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64672-9

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2010 AUG -9 PM 2:42

Case No.: 64672-9-i

In the Court of Appeals,  
Division 1  
of the State of Washington

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City of Kent, APPELLANT  
v.

Raymond Mann, RESPONDENT

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BRIEF OF APPELLANT

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Julie Stormes  
Prosecuting Attorney  
Attorney for Respondent  
City of Kent Law Department  
220 Fourth Ave. South  
Kent, WA 98032-5895

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#### A. INTRODUCTION

The City of Kent by and through its attorney Julie Stormes, respectfully requests this court to overrule the December 11, 2009 decision of the King County Superior Court that upheld the ruling of the Kent Municipal Court regarding agency discretion and length of vehicle impounds.

#### B. ASSIGNMENT OF ERROR

The King County Superior Court (superior court) erred when it upheld the Kent Municipal Court's (trial court) decision that the City's impound ordinance Kent City Code (KCC) 9.39.030, is invalid because it fails to allow for the impounding officer to exercise discretion regarding the length of a vehicle impound period, when Wash. Rev. Code (RCW) §46.55.120(1)(a) states the impounded vehicle "may be held for up to thirty days at the written direction of *the agency* ordering the vehicle impounded," in this case, the City. (Emphasis added).

#### D. STATEMENT OF THE CASE

Raymond Mann (the defendant) was arrested for Driving While License Suspended-2<sup>nd</sup> degree on March 13, 2009. Ex. 1. Pursuant to the arrest, Kent Police Officer R. Brennan impounded the defendant's car and placed a 30 day hold upon it. Ex.1. The

defendant appealed to the trial court and, at a hearing on March 20, 2009, argued the impound was improper because the officer failed to exercise discretion, as interpreted under RCW 46.55, *et seq*, and the Washington state cases *All Around Underground v. Washington State Patrol, et al*, 148 Wn.2d 145, 60 P.3d 53 (2002) and *Beccerra v. City of Warden*, 117 Wash. App. 510, 71 P.3d 226 (2003)<sup>1</sup>. Ex. 2, at 4-8. The defendant did not argue his arrest was improper, nor did he request the vehicle be released due to hardship. Ex. 2, at 1-17. The City countered the officer did exercise discretion regarding the impound, and that the impoundment period was proper under the authority delegated to municipalities under RCW 46.55.120(1)(a). Ex.2, at 9-10.

The trial court ruled the officer did exercise discretion regarding the initial impound, but held the duration of the impound was improper not only because it limited an impounding officer's discretion, but the trial court's discretion as to the term of a vehicle impound as well. Ex. 2, at 23-26. It then directed the defendant's vehicle released immediately, and held the City liable for all costs incurred to date, less initial impound costs and storage fees. Ex.

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<sup>1</sup> These cases were also referred to by both parties at the lower court as "*In re Chevrolet Truck*" and "*1992 Honda Accord*", respectively. Ex. 2, at 24.

3. The City timely filed its appeal with the superior court. Ex. 4, at 2.

The parties next appeared before King County Superior Court Judge Theresa Doyle. Ex. 5, at 1-9. The City argued the trial court erred in holding, first, that the duration of the tow was improper and, second, that the court's discretion was improperly restricted by the KCC authorizing the impound. Ex. 5, at 3, 6. The superior court agreed with City regarding the second part of the appeal, that the trial court erred in finding its discretion was improperly restricted by the City's impound ordinance, and did not require additional argument. Ex. 4, at 6. Nevertheless, it upheld the trial court's decision that the length of the impound periods under the KCC failed to permit the officer initiating the impound to exercise discretion. Ex. 6.

#### E. ARGUMENT

The superior court erred in upholding the trial court's decision that the duration of the impound was improper.

A city is free to enact and enforce ordinances relating to the regulation of the operation of vehicles on public highways, as long as the ordinance does not interfere with the statutory uniformity requirement. *Seattle v. Williams*, 128 Wn.2d 341, 354, 908 P.2d

359 (1995); see also Wash Const. Art. XI, §11. The legislative branch of government represents the people when it determines that a law is necessary, wise, or desirable. *State v. Smith*, 93 Wn.2d 329, 337, 610 P.2d 869 (1980).

The superior court erred when it affirmed the trial court's ruling that the City's vehicle impound ordinance violated RCW 46.55, *et seq.* The City does not dispute that the discretion regarding the initial impound in RCW 46.55.113 is the officer's to exercise, and acknowledges this is an issue when the decision of whether to tow a vehicle arises. In finding KCC 9.39.030 improperly restricted the officer's exercise of discretion in this case, however, it appears both lower courts relied upon the holding in *Beccerra*, supra, to support of their respective rulings. In that case, the panel concluded the length of the hold violated RCW 46.55.120(1)(a) because it imposed a mandatory hold period. It reasoned that the logic of *All Around Underground*, 148 Wn.2d 145, applied to the length of impound, not just impoundment itself: "[t]he [Warden City] code affords no room for discretion as the term of impoundment." *Id.* at 517. In its ruling, the *Beccerra* panel inferred that not only the impound, but the duration of the impound, was in the officer's discretion. Again, it is apparently

this inference upon which the lower courts relied in ruling the term of impound in this case was improper.

The impound term under RCW 46.55.120(1)(a) is a determination to be made “at the written direction of *the agency* ordering the vehicle impounded” (emphasis added). The law enforcement officer who initiates a vehicle impound is simply not “the agency.” The authority to hold a motor vehicle is not intrinsic to the officer, rather it originates with the agency that employs him/her and authorizes his/her actions, be that the state, or a county or city. A plain reading of RCW 46.55.129(1)(a) which allows the agency authorizing an impound to hold a vehicle for a set period of time imparts no authority to the officer in determining how long a vehicle is to be held. Notably, the same statute also confers upon the agency ordering the impound – not the officer initiating the impound – the ability to release an impounded vehicle due to hardship, or lack of knowledge of the vehicle’s true owner.

RCW 46.55.120(1)(a) permits agencies to impound a car for 30, 60, or 90 days, depending on the type of crime a driver is accused of committing. That the City, as the agency authorizing the impound, opted for the maximum period of impoundment

available under the statute was a proper exercise of *its* discretion. It was error for the superior court to find that the officer's discretion was improperly restricted when the initial period of the impound is simply not for the officer to decide.

The City also believes it is illogical to impose upon an officer conducting a criminal investigation on the street the decision of duration of vehicle impound. The facts of police contact in this case may have been benign, but to expect a law enforcement officer on each case involving an impound for a violation of RCW 46.20.342 to set aside time during a criminal investigation, or to put off responding to pending calls, so he can ponder about how long one car should be held versus another, is simply not an appropriate use of a law enforcement officer's time or attention. Further, if the legislature had intended for the officer to determine how long an impounded vehicle should be held, it could have made that as clear as it did in RCW 46.55.113. It did not. As it stands, RCW 46.55.120(1)(a) is not written, nor should it be read, to impart this decision to a law enforcement officer. For this reason, the superior court's ruling upholding, in part, the ruling of the trial court, must be overruled.

F. CONCLUSION

Based on the foregoing, and any subsequent argument, the appellant, City of Kent, respectfully requests that this court reverse the ruling of the superior court in its finding that the duration of the impound in this case improperly impinged upon the law enforcement officer's discretion. The City further asks that the court reverse the findings of the trial court that the Kent City Code improperly restricted both the law enforcement officer's and the court's discretion, and remand the matter to Kent Municipal Court for further hearing.

RESPECTFULLY submitted this <sup>9TH</sup> \_\_\_\_\_ day of August 2010.



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Julie Stormes, WSBA #34882  
Prosecuting Attorney  
Office of the Kent City Attorney

## APPENDIX

- Exhibit 1: Kent Police Case Report 09-2798 (K75218)
- Exhibit 2: City of Kent v. Raymond Mann  
Kent Municipal Court  
Cause No.: K75218 (CV)  
Report of Proceedings, March 30, 2009
- Exhibit 3: City of Kent v. Raymond Mann  
Kent Municipal Court  
Cause No.: K75218 (CV)  
Findings, Conclusions, and Order Following  
Vehicle Impound dated March 30, 2009
- Exhibit 4: Certified Copy of Kent Municipal Court Docket
- Exhibit 5: City of Kent v. Raymond Mann  
King County Superior Court  
Cause No.: 09-2-17404-1SEA  
Report of Proceedings, December 11, 2009
- Exhibit 6: City of Kent v. Raymond Mann  
King County Superior Court  
Cause No.: 09-2-17404-1SEA  
Order Affirming Lower Court's Decision, dated  
December 11, 2009
- Exhibit 7: RCW § 46.55.113
- Exhibit 8: RCW § 46.55.120
- Exhibit 9: KCC § 9.39.030

**Ex. 1**

09-2798

MICRO DATA OLYMPIA (360) 570-8400

CRIMINAL  TRAFFIC  NON-TRAFFIC  K 75218

IN THE  DISTRICT  MUNICIPAL COURT OF KENT, WASHINGTON  
 STATE OF WASHINGTON, PLAINTIFF VS. NAMED DEFENDANT  
 COUNTY OF KING  
 CITY/TOWN OF KENT  
L.E.A. ORI #: WA0170700 COURT ORI #:  WA017111J (KENT)  WA017033J (AUKEEN)

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO. MANN \* R \* 63890 STATE WA EXPIRES 10/09 PHOTO I.D. MATCHED  YES  NO  
NAME: LAST MANN, RAYMOND FIRST MIDDLE COL  YES  NO  
ADDRESS 619 1st Ave S #5 IF NEW ADDRESS   
CITY KENT, WA STATE WA ZIP CODE 98032 EMPLOYER LOCATION  
DATE OF BIRTH 10/26/37 RACE W SEX M HEIGHT 5'09 WEIGHT 175 EYES BR HAIR WHE  
RESIDENTIAL PHONE NO. CELL/PAGER NO. 606 850-3437 WORK PHONE NO.  
VIOLATION DATE MONTH 3 DAY 13 YEAR 09 TIME 1425 INTERPRETER NEEDED   
ON OR ABOUT 3/13/09 LANG:  
AT LOCATION 10900 SE 256 ST M.P. CITY/COUNTY OF KENT / KING

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEHICLE LICENSE NO. 371-UKA STATE WA EXPIRES 10/09 VEH. YR. 1996 MAKE FORD MODEL WIND STYLE VANW COLOR WHI  
TRAILER #1 LICENSE NO. STATE EXPIRES TR. YR. TRAILER #2 LICENSE NO. STATE EXPIRES TR. YR.  
OWNER/COMPANY IF OTHER THAN DRIVER SAME  
ADDRESS CITY STATE ZIP CODE  
ACCIDENT  BAC  COMMERCIAL  YES HAZMAT  YES EXEMPT  FARM  FIRE  
NO NR R I F BEADING VEHICLE  NO  YES  F.V.  OTHER

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

#1 VIOLATION/STATUTE CODE RCW 46.20.342  DV  
DWLS 2<sup>o</sup>  
#2 VIOLATION/STATUTE CODE  DV

MANDATORY COURT APPEARANCE OR  BAIL FORFEITURE IN U.S. \$

APPEARANCE DATE MO. DY. YR. TIME A.M. P.M. RELATED # 09-2798 DATE ISSUED 5/13/09  
 Served on Violator  
 Sent to Court for Mailing  
 Referred to Prosecutor  
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S).  
OFFICER BRENNAN 158426

COMPLAINT / CITATION

ABSTRACT OF JUDGMENT

CRG	PLEA	CNG	FINDINGS	FINE	SUSPENDED	SUB-TOTAL	FIND/JUDG DATE
1	G NG		G NG D BF	\$	\$	\$	ABS. MLD TO OLY
2	G NG		G NG D BF	\$	\$	\$	TO SERVE
OTHER COSTS \$							WITH DAYS SUP.
RECOMMENDED NONEXTENSION OF SUSPENSION <input type="checkbox"/>				LICENSE SUR-RENDER DATE	TOTAL COSTS \$	CREDIT / TIME SVD	

K 75218



# Case Report

## KENT POLICE DEPARTMENT

09-2798

Supplement No  
ORIG

Reported Date  
03/13/2009  
Crime/Incident  
MV OFFENSE  
Officer  
BRENNAN, R

### Administrative Information

Agency KENT POLICE DEPARTMENT	Case No 09-2798	Supplement No ORIG	Reported Date 03/13/2009	/Time 14:18	IH No 090019589
Status CLEARED / SINGLE ADULT ARREST		Crime/Incident MOTOR VEHICLE OFFENSE			
Location 10900 SE 256 ST			City KENT	Rep Dist 278	
NTZ Beat 2, Neighborhood Traffic Zone 7		Beat BEAT 2	From Date 03/13/2009	/Time 14:18	To Date 03/13/2009
/Time 14:18	Officer 158426/BRENNAN, R	Assignment PATROL EARLY SWING 2		Entered by 158426	
Assignment PATROL EARLY SWING 2	RMS Transfer Successful	Approving Officer 45656		Approval Date 03/14/2009	
Approval Time 08:59:15					
Impound Form X					
# Offenses 1	Offense 462000	Description DRIVERS LICENSES		Complaint Type	
Link ARR	Involvement ARR	Invl No 1	Name MANN, RAYMOND	Race W	Sex M
			Date of Birth 10/20/1937		

