is a Notice of Tow in which the officer indicates that the vehicle was towed because it was a hazard "blocking entire lane of travel-blocking in parked vehicles."

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. The specific sections of PCC Title 16 that are relevant to this case are found in PCC 16.20.120Q, PCC 16.30.210A2 and PCC 16.30.220A. PCC 16.20.120 Q states that it is unlawful to park or stop a vehicle in a manner that creates a traffic hazard impeding the safe movement of vehicular or pedestrian traffic. PCC 16.30.210 A.2 states that a vehicle may be towed and held at the expense of the owner or person entitled to possession thereof if the vehicle is in the public right-of-way and the vehicle is parked/stopped unlawfully in a manner that may be hazardous to traffic. PCC 16.30.220 A authorizes a police officer to order a vehicle towed, without prior notice, if the vehicle is impeding or likely to impede the normal flow of vehicular traffic.

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that based on Officer Yakots' contact with Mr. Caputo on May 21, 2011, the officer had reasonable suspicion to believe that Mr. Caputo had committed the crime of Criminal Trespass in the 2nd Degree by being on Fred Meyer property on May 30, 2011. The Hearings Officer finds that reasonable suspicion of criminal activity provides the lawful basis for a traffic stop. The Hearings Officer finds that Officer Yakots, despite the contrary statements of Mr. Caputo, had probable cause to arrest Mr. Caputo for the crime of Criminal Trespass in the 2nd Degree based on his prior knowledge of the trespass. The Hearings Officer finds that the stop and arrest of Mr. Caputo were lawful and do not provide a basis for invalidating the tow of Mr. Caputo's vehicle. The Hearings Officer finds that NW 20th is a public right-of-way. The Hearings Officer finds that on May 30, 2011 Mr. Caputo stopped his vehicle on NW 20th, upon receiving a signal from a police officer, and the vehicle was stopped in a manner which impeded traffic on the roadway and blocked the movement of parked vehicles. The Hearings Officer finds that the tow of Mr. Caputo's vehicle, as a hazard, is valid.

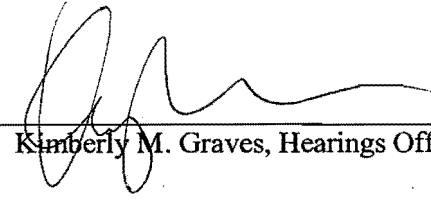
Order:

Therefore, it is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.

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

Dated: June 3, 2011

KMG:jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: PPB
Tow Number: 9677

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Caputo, Martin Louis	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Statement of Rights and Procedures	Hearings Office	Received
5	Towed Vehicle Record	Police Records	Received
6	Investigation Report	Police Records	Received
7	Continuation Report	Police Records	Received
8	Custody Report	Police Records	Received
9	Notice of Tow	Police Records	Received
10	Investigation Report	Police Records	Received
11	Custody Report	Police Records	Received
12	Notice of Tow	Police Records	Received
13	Towed Vehicle Record	Police Records	Received