### Person Summary

Invl ARR	Invl No 1	Type I	Name MANN, RAYMOND	MNI 83719	Race W	Sex M	Date of Birth 10/20/1937
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### Vehicle Summary

Invl I	Type 2	License No 371UKA	State WA	Year 1998	Make FORD	Model WI	Style VN	Color WHI
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# Case Report

## KENT POLICE DEPARTMENT

09-2798

Supplement No  
ORIG

### ARRESTEE 1: MANN, RAYMOND

Involve	Invl No	Type	Name	MNI	Race	Sex
ARRESTEE	1	INDIVIDUAL	MANN, RAYMOND	83719	WHITE	MALE
Date of Birth	Age	Juvenile?	Height	Weight	Hair Color	Eye Color
10/20/1937	71	No	5'09"	170#	GRAY/PARTIALLY GRAY	BROWN
Type	Address			City	State	
HOME	619 1 AV S #5			KENT	WASHINGTON	
ZIP Code						
98032						
Phone Type	Phone No					
CELL	(206) 850-3437					
Involvement				Arrest Date/Time		
ARRESTED (BOOKED, CITED, AT LARGE FILING)				03/13/2009	14:25:00	
Citation No		Status	Arrest Dispo			
K75218		NORMAL BOOK IN	MISDEMEANOR			
Arrest Location				City	Rep Dist	Beat
10900 SE 256 ST				KENT	278	BEAT 2
AR_MAP						
01302590 00138898						
Charge			Level	Charge Literal		
RCW46.20.342.1B			GM	DWLS 2		

### Vehicle: 371UKA

Involvement		Type	License No	State	Year	Make	Model
DWLS/R IMPOUND		TRUCK/VAN	371UKA	WASHINGTON	1998	FORD	WINDSTAR - FORD
Style	Color	VIN	Rec St	Storage Location			
VAN	WHITE	2FMZA51U9WBC21781	WASHINGTON	PROTOW			
Link	Involvement	Invl No	Name	Race	Sex	Date of Birth	
ARR	ARR	1	MANN, RAYMOND	W	M	10/20/1937	

### Modus Operandi

Physical Evidence	Premise Type
NONE / NOT APPLICABLE	STREET/HWY/ALLEY/PASSENGER CAR
Suspect's Action	
OTHER	
Crime Code(s)	
TRAFFIC	

### Narrative

On 3/13/09, about 1417 hours, I was traveling WB on SE 256 St in the City of Kent, County of King, State of Washington. While stopped at the intersection of 116 Ave and SE 256 ST there was a Ford Winstar, WA plate 371-UKA, stopped in front of me. I ran the vehicle's plate through DOL and the return indicated an associated PIC for the male registered owner, Raymond Mann. When I ran the PIC through DOL, the return indicated that Mann's driving status was DWLS 2. From my position behind the vehicle, I could clearly see that a male was driving.

I activated my emergency lights and stopped the vehicle. Upon contacting the driver, I asked him if he was Raymond Mann and he stated yes. He handed me his WA Driver's License, which was punched in the corner, and I identified him as ARR Raymond Mann. When asked if he knew if his license was suspended, he told me he had an attorney working on it. Mann said he had to get to work somehow.

Mann was placed in handcuffs, which were double locked, and placed in the back of my patrol vehicle. I called for a tow truck to come and get his car, and Pro Tow responded. Since his driving status was DWLS 2, I placed a 30 day hold on his vehicle. An Impound Form was completed and Mann was given a copy of it. He was transported to the CKCF and was interviewed and released.

KPD Records was contacted, and the vehicle was entered into WACIC as impounded.

Case cleared, adult arrest.

By affixing my electronic signature below in the form of my type written name, I certify under penalty of perjury under the laws of the State of Washington that this report is true and correct.

R. Brennan

Report Officer	Printed At	Page
158426/BRENNAN, R	03/16/2009 14:13	2 of 3

**Case Report**  
**KENT POLICE DEPARTMENT**

**09-2798**

Supplement No  
ORIG

**Narrative**

Dated this 13 day of, March, 2009, in the City of Kent, Washington.

# Case Report

## KENT POLICE DEPARTMENT

09-2798

Supplement No  
0001

Reported Date  
03/13/2009  
Crime/Incident

Officer  
GIBBS, SM

### Administrative Information

Agency KENT POLICE DEPARTMENT	Case No 09-2798	Supplement No 0001	Reported Date 03/13/2009	/Time 15:21
Officer 45859/GIBBS, SM	Assignment RECORDS	Entered by 45859	Assignment RECORDS	RMS Transfer Failed
Approving Officer 45859	Approval Date 03/13/2009	Approval Time 15:21:19		

### Narrative

Per Ofc Brennan, I entered this vehicle into WACIC/NCIC as an impound.

LIC/371UKA  
WAC/09V0032049

09-2798

DOLDB TIME: 1458 DATE: 031309 TO: KNPDS  
L..WA0170740.LIC/371UKA

VIN/2FMZA51U9WBC21781  
.VYR/1998.VMA/FORD .VMO/WNDSTR  
EXP DATE/10-28-2009  
MANN,RAYMOND  
619 1ST AVE S APT 5  
KENT,WA,98032  
LEGAL OWNER SAME AS ABOVE  
TITLE/ 10-05-2007 0727824109

PIC NAME1 MANN\*R\*638P0  
TAB# IS D033176 09  
PREV TAB R827010 08  
PLATE ISSUE DATE/ 10-2005  
FIRST COLOR IS WHITE  
SECOND COLOR IS NO COLOR

MKE/ EVI ORI/ WA0170700 LIC/ 371UKA LIS/ WA LIY/ 2009 LIT/ PC  
VIN/ 2FMZA51U9WBC21781 VYR/ 1998 VMA/ FORD  
VMO/ WIN VST/ 4D VCO/ WHI DOT/ 20090313 OCA/ 5459  
LKI/ LKA/  
MIS/ PROTOW/425 432 8196 DWLS IMPOUND/09-2798 FROM 109/256 AT 1418 HRS

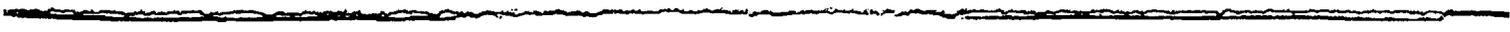
SG

WVCIC TIME: 1507 DATE: 031309 TO: KNP8X  
WA0170700  
ENTERED EVI LIC/371UKA VIN/2FMZA51U9WBC21781  
WAC/09V0032049 OCA/5459  
03/13/2009 AT 15/08

J

NCIC TIME: 1507 DATE: 031309 TO: KNPDS  
WA0170700

NO RECORD LIC/371UKA LIS/WA  
NO RECORD VIN/2FMZA51U9WBC21781



03/13/09 15:00:02 PRINT 7 REQUESTED BY TERMINAL KPT21

Incident History for:#KPO9589 CN: \$KPO9002798

Entered 03/13/09 14:18:23 BY PD36 /VC7483

Dispatched 03/13/09 14:18:23 BY PD36 /VC7483

Enroute 03/13/09 14:18:23

Onscene 03/13/09 14:18:23

Initial Type:TSTOP TG: Initial Alarm Level:  
Alarm Type:TRFC (TRAFFIC COMPLAINT)Pri:4Dispo: Alarm Lev:  
Police KP2780 Fire KF1572 Grp:K2Beat: Lt/Lg:00000000000/00000000000  
Police Rms: Fire Rms: 747141 Medic Rms: KC1572  
Loc:10900 SE 256 ST ,KEN near UNK (V)  
Name: Addr: Phone:

14:18:23 VC7483 PD36 \$OUTSRV ,LAST  
14:18:23 PD36 OUTONS 2K24 #K58426 BRENNAN, RANDY  
,LAST  
14:20:20 VC7999 PD36 CHANGE LOC: 109/256  
--> 10900 SE 256 ST ,KEN  
CON:  
14:20:27 \*\*\*\*\* REMINQ 2K24 MDTQP,MANN,RAYMOND,,102037,,MOND102037  
14:21:11 VC7999 PD36 ASST 2K28 [10900 SE 256 ST ,KEN] #K35060 JACKEL, C  
HUCK  
14:21:26 PD36 REMINQ 2K24 MANN.RAYMOND..10201937...  
14:21:36 K35060 2K28 \*ENROUT 2K28  
14:23:18 VC7999 PD36 TOWROT 2K24 TOW,KENPRO,KEN,PRO TOW-AUBURN,2538563312  
14:23:42 K35060 2K28 \*ONSCNE 2K28  
14:24:39 VC5196 PD37 CALLBK 2K28 , PROTOW ETA 20  
14:25:05 VC7999 PD36 CHANGE TYP: TSTOP  
---> TRFC .  
14:25:08 PD36 OK 2K24 ,OIC  
14:25:08 PD36 OK 2K28 ,OIC  
14:29:15 K35060 2K28 CLEAR 2K28  
14:31:26 K58426 2K24 \*ASNCAS 2K24 \$KPO9002798  
14:32:48 \*\*\*\*\* REMINQ 2K24 MDTQL,371UKA,,  
14:46:32 K58426 2K24 \*TRANS 2K24 [CKCF]  
14:49:18 \*\*\*\*\* REMINQ 2K24 MDTQL,B01706F,,  
14:56:12 K58426 2K24 \*TRANSC 2K24

CHECK ALL THAT APPLY:

- NON-IMPOUND / TOW
- AAA OR OTHER ROADSIDE ASSISTANCE
- EVIDENCE
- SEIZED UNDER RCW 69.50.505
- IMPOUND ONLY
- IMPOUND WITH 30 DAY HOLD
- INFORMATIONAL COPY GIVEN TO SUSPENDED DRIVER.
- REGISTERED OWNER MAY REDEEM

- CHECK INDICATES DRIVER IS DWLS/R AND IS NOT THE REGISTERED OWNER. REGISTERED OWNER / LEGAL OWNER OR AGENT OF THE OWNER MAY REDEEM AT THE END OF THE IMPOUND HOLD.
- CHECK INDICATES DRIVER IS DWLS/R AND IS THE REGISTERED OWNER. THEY WILL NEED A SEPARATE RELEASE FORM FROM THE COURT.

UNIFORM WASHINGTON STATE  
TOW / IMPOUND  
AND INVENTORY RECORD

CASE / EVIDENCE NUMBER  
A-2798

VEHICLE INFORMATION

VIN: 2FMZA5149WBC21781

LICENSE: 371-UKA	STATE: WA	YEAR: 1998	MAKE: FORD	MODEL: WINDSTAR
MILEAGE		STYLE: VAN	COLOR: WHE	

Report of Sale

DRIVER	REGISTERED OWNER	LEGAL OWNER
NAME (LAST, FIRST, MI)	NAME (LAST, FIRST, MI) MANN, KAYMOND	NAME (LAST, FIRST, MI)
STREET ADDRESS	STREET ADDRESS 10900 SE 25th ST #5	STREET ADDRESS
CITY, STATE, ZIP CODE	CITY, STATE, ZIP CODE KENT, WA 98032	CITY, STATE, ZIP CODE
DOB	DOB 10/20/37	DOB

AUTHORIZATION AND RECEIPT

ON THIS DATE OF 3/13/09 AT 1430 (24 HOUR) PURSUANT TO RCW 46.55.085/.113 AND HAVING PERSONALLY INVENTORIED THE ITEMS IN THE DESCRIBED VEHICLE, I HEREBY AUTHORIZE PRO TOW (TOWING FIRM) TO REMOVE THIS VEHICLE FROM 10900 SE 25th ST. I CERTIFY THAT I HAVE RECEIVED THE ABOVE VEHICLE AND ITS CONTENTS LISTED BELOW.  
TOW DRIVER'S SIGNATURE: [Signature] DOL TOW TRUCK NO: 2010 DATE: 03-13-09

EQUIPMENT	DAMAGE	EVIDENCE (DRIVER'S SIDE)	EVIDENCE (PASSENGER'S SIDE)
<input checked="" type="checkbox"/> GLOVE BOX LOCKED	<input type="checkbox"/> FRONT		
KEYS [ ]	<input checked="" type="checkbox"/> R FRONT		
<input type="checkbox"/> AUTO STEREO	<input type="checkbox"/> R SIDE		
<input type="checkbox"/> AUDIO TAPES/CD'S [ ]	<input checked="" type="checkbox"/> R REAR		
<input type="checkbox"/> CB RADIO	<input type="checkbox"/> L FRONT		
<input type="checkbox"/> RADAR DETECTOR	<input type="checkbox"/> L SIDE		
<input type="checkbox"/> TRUNK LOCKED	<input checked="" type="checkbox"/> L REAR		
<input type="checkbox"/> SPARE TIRE	<input type="checkbox"/> REAR		
<input type="checkbox"/> JACK	<input type="checkbox"/> TOP		
<input type="checkbox"/> CHAINS	<input type="checkbox"/> UNDERCARRIAGE		
<input type="checkbox"/> OTHER	<input type="checkbox"/> OTHER		
	Damage to Front Rack		
	Key L		

INVENTORY	NARRATIVE OR DIAGRAM
- Tool box	
- Lunch and Lunch box	
	Driver arrested for DWLS 2. Vehicle held for 30 days - 0 convictions.

I CERTIFY (DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREMENTIONED IS TRUE AND CORRECT. (RCW 9A.72.085)

DRIVER'S SIGNATURE X [Signature] BADGE NO. 150922  
COUNTY, WA

SUPERVISOR

**Ex. 2**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

THE CITY OF KENT,	)	
	)	
Petitioner/Plaintiff,	)	NO. 09-2-17404-1KENT
	)	
vs.	)	ELECTRONIC RECORD
	)	TRANSCRIPTION
RAYMOND MANN,	)	
	)	
Respondent/Defendant.	)	
_____	)	

THE HONORABLE JUDGE PRO TEM JORGENSEN

Attorney for the Petitioner:  
Ms. Julie Stormes

Attorney for the Respondent:  
Mr. David Kirshenbaum

Legal Ease Transcription  
18940 111<sup>th</sup> Street East  
Bonney Lake, WA 98391  
(253) 891-3456

1 JUDGE PRO TEM JORGENSEN: Thank you for the  
2 privilege of reviewing this. For the record, this matter was heard before  
3 me last week at an impound hearing that was timely set. And at that  
4 hearing, Mr. Kirshenbaum presented, I believe the hearing was set for  
5 March 24<sup>th</sup>. At that hearing, Mr. Kirshenbaum raised the first issue  
6 regarding the validity of the Kent Municipal Code based on some statutory  
7 authority that he had, as well as challenging the initial impound as being  
8 mandatory. Because of the challenge to the statute, the Court asked to  
9 have the matter set over to have the City provide briefing material on that  
10 issue, since it was a case of first impression, obviously for the Court as  
11 well, and would note for the record that I spent a significant period of time  
12 on Wednesday doing research as well through the case law. So...

13 MR. KIRSHENBAUM: Did the Court read State versus  
14 (inaudible)? Is that one of the cases that came up in your research?

15 JUDGE PRO TEM JORGENSEN: It did not. Oh, okay.  
16 Yeah. I did review that, counsel. I'm not sure that it necessarily  
17 addresses the issue before us, but it does on the issue as to the individual  
18 facts on the...

19 MR. KIRSHENBAUM: Right. I never had the police  
20 report until that day.

21 JUDGE PRO TEM JORGENSEN: Right.

22 MR. KIRSHENBAUM: In reviewing the report it caused  
23 me to do some more research, which brought me about that case.

1 JUDGE PRO TEM JORGENSEN: Okay. And thank  
2 you. Just to let you know, the City had provided the Court this morning  
3 with a copy of the incident report that I believe is going to be the basis for  
4 criminal charges. I would note for the purposes of this hearing, the Court  
5 is not considering this. And the reason for it is that the hearing occurred  
6 on March 24<sup>th</sup>. Now having said that, what the Court did consider was the  
7 information that was presented to us, which was sufficient. No one has  
8 challenged – the issue before the Court is not whether or not Mr. Mann  
9 was suspended, and so that was not – the Court considered, just to let  
10 you know, the Court considered at the time of the hearing on March 24<sup>th</sup>, a  
11 copy of Officer Brennan's incident report that was submitted by Mister –  
12 Ms. Hardy.

13 MR. KIRSHENBAUM: Ms. Hardy.

14 JUDGE PRO TEM JORGENSEN: And that contains  
15 all of the facts that...

16 MS. STORMES: Okay. Well, I think it's all the same  
17 thing.

18 JUDGE PRO TEM JORGENSEN: Just making a  
19 record. And at that point in time, when the matter was set over, Mr.  
20 Kirshenbaum indicated – wanted to confirm for the Court, and the Court  
21 agreed that the record would be limited to what was presented on the 24<sup>th</sup>,  
22 which was appropriate because that was the time of the hearing. Now the  
23 Court did, pursuant to the Kent ordinance, did consider the ADR and

1 supplemental information confirming that he was suspended, but that was  
2 not the issue before the Court. The two issues before the Court was A,  
3 the legitimacy of the Kent Muni Code, mandatory impound period. Am I  
4 correct, Mr. Kirshenbaum?

5 MR. KIRSHENBAUM: So far. I'm not shy, Your Honor.  
6 I will interrupt. Nicely, I mean, but if there's...

7 JUDGE PRO TEM JORGENSEN: No. I want you to.  
8 The Court saw that there was two issues. A, whether or not the City of  
9 Kent Municipal Code was valid in as much as it directs mandatory  
10 impound periods and whether or not the mandatory nature of those  
11 periods was in violation of RCW 46.55.120. The second issue was as to  
12 the facts of this case, as to whether or not, when Mr. Mann was contacted  
13 by law enforcement, whether or not the impound of the vehicle was  
14 discretionary as required, or was considered mandatory and...

15 MR. KIRSHENBAUM: The only thing I would  
16 supplement with that, Your Honor, is that if it's discretionary, the officer still  
17 has to use discretion. And our reading of the report there was no  
18 discretion used.

19 JUDGE PRO TEM JORGENSEN: Well, I'm sure that's  
20 going to be your argument.

21 MR. KIRSHENBAUM: Well that's what – right.

22 JUDGE PRO TEM JORGENSEN: I understand that.  
23 Now, who would like to go first in terms of argument? And for the record,

1 the Court is considering not only the case that was submitted by counsel  
2 at the time of the hearing which I believe was the 1992 Honda Accord  
3 case, but the Court also considered the Chevrolet truck case, which was  
4 the Washington State Patrol case.

5 MR. KIRSHENBAUM: Right, the 140 Washington 2<sup>nd</sup>  
6 (inaudible).

7 JUDGE PRO TEM JORGENSEN: Which was referred  
8 to, but the Court did consider that. And Mister...

9 MR. KIRSHENBAUM: I think the City has the burden to  
10 show that the impound was lawful, first of all. And second of all, then the  
11 issue becomes whether or not the statute was applicable given the Kent  
12 City Code. In regards to – I don't think we really need to get to the statute,  
13 although I plan on getting to the statute. But I think if we just look at the  
14 facts that were in evidence in this case, and if we look at the officer's  
15 narrative, and the officer in very clear, unambiguous English says that  
16 Mann was placed in handcuffs, double locked in back (inaudible). I called  
17 for a tow truck to get his car. Pro Tow responded. Since his driving status  
18 was driving while license suspended second, I placed a 30 day hold on  
19 the vehicle. It doesn't indicate whatsoever that any reasonable  
20 alternatives to impoundment were considered, and they have to be  
21 considered for it to...

22 JUDGE PRO TEM JORGENSEN: And counsel, for the  
23 record, the Court would consider that two issues. Let me tell you the

1 reason why. So I (inaudible) argue, is that the decision to impound was  
2 made at the time that, in the Court's reading of it, we're limited to this,  
3 Mann was placed in handcuffs which were double locked, placed in the  
4 back. I called for a tow truck. Now at that point in time the officer has  
5 made the decision to impound.

6 MR. KIRSHENBAUM: Right.

7 JUDGE PRO TEM JORGENSEN: Now the next  
8 sentence, since his driving status was DWLS 2<sup>nd</sup>, I placed a 30 day hold.  
9 That goes to the second issue, which is the mandatory period of  
10 impoundment.

11 MR. KIRSHENBAUM: Right. Let's – I mean I think it  
12 (inaudible) yeah.

13 JUDGE PRO TEM JORGENSEN: I just want to make  
14 sure that in terms of the initial impoundment...

15 MR. KIRSHENBAUM: Well I think it goes to...

16 JUDGE PRO TEM JORGENSEN: Well, I'm going to  
17 let you argue (inaudible)...

18 MR. KIRSHENBAUM: If it was a Venn Diagram Your  
19 Honor, I think that the circles would be shaded with what the Court's  
20 saying. I'm not disagreeing with the Court, but I think it's broader than  
21 that. I think a reasonable interpretation of that is A, that he called a tow  
22 truck and placed a 30 day hold because his license was suspended. As  
23 the Court is saying, that's one interpretation. The other interpretation is

1 that the officer's mindset is that anytime a driving while license  
2 suspended, he's not looking at reasonable alternatives to impoundment.  
3 It's discretionary, and the way this report reads, it was mandatory, or that  
4 he decided (inaudible). That particular officer never uses discretion, or for  
5 some reason he wasn't going to consider alternatives. There was no  
6 question whether the car was legally parked, whether there were other  
7 people who could pick up the car, all those types of things that were  
8 appropriate. In reading the cases it appears that the crux is you go on  
9 somebody who is going to be continuing to disobey the law and drive  
10 while suspended. That's why the law changes on subsequent situations.  
11 But in this case there was no reasonable alternatives considered. It was  
12 an if/then situation. Because of that, that is invalid and Mr. Mann should  
13 get his car back.

14 In regards to the statutory arguments discretion comes in  
15 two different ways. It comes in whether the officer has discretion at the  
16 time, and it comes in the length of the impoundment. The City ordinance  
17 says shall be 30 days. It takes away the discretion as to the length of  
18 impoundment. 46.55 never authorized it to do that. And it makes perfect  
19 sense that a law enforcement officer or agency shouldn't have the  
20 authority to decide who gets their property and who doesn't. Then you do  
21 have constitutional implications, due process, lawful authority in Article  
22 One Section Seven. That's when those things are all triggered. The  
23 legislature, in their wisdom, I'm assuming tried to avoid constitutional

1 taking without due process, made it first the officer gets to decide if he  
2 uses discretion. In this particular case we know he didn't. But assuming  
3 for the sake of argument that he did use discretion, then Mr. Mann is  
4 timely set for a hearing in the City of Kent takes away the Court's  
5 discretion, which the statute, under 46.55 authorizes. That's what makes  
6 their ordinance invalid. And that's another reason why Mr. Mann should  
7 get his vehicle.

8 JUDGE PRO TEM JORGENSEN: Ms. Stormes.

9 MS. STORMES: Your Honor...

10 JUDGE PRO TEM JORGENSEN: And I realize that  
11 you weren't there on the first hearing, but the first hearing was somewhat  
12 brief in the fact that we reset...

13 MR. KIRSHENBAUM: I yelled a lot and (inaudible).

14 MS. STORMES: Well, I would expect that from  
15 (inaudible). And Your Honor, I am operating at a disadvantage because  
16 frankly, I am coming into this hearing thinking about the issue being one  
17 way when clearly there was more discussed than I was made privy to. So  
18 if I stumble a little bit or seem at a loss for words, I'd ask the Court's  
19 indulgence. In terms of – I think Mr. Kirshenbaum did this in the reverse of  
20 the way the Court addressed it...

21 JUDGE PRO TEM JORGENSEN: Well perhaps he  
22 could do it – what is the City's response to the validity of the Kent  
23 Municipal Code's mandatory period of impoundment...

1 MS. STORMES: Your Honor, the City...

2 JUDGE PRO TEM JORGENSEN: ... in terms of its  
3 reconciliation with the discretionary periods required under 46...

4 MR. KIRSHENBAUM: 55.

5 JUDGE PRO TEM JORGENSEN: 55.

6 MS. STORMES: Your Honor, the City's response to that,  
7 in reviewing the case that was provided by Mr. Kirshenbaum, the case that  
8 I reviewed, that case rightfully discussed the removal or rightfully  
9 addressed the holding in re: Chevrolet truck as the impound itself, the  
10 actual decision to impound not being a decision at all, just being a  
11 perfunctory act. That was the issue in re: Chevrolet truck. The City takes  
12 issue with Division Three's rationale because...

13 JUDGE PRO TEM JORGENSEN: By analogy that the  
14 mandatory...

15 MS. STORMES: Exactly, because Your Honor, in RCW  
16 46.55.120, the statute that authorizes tows for certain periods, the statute  
17 is clear that the impound period may be for a limited period, may be for 30  
18 day periods...

19 JUDGE PRO TEM JORGENSEN: Well, actually it's  
20 true. But our statute does not.

21 MS. STORMES: That's correct, Your Honor. But the  
22 issue in re: Chevrolet truck, where the court found that the mandatory  
23 impound was invalid is that in that case the authority, the – I'm sorry, the

1 Washington State Patrol in that case exceeded, exceeded its statutory  
2 authority by taking an act of discretion by the officer and removing that  
3 discretion, which was provided for by statute and essentially making it a  
4 mandatory act of the administration. Whereas, under 46.55.120 the act  
5 itself, the period of time may be up to 30 days. The city's decision to have  
6 that period be the maximum of the period allowed under the statute does  
7 not exceed the City's authority under the statute, does not take away any  
8 discretion from the officer. It falls firmly under what is permitted by statute.  
9 It's completely in opposite, the City's position is, to the case that's relied  
10 on by in re: Chevrolet truck because may means permissible. It's just like  
11 Your Honor may sentence up to 365 days in jail and may impose a \$5000  
12 fine. It's the same principle. The Court can go up to that point.

13 JUDGE PRO TEM JORGENSEN: Let me ask you this  
14 then. Would it be invalid if the City of Kent indicated that if you're  
15 convicted of a gross misdemeanor, that you shall do one year in jail and a  
16 \$5000 fine? It's certainly within the limits as set. But I have a feeling that  
17 you would disagree with that.

18 MS. STORMES: Well Your Honor, the Court by statute –  
19 this Court by statute, has that discretion. To remove that discretion from  
20 this Court would be improper. But the City is not removing any discretion  
21 from the officer.

22 JUDGE PRO TEM JORGENSEN: Well, I think that  
23 there are two issues. The question though, and I – and this is where I

1 think the distinction is made. The first issue is whether or not the officer  
2 exercised discretion...

3 MS. STORMES: (Inaudible)...

4 JUDGE PRO TEM JORGENSEN: ... under these  
5 facts, and I'll let you argue – under these facts, under these  
6 circumstances. That's the issue because everybody is in agreement that  
7 the officer must exercise discretion or know that what that means, and  
8 under the circumstances that's fine. The secondary issue is that once that  
9 discretion is authorized, how is the validity, how does the City justify the  
10 mandatory period of an impound with...

11 MS. STORMES: Your Honor...

12 JUDGE PRO TEM JORGENSEN: ... the express  
13 provisions of 46.55.120 that only allow for may be held for up to 30 days.

14 MS. STORMES: Because Your Honor, the City  
15 maintains, if I can answer your last question in two parts, taking the  
16 second part of the Court's question first. Again, under in re: Chevrolet  
17 truck the City has not exceeded the mandatory – I'm sorry, the City has  
18 not exceeded the statutory authority granted by the statute that enables  
19 impoundment for a period of time in the first place. Yes, the period is up  
20 to 30 days, but the statute specifically allows that that period can be for  
21 that long of a time. Second Your Honor, in converse to what the Court  
22 was saying in terms of sentences being shall versus may, the City would  
23 query whether or not it's appropriate to have an officer in the field standing

1 out there deciding whether or not to hold the car for five days versus 30  
2 days. The officer in this case followed the code, and Your Honor I  
3 apologize. Was the actual impound form submitted as part? Okay.

4 JUDGE PRO TEM JORGENSEN: 30 days.

5 MS. STORMES: Specifically says in there in reference to  
6 City Code, hold for 30 days, no convictions. It specifically is held under  
7 the provision of the code that says 30 days when there is no conviction for  
8 a similar crime. The officer followed the statute and...

9 JUDGE PRO TEM JORGENSEN: Well no, and  
10 counsel, no one is suggesting that the officer violated the terms and  
11 conditions of the Kent Muni Code.

12 MS. STORMES: And I'm not...

13 JUDGE PRO TEM JORGENSEN: The question was  
14 whether or not the Kent Muni Code is valid...

15 MS. STORMES: And I'm not...

16 JUDGE PRO TEM JORGENSEN: ... based on the  
17 case law and based on the express provisions of 46.55.120 and the  
18 legislative authority which clearly indicates that impoundment is a  
19 significant...

20 MS. STORMES: But Your Honor if I – if I may. If that  
21 discretion is to be exercised, is the Court inquiring whether or not we're  
22 not – that the code does not allow the officer to exercise that discretion in  
23 the field?

1 JUDGE PRO TEM JORGENSEN: The Court is asking  
2 whether or not the City Municipal Code basically does not allow this Court  
3 any discretion.

4 MS. STORMES: But it does Your Honor, because...

5 JUDGE PRO TEM JORGENSEN: How?

6 MS. STORMES: Because noted in the briefing that I  
7 provided, we do provide for an expedited hearing from 12 days from the  
8 impound.

9 JUDGE PRO TEM JORGENSEN: But tell me under  
10 what authority under the Kent City Code this Court would have the ability  
11 to release that vehicle shorter than a 30 day period.

12 MS. STORMES: Because if the Court finds that the tow is  
13 improper, the Court can exercise its...

14 JUDGE PRO TEM JORGENSEN: That's not the issue.  
15 The issue is whether or not the Court has the ability to exercise its  
16 discretion on the 30 days, not on the initial validity of tow, but on the  
17 mandatory – this is the issue. The issue is on the mandatory 30 days. My  
18 review of the Kent City Code clearly indicates that this Court has no  
19 discretion.

20 MS. STORMES: Your Honor the Code can – the Court –  
21 my understanding of the City Code, can release it if there's a hardship, if  
22 there's another owner of the vehicle. There are provisions under which it  
23 can be released.

1 JUDGE PRO TEM JORGENSEN: Not to the driver,  
2 which is a different issue. And in fact, Kent City Code basically says  
3 under KMC 9.39.030, if a vehicle – if, now that’s the discretionary part. If  
4 the vehicle is impounded because the driver is arrested for violation of  
5 RCW 46.61.342(1) while the driver’s license is suspended or revoked in  
6 the third degree, and the Washington license, whatever. Here’s the critical  
7 part. The vehicle shall be impounded for 30 days. That’s not  
8 discretionary. That’s KMC 9.39.030(b)(2). Here’s another section. If the  
9 impound is found to be proper, and this – we’re only going to – there’s two  
10 issues. We’re going to the period of impoundment. The Court shall enter  
11 an order so stating. The Court’s order shall provide the impounded  
12 vehicle shall be released, and here’s the critical language, only after the  
13 applicable period has expired. This Court has no discretion. I mean, I  
14 don’t believe in my review of the Kent City Code, that if – now and we’re  
15 assuming, if the officer exercises discretion and elects to impound the  
16 vehicle, and clearly that’s authorized by the provisions of 46.55.120, and  
17 under the Kent City Code, I’m (inaudible) that the language is...

18 MR. KIRSHENBAUM: And (inaudible) Your Honor.

19 JUDGE PRO TEM JORGENSEN: Assuming – and I  
20 don’t know – we’re not arguing the facts in this case. It’s also clear that  
21 this Court has no discretion that the officer shall impound for 30 days. The  
22 Court has no discretion in releasing the vehicle. Now there’s a hardship,

1 but that isn't the issue as to the mandatory period. That's what is being  
2 challenged.

3 MS. STORMES: But I think if the Court did find a  
4 hardship, and Mr. Kirshenbaum, can I borrow this?

5 MR. KIRSHENBAUM: Sure.

6 JUDGE PRO TEM JORGENSEN: But that's releasing  
7 it to someone else. That's not releasing it to the driver, which clearly is – I  
8 think the challenge is to the mandatory nature of the...

9 MS. STORMES: No, I understand. I understand what the  
10 Court is saying. And Your Honor, just given the case law that the City has  
11 reviewed and frankly the way this issue was presented to me, the City  
12 believes that the impound is reasonable. The impound occurred at the  
13 officer's exercise of – I'm sorry the officer's...

14 JUDGE PRO TEM JORGENSEN: And (inaudible) that  
15 issue then. In terms of the particular facts of this case tell me – Mr.  
16 Kirshenbaum has argued that it was not discretion, that it was mandatory  
17 based on the conditions. Tell me why you believe it was not.

18 MS. STORMES: Your Honor, it's clear that the officer  
19 made the decision to impound. The 30 day, which was referenced on the  
20 impound form was prescribed or set forth by the Kent City Code. But the  
21 City doesn't believe that the officer needs to include any kind of line saying  
22 I exercised my discretion or I made my decision. The fact that the  
23 decision was made demonstrates that discretion was exercised. Whether

1 or not Mr. Kirshenbaum agrees with it, whether or not it was a proper tow,  
2 the officer exercised his discretion and to have the officer have to put that  
3 in, I think would be, for lack of a better way of putting it, overkill. It's clear  
4 that the decision was made, and the only provision that was followed in  
5 terms of mandatory period or mandatory direction was the 30 days.

6 JUDGE PRO TEM JORGENSEN: Counsel?

7 MR. KIRSHENBAUM: I think that's where you draw the  
8 line from the officer's notes. If you're going to be – you could have the  
9 officer come and testify and if you're going to take a shorter version of  
10 these hearings and rely on the report...

11 JUDGE PRO TEM JORGENSEN: And for the record,  
12 the Court is only relying on the...

13 MR. KIRSHENBAUM: I understand.

14 JUDGE PRO TEM JORGENSEN: ... the plain  
15 language...

16 MR. KIRSHENBAUM: Right.

17 JUDGE PRO TEM JORGENSEN: ... of the report.

18 MR. KIRSHENBAUM: Right. And I think if the City does  
19 have an ordinance that says you can rely on the plain language of the  
20 report, they do that at their peril without training the officers how to  
21 properly write a report and properly make discretionary decisions. But in  
22 this case there is nothing in there that would indicate there was any  
23 discretionary decision. It's just the evidence of the case.

1 MS. STORMES: Your Honor, it happens all the time  
2 where officers, granted this is a civil hearing versus a criminal hearing,  
3 officers make a decision to cite for a charge, to arrest for a charge without  
4 putting that language in there. It's endemic in the report that the decision  
5 was made. The City maintains that the decision is simply part of what  
6 holds this report together.

7 MR. KIRSHENBAUM: I would say it's akin to a speeding  
8 ticket where the officer doesn't do what's necessary on a speed  
9 measuring device. And we can infer that he probably didn't, but if he  
10 doesn't say the magic words then the magic doesn't happen.

11 JUDGE PRO TEM JORGENSEN: And counsel,  
12 subsequent to the argument that was heard which distinguished the  
13 language of the – I think one of the cases talked about whether or not the  
14 language regarding the initial – I think the vehicle is subject to  
15 impoundment pursuant to the terms and conditions of an applicable local  
16 ordinance or state agency rule at the direction of law enforcement. The  
17 Court would note that as of last week when I ran a copy of RCW  
18 46.55.113, that language has changed. It now reads the vehicle is subject  
19 to summary impoundment as opposed to just impoundment, which I  
20 believe changes the language and changes the focus. Now the question  
21 is, for purposes of the State Patrol or anybody else that is relying on that  
22 language, I think that the statutory authority makes it a little bit more  
23 broad, certainly summary impoundment. Now the question is whether or

1 not the language of the Kent City Code, which clearly passes muster,  
2 because the Kent City Code uses the exact language which was upheld in  
3 one of the cases and found to be discretionary, does not require  
4 mandatory impoundment. And Mr. Kirshenbaum, you're in agreement  
5 with that?

6 MR. KIRSHENBAUM: I don't think the City Code  
7 involves mandatory impoundment. I just think it has mandatory holding  
8 periods, which we talked about.

9 JUDGE PRO TEM JORGENSEN: Yes, which we've  
10 talked about and which is at issue in this case.

11 MR. KIRSHENBAUM: And I don't think it changes the  
12 facts of this case.

13 JUDGE PRO TEM JORGENSEN: Okay. And does  
14 the change in language under 46.55.113, that now introduces summary  
15 impoundment change it?

16 MR. KIRSHENBAUM: No. I don't think it does to some  
17 extent, because it still requires officers to use any other alternatives or at  
18 least consider other alternatives to impoundment. And I think that's clear  
19 of the Chevrolet case. I think it cites back to that statute. It talks about the  
20 change and makes a point of saying you still need to use, you know, if  
21 you're...

22 JUDGE PRO TEM JORGENSEN: Well, and at that  
23 point the change wasn't in the language. It talked about just summary...

1 MR. KIRSHENBAUM: Well, I think it cites to it. I think  
2 it's (inaudible) if I remember correctly.

3 JUDGE PRO TEM JORGENSEN: And if you could...

4 MR. KIRSHENBAUM: Make sure I'm thinking of the  
5 right case.

6 JUDGE PRO TEM JORGENSEN: .. identify that.

7 MR. KIRSHENBAUM: I'm looking for it. I know it's  
8 footnote three. I just don't know which case I was reading (inaudible)  
9 footnote three. It may have been the Cruz case. It must have been the  
10 Cruz case.

11 JUDGE PRO TEM JORGENSEN: And counsel, I  
12 would note under footnote three under – and the Court did note in the  
13 impoundment of Chevrolet truck, it talks about the fact that the State  
14 Patrol is provided procedures following vehicle impoundment such as  
15 provisions for early release. But more importantly all facts subsequent to  
16 the impoundment are irrelevant as to the threshold question as to whether  
17 or not there was reasonable cause to impound.

18 MR. KIRSHENBAUM: Do you still have that Cruz case  
19 Your Honor? Did you hand it back down? Did I magically – it has a Lexis  
20 trade mark on it.

21 MS. STORMES: They all have Lexis trade mark on them.

22 MR. KIRSHENBAUM: You use Lexis too?

23 MS. STORMES: Yes.

1 JUDGE PRO TEM JORGENSEN: And I don't.

2 MR. KIRSHENBAUM: Wow. Oh.

3 JUDGE PRO TEM JORGENSEN: And I'll give you a  
4 brief minute if you need it.

5 MR. KIRSHENBAUM: This one is (inaudible). Oh yeah,  
6 footnote three was the Cruz case. That's correct. I knew I'd seen as  
7 footnote three, but that (inaudible).

8 JUDGE PRO TEM JORGENSEN: And if you could,  
9 counsel, for some reason I'm missing it.

10 MR. KIRSHENBAUM: Footnote three?

11 JUDGE PRO TEM JORGENSEN: Mm-hmm.

12 (Affirmative)

13 MR. KIRSHENBAUM: It's on the bottom of the page. I  
14 can point it out to you.

15 JUDGE PRO TEM JORGENSEN: If you could. Sorry.

16 MR. KIRSHENBAUM: That's all right. It's like learning  
17 to read all over again. Usually footnotes are at the bottom of the page.

18 JUDGE PRO TEM JORGENSEN: I don't see where it  
19 would be.

20 MR. KIRSHENBAUM: I'm sorry. (Inaudible).

21 JUDGE PRO TEM JORGENSEN: Oh. Okay. That  
22 doesn't address the issue.



1 MR. KIRSHENBAUM: That's what I was saying. I  
2 thought it was another case.

3 JUDGE PRO TEM JORGENSEN: Yeah. Because  
4 that talks – and that's why I wanted to make sure, because I didn't see any  
5 case law which reflected the change in language which is now reflected in  
6 46.55.113 that talks about summary impoundment versus the other  
7 inclusion.

8 MR. KIRSHENBAUM: Right. I don't think it – I don't  
9 think it changes the laws (inaudible) impoundment. I don't think it says no  
10 longer (inaudible).

11 JUDGE PRO TEM JORGENSEN: I may be doing this  
12 in a reverse order, but the first issue that the Court wants to address is  
13 whether or not the express provisions of KMC 9.39.030, which clearly  
14 provide for a mandatory impound period when or if a driver is arrest for a  
15 specific offense, is invalid pursuant to the discretionary provisions of RCW  
16 46.55.120. And the Court finds that it is. I'm satisfied that the case law is  
17 clear that the presence of the language shall and making it mandatory is  
18 in...

19 MS. STORMES: Your Honor, if I can just again, because  
20 I wasn't here last week and I wasn't sure how the issue was exactly  
21 phrased. I understand what the Court is saying, however, given some of  
22 the statement in re: Chevrolet truck and the language that was specifically  
23 addressed there, for lack of a better way of putting this Your Honor, the

1 fact that a person is suspended in the second degree and the car is  
2 impounded at the discretion of the officer as occurred in this case, and  
3 then held up to – held for 30 days as occurred in this case, which the City  
4 maintains is permitted under the statute, the issue of the impound then is  
5 appropriately addressed...

6 JUDGE PRO TEM JORGENSEN: I haven't gotten  
7 there.

8 MS. STORMES: ... in an administrative law capacity –  
9 procedural due process post deprivation hearing is appropriate in a  
10 situation like that. There's an expedited hearing process provided for in  
11 the statute. I understand what the Court says about the hearing that takes  
12 place afterward, but the City has specifically provided for an expedited  
13 hearing process. And should the impound be found proper, the City  
14 maintains that it is acting within its legislative authority and complying with  
15 legislative intent. Looking at Chevrolet truck the legislature concluded  
16 existing criminal penalties were not sufficient to deter or prevent person  
17 with a suspended or revoked license from driving, wherefore it found it  
18 necessary to authorize the impound of any vehicle when it's found to be  
19 operated by a driver with a suspended or revoked license. Your Honor, in  
20 this case, assuming (inaudible) that the Court were finding an impound in  
21 a situation like this to be proper, the City doesn't believe that the  
22 defendant was unfairly denied access to his property or unfairly denied  
23 due process considering the legislative intent behind the statutes which

1 specifically provides for the removal of these persons from the roadway.  
2 This is an individual that, if the impound was found improper then he  
3 would have every right to have his car back. But if the impound was found  
4 proper based upon his suspension, then the right to have the car back is  
5 not something the City believes he should be able to protest given the  
6 statutory authority.

7 JUDGE PRO TEM JORGENSEN: Thank you. May I  
8 finish now?

9 MS. STORMES: I just wanted to throw that in there.

10 JUDGE PRO TEM JORGENSEN: Okay. The issue  
11 that the Court is addressing is whether or not the specific conditions and  
12 specification of the Kent Muni Code, which mandates, not permissive, not  
13 discretionary, mandates a mandatory impound period of 30 days in this  
14 case, but it also authorizes mandatory periods for I believe 90 days under  
15 HTO and other conditions is valid. And the Court finds that it is not. The  
16 fact that it is a mandatory period, clearly the language of the Kent Muni  
17 Code makes it – allows that this Court has no discretion, must impose a  
18 mandatory period if that's the basis for it. The existence of hardship  
19 release does not address – the Court finds that that's not the issue. The  
20 issue is whether by reading 46.55.120, which clearly indicates that it  
21 needs to be – and that is the authority by which the legislature allows for  
22 impoundment, and although it does allow local and city ordinance, it does  
23 not allow the City to exceed its authority. And in this case, I am finding

1 based on the case law and based on the express conditions of 46.55.120,  
2 that the City's Code of mandatory periods exceeds the authority as  
3 authorized by the RCW. And as authority, I'm using both 1992 Honda  
4 Accord and in re: impoundment of Chevrolet truck.

5 Now having said that, there is also severability causes in the  
6 Kent City Code, and specifically KMC 1.01.110, and if the Court finds the  
7 relevant sections, and I believe KMC 9.39.030, which provide for  
8 mandatory impound periods is invalid, and I have so found, it shouldn't  
9 invalidate any other chapter, section or subdivision of a section thereafter.  
10 My reading of the Code in its entirety also indicates that if a vehicle is  
11 impounded for any other reason, lawful reason, if the Court finds that it's a  
12 valid impound that the vehicle should be redeemable immediately under  
13 the Code. That would be true under a driving while license suspended  
14 third. It would be true under any other basis by which there would be a  
15 valid Code. Mr. Kirshenbaum, are you in agreement with that?

16 MR. KIRSHENBAUM: I don't know Your Honor. But I'm  
17 looking at 9.39.010 which says this (inaudible) towing ordinance in  
18 (inaudible) 46.55, which is clearly adopted in King County Code 9.36.010  
19 of (inaudible). In the event a conflict exists between (inaudible) this  
20 chapter and chapter 46.55, this chapter shall prevail. So it seems to me  
21 the City has opted to have 46 – or 9.39 (inaudible) prevail over any  
22 conflicts or ambiguity.

1 JUDGE PRO TEM JORGENSEN: Well, I'm satisfied  
2 that if the provisions (inaudible) the vehicle, that if the impound was  
3 proper, that it should be immediately redeemable, clearly. Now the  
4 question before the Court then is under the case before the Court whether  
5 or not this was a discretionary act. And Mr. Kirshenbaum, obviously the  
6 Court is limited to the facts herein. But the facts herein are somewhat  
7 persuasive in that obviously, in addition to the initial DOL contact in terms  
8 of running the license plate, finding that the return indicated that the  
9 registered owner was driving while license suspended second. There was  
10 a stop. Upon contacting the driver I asked if he was Raymond Mann. He  
11 stated yes and he handed me a driver's license which was punched in the  
12 corner, identified him as the arrestee, Raymond Mann. When asked if he  
13 knew his license was suspended he told me he had an attorney working  
14 on it. Mann said he had to get to work somehow. Mann was placed in  
15 handcuffs, which were double locked and placed in the back of my patrol  
16 vehicle. I called for a tow truck and get his car. And at that point the  
17 impound has occurred. So the Court can only consider those facts.

18 The length of the impound, since his driving was driving  
19 while license revoked in the second degree, I placed a 30 day hold on his  
20 vehicle is a separate issue. The Court's only issue is dealing with the  
21 initial impound. I'm satisfied that the officer did use discretion based on  
22 the facts that are here. Clearly Mr. Mann indicated that he knew his  
23 license was suspended. Clearly he indicated an intent to continue to drive

1 that was (inaudible) from his words, said he had to get to work somehow,  
2 which indicates a disregard. I'm satisfied by a preponderance of the  
3 evidence that the officer did use discretion on the initial impound.

4 Now having said that then, I am going to make the following  
5 ruling. I am going to find that the impound, and counsel I wish that you  
6 had brought Mr. Mann here, because obviously it's going to affect...

7 MR. KIRSHENBAUM: He had to go to work today, Your  
8 Honor.

9 JUDGE PRO TEM JORGENSEN: Okay. But  
10 obviously the Court has jurisdiction over the parties. I am satisfied that  
11 Mr. Mann was a person qualified to contest the impound. There was no  
12 challenge to the fees or the costs in terms of – it was never raised in terms  
13 of whether or not they were within the posted...

14 MS. STORMES: The posted...

15 JUDGE PRO TEM JORGENSEN: ... notes.

16 MR. KIRSHENBAUM: You mean the amount that  
17 they're charging daily in...

18 JUDGE PRO TEM JORGENSEN: Right, the amount  
19 that they're charging. Thank you. I'm running out of language. The driver  
20 of the vehicle was – I am satisfied that the driver was driving in the period  
21 that it was suspended. I am going to find that the impound of the vehicle  
22 was valid. I am, however, releasing the vehicle immediately. What that  
23 means Mr. Kirshenbaum, is that your client will only be responsible for the

1 initial tow and impound fee and that is it. And I'm going to write an order.  
2 The City of Kent will be responsible for the storage fees from that date  
3 until today's date. And because the City will be incurring costs until the  
4 vehicle is released, I am going to require that the vehicle be redeemed  
5 immediately.

6 MR. KIRSHENBAUM: I can certainly get a hold of my  
7 client and see (inaudible)...

8 JUDGE PRO TEM JORGENSEN: Now, because his  
9 license is still revoked it needs to be redeemed with someone, a third  
10 party who has a valid license, and so that it would obviously need to  
11 comply with the other conditions of the code and meet the redemption  
12 requirements of KMC 9.39.030(b)(5) and (6) and it must be immediate,  
13 otherwise the petitioner would be responsible for additional storage fees  
14 after the date of the impound order. May I assume, Mr. Kirshenbaum, that  
15 your client will be able to redeem the vehicle on or before 6:00 tonight?

16 MR. KIRSHENBAUM: I think it's safe to assume that  
17 he'd be able to redeem the vehicle before noon tomorrow, because I don't  
18 know what time he gets off work today and he's got to get – I know he's  
19 got a friend that I've been in contact with who is a licensed driver. But he  
20 needs to get home from work, get a hold of that person, and I don't want  
21 to...

22 JUDGE PRO TEM JORGENSEN: Well, it's his choice  
23 not to be here.

1 MR. KIRSHENBAUM: Well, I understand that Your  
2 Honor. Mr. Mann can't hear very well, and didn't hear anything that  
3 happened at the last hearing. And I didn't want to waste his time missing  
4 another day of work. So it was his choice, but it was under my advice that  
5 he's not here.

6 JUDGE PRO TEM JORGENSEN: City wish to be  
7 heard?

8 MS. STORMES: Your Honor, considering the Court did  
9 find the impound improper, if the Court is exercising leniency by just  
10 imposing the fee that it is imposing, we would ask that the City not be held  
11 responsible for anything beyond today, and if it is not redeemed by today,  
12 then the City asks that it not be held responsible for the fees.

13 MR. KIRSHENBAUM: If we did all this Friday or  
14 whenever we were here last, I mean that's five more days that were added  
15 on because...

16 JUDGE PRO TEM JORGENSEN: Well, it's going to  
17 be...

18 MR. KIRSHENBAUM: I just – I know that Mr. Mann  
19 would like to get his car out (inaudible). He indicated to me that it was  
20 cheaper to put himself in an apartment than it is to keep his car in lock.  
21 So that's what he was thinking he was paying for, so I know he knows it's  
22 expensive. So I'm just – I don't know how late Pro Tow is open. I know  
23 it's an extra fee if he gets it after a certain period of time. I'm not sure

1 where Pro Tow is. Do you know where they are located? Does the Court  
2 know where they are located?

3 MS. STORMES: Isn't the address on...

4 MR. KIRSHENBAUM: I didn't even look at (inaudible).  
5 Pro Tow, Auburn. (Inaudible). I suppose I can go pick up the car if worse  
6 comes to worse. No (inaudible) schedule. I just walked in, I didn't file a  
7 notice of appearance. It was on the calendar.

8 MS. STORMES: (Inaudible).

9 JUDGE PRO TEM JORGENSEN: Counsel, what I'd  
10 urge you to do is also get a certified copy of this order so there won't be  
11 any questions at the tow because...

12 MR. KIRSHENBAUM: (Inaudible) the cost for the  
13 certification (inaudible).

14 JUDGE PRO TEM JORGENSEN: Yeah.

15 MADAM CLERK: We don't charge.

16 MR. KIRSHENBAUM: Perfect.

17 JUDGE PRO TEM JORGENSEN: That's why I'm  
18 happy to do it.

19 MR. KIRSHENBAUM: I'm happy to get one.

20 JUDGE PRO TEM JORGENSEN: The vehicle shall be  
21 released immediately upon payment of only the initial tow and impound  
22 fees. And then I've indicated other, that the City of Kent will be

1 responsible for payment of all storage fees from date of impound to  
2 3/30/09. So he has until the end of midnight tonight.

3 MR. KIRSHENBAUM: Okay.

4 JUDGE PRO TEM JORGENSEN: And what I'm also  
5 going to do is any storage fees after 3/30/09 will be the responsibility of  
6 the petitioner.

7 MR. KIRSHENBAUM: I will do what I can to get a hold  
8 of him.

9 JUDGE PRO TEM JORGENSEN: And counsel, if  
10 parties would read the order to make sure that it reflects the Court's ruling.

11 MR. KIRSHENBAUM: (Inaudible).

12 MS. STORMES: Your Honor, may I see, if it's not too  
13 much to ask, the entirety of the Court's file on this particular hearing?

14 JUDGE PRO TEM JORGENSEN: And I'll give you the  
15 filings.

16 MS. STORMES: Is this the criminal too?

17 MR. KIRSHENBAUM: While I (inaudible) objected as  
18 nicely as I can to that finding, I don't think I can object to (inaudible). I  
19 liked it better that way (inaudible).

20 JUDGE PRO TEM JORGENSEN: I forgot to check  
21 that. Thank you sir. Counsel and I have my own file that is based on the  
22 research that I did. Any other – counsel, what I did indicate is that it needs

1 to be released to a third party authorized by the petitioner since his license  
2 is suspended, who needs to have a valid license and insurance card.

3 MR. KIRSHENBAUM: (Inaudible) Your Honor.

4 MS. STORMES: Let me just (inaudible).

5 JUDGE PRO TEM JORGENSEN: Thank you for the  
6 opportunity to...

7 MR. KIRSHENBAUM: In a (inaudible)...

8 MS. STORMES: And Your Honor, this might not be an  
9 appropriate question for Your Honor but I feel the need to ask this  
10 because we could have been better prepared last week. What kind of  
11 notice is the City sent for these tow hearings when they're set on these in  
12 custody calendars, because I don't see any notice in here that anything  
13 was provided to the City.

14 MADAM CLERK: They were supposed to give you a copy  
15 of the (inaudible), the top (inaudible)...

16 MR. KIRSHENBAUM: Kathy knew about it, so she had  
17 the...

18 MS. STORMES: I think it appeared – it's possible that it  
19 appeared on the calendar, but we didn't get any notice.

20 MR. KIRSHENBAUM: Because she brought discovery  
21 with her.

22 MS. STORMES: I understand that. But I think we had a  
23 calendar that we got that morning, but nothing else. And if I'm going to

1 come from this hearing or anybody from my office is going to have to  
2 appear at this hearing when somebody else is going to be actually at the  
3 hearing, the initial hearing. It was evidenced today I didn't know  
4 everything that was discussed last week. So perhaps you can let Ms.  
5 Yetter know and we can bring that up at the...

6 JUDGE PRO TEM JORGENSEN: Counsel, get a  
7 certified copy of that. Please be sure to advise your client.

8 MR. KIRSHENBAUM: I will definitely do that. Thanks  
9 very much, Your Honor.

10 JUDGE PRO TEM JORGENSEN: And thank you.

11 MS. STORMES: Thank you Your Honor.

12 (End of proceeding)

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**Ex. 3**



IN THE MUNICIPAL COURT FOR THE CITY OF KENT,  
KING COUNTY, STATE OF WASHINGTON

1220 S. Central, Kent, WA 98032

CITY OF KENT,  
Plaintiff,

vs.

MAAD, Raymond )  
Impound Petitioner )

VEHICLE LICENSE NO: \_\_\_\_\_ )

MAAD, Raymond )  
Defendant )

NO: K75218

FINDINGS, CONCLUSIONS AND  
ORDER FOLLOWING VEHICLE  
IMPOUND HEARING

State of Washington  
County of King  
City of Kent  
**CERTIFICATION**

The undersigned, duly authorized clerk of the Kent Municipal Court, Washington, hereby certifies or declares under penalty of perjury that the document on which this stamp is imprinted is a true and correct copy of the original filed in this court. Signed this 13 day of Sept., 2009

Court Clerk Allen Burt

TO: KENT CITY PROSECUTOR  
AND TO: TOW COMPANY  
AND TO: RAYMOND MAAD, Impound Petitioner

**THIS MATTER** having come before the Kent Municipal Court for a determination of the legality of the impound of the above referenced vehicle, and having considered documentary and testimonial evidence and argument; having reviewed the files and records herein and otherwise deeming itself fully advised in the premises; does now make the following findings of fact and conclusions of law:

- This Court has jurisdiction over the parties and the Kent Municipal Court is the appropriate venue for the impound hearing.
- Pursuant to Kent City Code 9.39.030, the person contesting the impound or towing fees, hereinafter referred to as the "Impound Petitioner":
  - Is a person qualified to request a hearing to contest the impound or storage fees and the request was timely filed.
  - Is not a person qualified to request a hearing to contest the impound or storage fees.
  - Is a person qualified to request a hearing to contest the impound or storage fees, however, the request was untimely filed.
- The Impound Petitioner has filed a "Motion To Proceed As Indigent":
  - The Impound Petitioner has established that he/she is indigent pursuant to the standards set forth in RCW 10.101.010(1) and the \$39.00 filing fee is waived.
  - The Impound Petitioner has failed to establish that he/she is indigent pursuant to the standards set forth in RCW 10:101.010(1) and the \$39.00 filing fee must be paid before the impound hearing shall take place.
    - This impound hearing is continued until \_\_\_\_\_ to provide the Impound Petitioner time to pay the filing fee. No additional continuances of the hearing shall be granted.
- The driver of the above referenced vehicle:
  - Was driving the above referenced vehicle in the City of Kent during a period that his/her license or privilege to drive was in a suspended or revoked status in this or any other State.
  - Has not been shown to have been driving the above referenced vehicle in the City of Kent during a period that his/her license or privilege to drive was in a suspended status in this or any other State.

FINDINGS, CONCLUSIONS AND ORDER ON  
IMPOUND HEARING - 1

- The impound of the vehicle:
- Was proper based on the facts and circumstances.
  - Was improper based on the following: \_\_\_\_\_

- The towing and impound fees: *not challenged.*
- Were charged in accordance with the contract rates and were therefore proper.
  - Were not charged in accordance with the contract rates and were therefore improper.

A hardship, as defined in Kent City Code 9.39.030(D), exists.

NOW THEREFORE, the Court orders as follows:

- The vehicle shall be released only upon payment of all towing and storage fees, and after the mandatory impound period of  15 days  30 days  60 days  90 days  
 Other: \_\_\_\_\_ has expired. *City of Kent will be responsible for payment of all storage fees from date of impound to 3/30/09.*
- The Court has entered a finding that a hardship exists. Accordingly, the vehicle should be released to the driver's spouse upon payment of towing and storage fees incurred to this date and upon showing proof that said spouse has a valid driver's license and proof of insurance on said vehicle.
- The Court has entered a finding that the towing and impound fees were improper. The fees are therefore adjusted as follows (only the fees found to be improper are adjusted. If no correction is made, then the Court has found the specific fee charged to be proper): Towing Fee: \_\_\_\_\_  
 Storage Fees: \_\_\_\_\_ per day; Miscellaneous Fees: \_\_\_\_\_.
- The Court has entered a finding that the impound was improper. Accordingly, the vehicle is to be released to the impound petitioner immediately, without cost to such person, and any filing fee previously paid in the above matter shall be returned to the impound petitioner.
- Vehicle shall only be released to third party - authorized by petitioner - to pick up vehicle (must have valid OH license)*

DATED this 30 day of March, 2009

*Any storage fees after 3/30/09 will be the responsibility of the Petitioner / Raymond Man*

*Karl Kustim Jorgensen*  
 Judge/Pro-Tem/Court Commissioner/Magistrate

**Ex. 4**

CASE: K00075218  
Civil

PLAINTIFF/PETITIONER  
R 01 MANN, RAYMOND

DEFENDANT/RESPONDENT  
RSP 01 CITY OF KENT  
220 4TH AVE S  
KENT WA 98032

619 1ST AVE SO APT 5  
State of Washington  
KENT County of King  
City of Kent  
**CERTIFICATION**

The undersigned, duly authorized clerk of the Kent Municipal Court, Washington, hereby certifies or declares under penalty of perjury that the document on which this stamp is imprinted is a true and correct copy of the original filed in this court. Signed this 25<sup>th</sup> day of September 2009

RSP 03 PRO TOW  
3933 SE 264TH  
MAPLE VALLEY WA 98038

TITLE  
CITY OF KENT VS RAYMOND MANN

Filed: 03/17/2009 Cause: Public Tow

DV: Amount:

TEXT

S 03/17/2009 Case Filed on 03/17/2009 TKB  
 PET 1 MANN, RAYMOND Added as Participant  
 RSP 1 CITY OF KENT Added as Participant  
 RSP 3 PRO TOW Added as Participant  
 9076100325 CIV FILING FEE Received 39.00  
 Paid by: MANN, RAYMOND

U DEF AT FRONT COUNTER REQUESTING AN IMPOUND HEARING  
 S NJT TOW Set for 03/24/2009 01:15 PM  
 in Room I with Judge GMP

U 03/24/2009 3-2:42 JUDGE PRO TEM: K. JORGENSEN, PA HARDY LLC  
 DEF PRESENT WITH ATTY D. KIRSHENBAUM  
 DEFENSE REQUESTS COURT RELEASE VEHICLE  
 CITY OBJECTS  
 HEARING CONTINUED TO MONDAY AT 1:30 - RM 3 FOR PRO TEM  
 JORGENSEN TO HEAR  
 BRIEF'S IF ANY ARE TO BE FILED BY FRIDAY AT 4:00

S NJT TOW Set for 03/30/2009 01:15 PM  
 in Room I with Judge GMP

U FILE TO PRO TEM JORGENSEN  
 S NJT TOW: Held

U 03/27/2009 FILED: THE RESPONDENT CITY'S RESPONSE TO THE PETITIONER'S ADS  
 IMPOND HEARING

03/30/2009 FAXED COPY OF POLICE REPORT RECEIVED BRG  
 3-1:00 JUDGE PRO TEM JORGENSEN, PA, STORMES LLC  
 DEF NOT PRESENT/ ATTY KIRSHENBAUM PRESENT  
 COURT FINDS IMPOUND PROPER  
 COURT WILL RELEASE VEHICLE TO DEF IMMEDIATELY

S NJT TOW: Held  
 U FINDINGS, CONCLUSIONS AND ORDER FOLLOWING VEHICLE IMPOUND  
 HEARING SIGNED JUDGE PRO TEM K. JORGENSEN.  
 THE VEHICLE SHALL BE RELEASED IMMEDIATELY UPON PAYMENT OF  
 ONLY INITIAL TOW AND IMPOUND FEES.  
 THE CITY OF KENT WILL BE RESPONSIBLE FOR PAYMENT OF ALL  
 STORAGE FEES FROM DATE OF IMPOUND TO 3/30/09.  
 VEHICLE SHALL ONLY BE RELEASED TO THIRD PARTY - AUTHORIZED  
 BY PETITIONER TO PICK UP VEHICLE. (MUST HAVE VALID OPERATORS

CASE: K00075218  
Civil

PLAINTIFF/PETITIONER  
P 01 MANN, RAYMOND

DEFENDANT/RESPONDENT  
RSP 01 CITY OF KENT

TEXT - Continued

U 03/30/2009 LICENSE AND INSURANCE) ANY STORAGE FEES AFTER 3/30/09 WILL BE THE RESPONSIBILITY OF THE PETITIONER RAYMOND MANN. LLC

S Case Disposition of CL Entered

U 04/01/2009 FILE TO CLOSED MARCH 2009

04/28/2009 FILED: NOTICE OF APPEAL EMB  
- FILED BY CITY

FILED: MOTION TO DESIGNATE RECORD

FILED: REQUEST FOR RECORDINGS

04/29/2009 ORIGINAL NOTICE OF APPEAL AND CHECK FOR \$200 CIVIL FILING FEE FORWARDED TO KING COUNTY SUPERIOR COURT

05/01/2009 ORIGINAL NOTICE OF APPEAL SUPERIOR COURT #09-2-17404-1KENT

06/22/2009 COPY OF CD'S FROM 3/24/09 AND 3/30/09 HEARINGS FORWARDED TO CITY ATY'S OFFICE FOR APPEAL TRANSCRIPT.  
NOTICE OF FILING TRANSCRIPT FORWARDED TO KING COUNTY SUPERIOR COURT

ADDITIONAL CASE DATA

Case Disposition

Disposition: Closed

Date: 03/30/2009

Hearing Summary

Held	IMPOUND HEARING	ON 03/24/2009 AT 01:15 PM IN ROOM I	WITH GMP
Held	IMPOUND HEARING	ON 03/30/2009 AT 01:15 PM IN ROOM I	WITH GMP

End of docket report for this case



RECEIVED

JUN 17 2010

APPELLATE COURT

**IN THE SUPERIOR COURT IN AND FOR THE STATE OF WASHINGTON,  
IN AND FOR THE COUNTY OF KING**

CITY OF KENT,	)	
	)	COURT OF APPEALS # 64672-9-I
Petitioner,	)	SUPERIOR COURT # 09-2-17404-1SEA
	)	
v.	)	
	)	<b>ELECTRONIC RECORD</b>
RAYMOND MANN,	)	<b>TRANSCRIPTION</b>
	)	
Respondent.	)	
	)	
	)	
	)	

VERBATIM REPORT OF PROCEEDINGS, taken before the  
HONORABLE THERESA B. DOYLE

APPEARANCES

FOR THE PLAINTIFF/PETITIONER:  
Ms. Stormes

FOR THE DEFENDANT/RESPONDENT:  
Mr. Kirshenbaum

Legal Ease Transcriptions  
9926 195<sup>th</sup> Ave. E.  
Bonney Lake, WA 98391  
(253) 987-7769

INDEX

ARGUMENT

BY MS. STORMES ..... 2:16

ARGUMENT

BY MR. KIRSHENBAUM ..... 8:3

1 COURT CLERK: (Inaudible) presiding.

2 JUDGE DOYLE: Thank you. You may be seated. Good  
3 morning.

4 MS. STORMES: Good morning, Your Honor.

5 MR. KIRSHENBAUM: Good morning.

6 JUDGE DOYLE: This is Kent versus Raymond Mann  
7 and it's cause number 09-2-17404-1 Kent designation. And this is Kent's  
8 appeal from the lower Court's determination on an impound.

9 MS. STORMES: Yes, Your Honor.

10 JUDGE DOYLE: And you're Ms. Stormes.

11 MS. STORMES: Yes, Your Honor. Good morning.

12 JUDGE DOYLE: Good morning. And Mr...

13 MR. KIRSHENBAUM: Kirshenbaum (inaudible).

14 JUDGE DOYLE: Very good. Welcome. Okay. And so  
15 ten minutes per side. Would you like to begin Ms. Stormes?

16 MS. STORMES: Yes, Your Honor. Thank you. Your  
17 Honor, I don't intend to take the full ten minutes mostly because I don't  
18 wish my argument to be longer than the City's brief. The issue is pretty  
19 succinct. I don't believe that we're here—and if obviously Mr.  
20 Kirshenbaum disagrees with me he'll speak up—but I don't believe we're  
21 here to argue the legality of the tow itself. There's no dispute that the  
22 defendant was suspended on the day in question. There's also—the City  
23 would argue no issue that the officer exercised his discretion, although

1 Mr. Kirshenbaum in his brief does question the Court's ruling, there's no  
2 basis to argue—I'm sorry—there's no argument really made against the  
3 officer exercising his discretion in mandating the tow. The issue arises  
4 when we talk about the duration of the tow. And the City maintains that  
5 the Court's decision—that the duration of the tow was somehow improper  
6 and violated the statute—the City believes is an error as a matter of law  
7 and is an abuse of discretion. And as I set forth in my brief—and I'll kind  
8 of go through this briefly. The issue of whether or not the car may be held  
9 for up to 30 days. And the statute is clear. The RCW is clear that when  
10 somebody is stopped and arrested for Driving While License Suspended  
11 in the 2<sup>nd</sup> Degree, the car may be held for up to 30 days.

12 JUDGE DOYLE: Right.

13 MS. STORMES: The RCW—I believe it's 46.55.120 that  
14 permits that.

15 JUDGE DOYLE: Right. At the written direction of the  
16 agency ordering the vehicle impounded.

17 MS. STORMES: Exactly, Your Honor. And the City  
18 maintains that the party that authorizes that duration of the time is the City  
19 of Kent. While the RCW leaves it discretionary as far as the period of  
20 time may be up to 30 days, the City was well within its discretion when  
21 the City Council, the legislative branch, adopted the maximum period  
22 available to it under the law to hold the vehicle. Now...

1 JUDGE DOYLE: Okay. Could you distinguish the  
2 situation that Kent is in from—let's see. I read both of the opinions.  
3 Becerra—this is a Honda Accord case.

4 MS. STORMES: Your Honor, the Honda Accord case—  
5 I'm sorry.

6 JUDGE DOYLE: No, go ahead.

7 MS. STORMES: I believe was the case where the State  
8 Patrol had essentially a rule that mandated the impoundment that  
9 removed all discretion from the officer, including the initial discretion  
10 required under 46.55.113.

11 MR. KIRSHENBAUM: That was the Chevrolet case. I  
12 don't mean to interrupt.

13 JUDGE DOYLE: Thanks.

14 MR. KIRSHENBAUM: Well, that's—my recollection—  
15 well, the issue is is that when discussing the mandatory impoundment  
16 period, I don't believe that in the case—in the Honda Accord case, if I am  
17 mixing them up—really addressed the mandatory hold period other than,  
18 for lack of a better way of putting it, in dicta. It talked about discretion of  
19 the officer throughout, but the 30 day hold period was mentioned almost  
20 in passing and my recollection of the reading of the case and the  
21 mandatory hold period itself wasn't the (inaudible) issue. It was the fact  
22 that it again argued removal discretion from the officer. Now if I may Your  
23 Honor...

1                   JUDGE DOYLE:    But that's real—and I'm looking at the  
2 language in the Becerra decision right now. And that's at—well, it's my  
3 page five. It's under section B, the fourth paragraph. Okay. It says the  
4 Warden Municipal Court's—Municipal Code is nearly identical to the WAC  
5 that states the vehicle shall be impounded. And they're talking about the  
6 Chevrolet truck case. But then the Court also says that RCW  
7 46.55.120(1)(a) permissibly states the vehicle may be held for a relevant  
8 period of time and the City's code affords no room for discretion as to the  
9 term of impoundment.

10                   MS. STORMES:    Exactly Your Honor. And that's where  
11 the City—the City of Kent I should say, maintains that it's dicta because  
12 whose discretion other than the officer's would the Court in that case be  
13 referring to? The City as the agency authorizing the tow may order the  
14 vehicle held up to 30 days for this particular violation. I think the Court's  
15 silence as to whose discretion they're referring to and the implication that  
16 it's the officer's discretion or the (inaudible)—or the lower Court's  
17 discretion is in error because the agency authorizing the tow is not the  
18 Court. The agency authorizing the tow certainly isn't the officer. The  
19 officer is simply the person deciding on whether or not the car will be  
20 towed. The agency authorizing the tow is the City, is the executive  
21 branch—or the legislative branch of the City by adopting the maximum  
22 period available under the statute. It is illogical—and this is the  
23 implication I took from reading that case. It's illogical to say that the

1 discretion in the field is the officer's when he's processing a criminal  
2 charge, when he's out on the street, when he's patrolling and doing his  
3 duty. It's illogical to expect him to sit there and say huh, should I impound  
4 this car for ten days, seven days, twenty days, or thirty days? That's  
5 illogical. The fact that the City, as the legislative authority, takes  
6 advantage of what's available to it under the law and maximizes that to  
7 remove that issue from the officer in the field was totally appropriate  
8 under the statute. And I think that the Court's silence as to whose  
9 discretion it is and the implication that discretion belongs to either the  
10 Court or the officer again is in error. A strict reading of the statute  
11 indicates that the only party that can exercise that discretion would be the  
12 legislative branch, the Kent City Council, by adopting the Kent City Code  
13 and taking advantage of the maximum period. Now the issue I think in  
14 this case and this is why, again, I have to go by the implication in the case  
15 that Your Honor just referred to, is that the lower Court here maintained  
16 that its discretion had been taken away by the City's exercising its  
17 authority to impound the vehicle for the maximum period.

18 JUDGE DOYLE: Okay. You don't need to argue that  
19 because I think was incorrect.

20 MS. STORMES: The City's argument, Your Honor?

21 JUDGE DOYLE: No. I think that was—I'm agreeing with  
22 you.

23 MS. STORMES: Thank you.

1 JUDGE DOYLE: That the Trial Court was wrong with  
2 respect to that prong of the ruling.

3 MS. STORMES: Okay. Then—and again, because the  
4 implication that Becerra would—and we can take it either by both  
5 examples. The example I've given of the officer or the lower Court  
6 deciding the duration of the tow, neither one of them are the agency  
7 authorizing the tow. The City—I understand that what the City is asking is  
8 possibly a little extraordinary, if that's not an oxymoron, to ask the Court  
9 to find that the implication in Becerra is in error. Because the Court,  
10 again, is not specific as to who gets to exercise that authority in terms of  
11 how long the tow can occur—or the impoundment, I'm sorry, can go on.  
12 The statute, the RCW 46.55.120, is very clear that there is a period of  
13 time that the car can be held. And case law and the Washington State  
14 Constitution says that as long as it doesn't contravene state law, City  
15 ordinances can be enacted. The City did nothing wrong when it opted to  
16 take advantage of the full period of that 30 day tow—or that 30 day  
17 impoundment. And I would query who the Court is referring to in terms of  
18 discretion in that case. Obviously the lower Court believed that it was its  
19 discretion. The implication in that case would be that it's the officer's  
20 discretion because of its reliance on (inaudible) Chevrolet Truck. The  
21 City argues that that is against the black letter law reading of the statute.  
22 And would argue, that while that case may be on point, that the  
23 implication that it's not the City's discretion to exercise is in error.

1 JUDGE DOYLE: Okay. All right. Thank you. And Mr.  
2 Kirshenbaum.

3 MR. KIRSHENBAUM: Thank you, Your Honor. I don't  
4 have a lot to say. I really don't think that the City of Kent's ordinance is  
5 distinguishable from the Warden ordinance. And I think the Court was  
6 right in that. And I think that's—in the Honda case, that's exactly how the  
7 Court avoided any constitutional issues under Article 1, section 7, was by  
8 making it not mandatory to time periods and impoundments. And the  
9 Warden ordinance is exactly the same as Kent's ordinance. And I've  
10 always been a little surprised that when that case came down Kent didn't  
11 change their ordinance, but they didn't. And the law's for a mandatory  
12 period. It doesn't—it says shall, it doesn't say may, as authorized by the  
13 statute. It goes beyond its delegation and we'd ask the Court to affirm the  
14 lower Court.

15 JUDGE DOYLE: Okay. All right. Very good. Well I tend  
16 to agree with Mr. Kirshenbaum. I'm going to review the two cases again  
17 and the ordinance and the statute, in light of Ms. Stormes' argument that  
18 it doesn't make any sense. I think what you're saying is it doesn't make  
19 any sense to give the discretion to the officer because the officer cannot  
20 determine in the field what period of impoundment to use. Am I correct?

21 MS. STORMES: Well, I don't want to say cannot. I'm  
22 saying it's illogical given the officer's responsibility. Once—my argument  
23 is essentially that, Your Honor, once the discretion is exercised to tow...

1 JUDGE DOYLE: To impound or not impound. Okay.

2 MS. STORMES: ....then the impound discretion has  
3 already been exercised by the agency authorizing the tow of the City of  
4 Kent. So yes, to sum up, your statement is true. Thank you.

5 JUDGE DOYLE: Okay, great. Thank you. I should be  
6 able to decide this today.

7 MR. KIRSHENBAUM: (Inaudible).

8 JUDGE DOYLE: Pardon me?

9 MR. KIRSHENBAUM: A proposed order.

10 JUDGE DOYLE: Yes, please. I'm not sure that I have  
11 one from either of you. Okay. Great. Thank you very much. It was  
12 excellent briefing and argument. It's an interesting, narrow issue.

13 MR. KIRSHENBAUM: Thank you, Your Honor.

14 MS. STORMES: (Inaudible) tow hearing, that's I'm sure  
15 not said very often. Thank you, Your Honor.

16 (END OF RECORDING)

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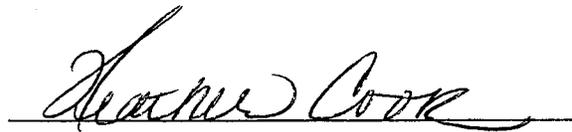
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I, Heather Cook, certify under penalty of perjury under the laws of the State of Washington that the foregoing transcript is true and correct to the best of my skill and ability.

DATED this 18<sup>th</sup> day of May, 2010 in Bothell, Washington.

A handwritten signature in cursive script that reads "Heather Cook". The signature is written in black ink and is positioned above a horizontal line.

Heather Cook



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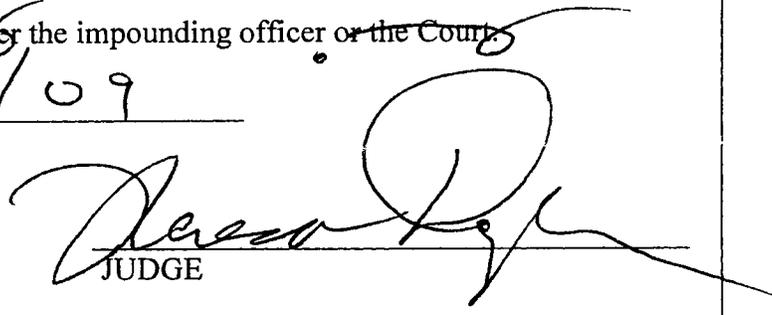
SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CITY OF KENT,	)	
	)	
Plaintiff/Appellant,	)	
	)	NO. 09-2-17404-1 SEA
vs.	)	<del>Proposed</del>
	)	ORDER AFFIRMING LOWER
MANN, RAYMOND,	)	COURT'S DECISION
	)	
Defendant/Respondent.	)	
_____	)	

This matter having come on regularly for oral argument, the parties being represented by counsel, and the Court being fully advised in the premises, it is hereby

ORDERED the lower court's decision is affirmed as the City of Kent's impound ordinance is in violation of RCW 46.55 et seq., as it mandates <sup>the term of</sup> impoundment and fails to allow for the use of discretion by either the impounding officer or the Court.

DATED: 12/16/09

  
 \_\_\_\_\_  
 JUDGE

Presented by:  
 \_\_\_\_\_  
 David R. Kirshenbaum WSBA 12706  
 Attorney for Defendant/Respondent Mann

ORD AFFIRM LOW CRT DEC

Kirshenbaum & Goss, Inc., P.S.  
 1314 Central Avenue South ♦ Suite 101  
 Kent, Washington 98032-7430  
 (253) 852-7979 ♦ Fax (253) 852-6337

COPY

**Ex. 7**

RCWs > Title 46 > Chapter 46.55 > Section 46.55.113

46.55.110 << 46.55.113 >> 46.55.115

### RCW 46.55.113

## Removal by police officer.

(1) Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502, 46.61.504, 46.20.342, or 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

(a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to transport a person with disabilities under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(g) Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone;

(i) When a vehicle with an expired registration of more than forty-five days is parked on a public street.

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)(a)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

[2007 c 242 § 1; 2007 c 86 § 1; 2005 c 390 § 5. Prior: 2003 c 178 § 1; 2003 c 177 § 1; 1998 c 203 § 4; 1997 c 66 § 7; 1996 c 89 § 1; 1994 c 275 § 32; 1987 c 311 § 10. Formerly RCW 46.61.565.]

### Notes:

**Reviser's note:** This section was amended by 2007 c 86 § 1 and by 2007 c 242 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Finding -- 1998 c 203:** See note following RCW 46.55.105.

**Short title -- Effective date -- 1994 c 275:** See notes following RCW 46.04.015.

**Ex. 8**

RCWs > Title 46 > Chapter 46.55 > Section 46.55.120

46.55.117 << 46.55.120 >> 46.55.130

## RCW 46.55.120

# Redemption of vehicles — Sale of unredeemed property — Improper impoundment.

\*\*\* CHANGE IN 2009 \*\*\* (SEE 1362-S.SL) \*\*\*

(1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department. In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency may issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (a)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(b) If the vehicle is directed to be held for a suspended license impound, a person who desires to redeem the vehicle at the end of the period of impound shall within five days of the impound at the request of the tow truck operator pay a security deposit to the tow truck operator of not more than one-half of the applicable impound storage rate for each day of the proposed suspended license impound. The tow truck operator shall credit this amount against the final bill for removal, towing, and storage upon redemption. The tow truck operator may accept other sufficient security in lieu of the security deposit. If the person desiring to redeem the vehicle does not pay the security deposit or provide other security acceptable to the tow truck operator, the tow truck operator may process and sell at auction the vehicle as an abandoned vehicle within the normal time limits set out in RCW 46.55.130(1). The security deposit required by this section may be paid and must be accepted at any time up to twenty-four hours before the beginning of the auction to sell the vehicle as abandoned. The registered owner is not eligible to purchase the vehicle at the auction, and the tow truck operator shall sell the vehicle to the highest bidder who is not the registered owner.

(c) Notwithstanding (b) of this subsection, a rental car business may immediately redeem a rental vehicle it owns by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound.

(d) Notwithstanding (b) of this subsection, a motor vehicle dealer or lender with a perfected security interest in the vehicle may redeem or lawfully repossess a vehicle immediately by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound. A motor vehicle dealer or lender with a perfected security interest in the vehicle may not knowingly and intentionally engage in collusion with a registered owner to repossess and then return or resell a vehicle to the registered owner in an attempt to avoid a suspended license impound. However, this provision does not preclude a vehicle dealer or a lender with a perfected security interest in the vehicle from repossessing the vehicle and then selling, leasing, or otherwise disposing of it in accordance with chapter 62A.9A RCW, including providing redemption rights to the debtor under RCW 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound.

(e) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (b) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle, or item of personal property registered or titled with the department, written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the appropriate court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section and more than five days before the date of the auction. At the time of the filing of the hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle or other item of personal property registered or titled with the department, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under

oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for the amount of the filing fee required by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO: . . . . .

YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the . . . . . Court located at . . . . . in the sum of \$ . . . . ., in an action entitled . . . . ., Case No. . . . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice.

DATED this . . . . day of . . . . ., (year) . . .

Signature . . . . .

Typed name and address

of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees.

[2004 c 250 § 1; 2003 c 177 § 2; 2000 c 193 § 1. Prior: 1999 c 398 § 7; 1999 c 327 § 5; 1998 c 203 § 5; 1996 c 89 § 2; 1995 c 360 § 7; 1993 c 121 § 3; 1989 c 111 § 11; 1987 c 311 § 12; 1985 c 377 § 12.]

**Notes:**

**Findings -- Intent -- 1999 c 327:** See note following RCW 9A.88.130.



**[KCC] 9.39.030 Impoundment of vehicles when driver arrested for violation of driving while license suspended or revoked or operation of motor vehicle under other license while suspended.**

*A. Impoundment of vehicles authorized.*

1. Whenever the driver of a vehicle is arrested for a violation of driving while license suspended or revoked (RCW 46.20.342) or operation of motor vehicle under other license or permit prohibited while license is suspended or revoked (RCW 46.20.345), as these provisions are currently enacted or hereafter amended, the vehicle is subject to impoundment at the direction of a law enforcement officer.

2. It shall be the responsibility of the owner or other person lawfully charged with possession of a vehicle to ensure that any person driving such vehicle has a valid license. It shall not be a defense to impoundment or to the payment of any of the costs of impound that the owner or other person lawfully charged with the vehicle was not aware that the driver's license was suspended, revoked, or otherwise invalid.

*B. Impoundment periods.*

1. If a vehicle is impounded because the driver is arrested for a violation of RCW 46.20.342 (1)(c) (driving while license suspended or revoked in the third degree) or 46.20.345, the vehicle shall be redeemable immediately pursuant to subsection (B)(6) of this section.

2. If a vehicle is impounded because the driver is arrested for a violation of RCW 46.20.342 (1)(a) (driving while license suspended or revoked in the first degree) or 46.20.342(1)(b) (driving while license suspended or revoked in the second degree) and the Washington Department of Licensing's records show that the driver has not been convicted of a violation of RCW 46.20.342(1)(a) or (b) or equivalent local ordinance within the past five (5) years, the vehicle shall be impounded for thirty (30) days.

3. If a vehicle is impounded because the driver is arrested for a violation of RCW 46.20.342(1)(a) or (b) and the Washington Department of Licensing's records show that the driver has been convicted one (1) time of a violation of RCW 46.20.342(1)(a) or (b) or equivalent local ordinance within the past five (5) years, the vehicle shall be impounded for sixty (60) days.

4. If a vehicle is impounded because the driver is arrested for a violation of RCW 46.20.342 (1)(a) or (b) and the Washington Department of Licensing's records show that the driver has been convicted of a violation of RCW 46.20.342(1)(a) or (b) or equivalent local ordinance two (2) or more times within the past five (5) years, the vehicle shall be impounded for ninety (90) days.

5. At the conclusion of the applicable period of impoundment, if any, the registered owner, a person authorized by the registered owner, or one who has purchased the vehicle from the registered owner, who produces proof of ownership or authorization and signs a receipt therefor, may redeem an impounded vehicle. A towing contractor may use any reasonable means necessary to confirm that the person redeeming the vehicle is authorized to redeem the vehicle, and neither the city nor the tow company shall be

responsible for any loss resulting from a delay during the time in which the towing contractor is confirming authorization.

6. Prior to redeeming the impounded vehicle, any person redeeming a vehicle impounded pursuant to this section shall pay the towing contractor for the costs of impoundment, including removal, towing, and storage fees accrued as a result of the impoundment. The towing contractor shall accept payment as provided in RCW 46.55.120 and other applicable statutes as currently enacted or hereafter amended. If the vehicle was impounded pursuant to this section and was being operated by the registered owner when it was impounded, it may not be released to any person until all traffic-related penalties, fines, and forfeitures owed by the registered owner have been satisfied.

7. A vehicle impounded pursuant to this section may be searched incident to the arrest of the driver, or inventoried incident to the impound of the vehicle pursuant to the laws of the state of Washington and the United States. With the exception of personal property seized by a police officer, personal property contained within an impounded vehicle shall continue to be the responsibility of its owner, or the person driving the vehicle, and shall be dealt with pursuant to the requirements of RCW 46.55.090 and other applicable statutes as now enacted or hereafter amended. Property which is attached to the vehicle with electronic wiring, or by bolts, screws, glue, or other adhesive material, shall be considered a component of, or a part of, the vehicle for purposes of impoundment.

*C. Impound hearing.*

1. When a vehicle is impounded pursuant to this section, the tow truck operator shall send notice to the legal and registered owners as required by RCW 46.55.110 and other applicable statutes as now enacted or hereafter amended.

2. Any person seeking to redeem a vehicle impounded pursuant to this section has a right to a hearing in the Kent municipal court without a jury. The purpose of this hearing is solely to contest the validity of the impoundment or the amount of removal, towing, and storage fees. A person may waive the right to a hearing and, subject to the requirements of subsection (B) of this section, redeem the vehicle at the end of the applicable period. Failure to request a hearing pursuant to this subsection (C) shall constitute a waiver of the hearing.

3. A request for a hearing must: (a) be in writing in a form approved by the administrator of the Kent municipal court, (b) be signed by the person contesting the impound, and (c) be received by the Kent municipal court within ten (10) days of the date the notice of impoundment was mailed or given to such person pursuant to RCW 46.55.110 or 46.55.120(2)(a), whichever is later. At the time of the filing of the request for hearing, the petitioner must pay to the court a filing fee in the amount of thirty-nine dollars (\$39.00).

4. The hearing shall be provided as follows:

a. The court, within five (5) days after a proper request for a hearing has been received, shall set the hearing date and send notice of the date, time, and location of the hearing to the registered and legal owners of the vehicle or other item of personal property registered or titled with the Department of

Licensing, the person requesting the hearing if not the owner, the tow truck operator, and the person or agency authorizing the impound.

b. If the vehicle is still impounded at the time the written request is received, the court shall set the hearing within seven (7) days of receipt of the written request. If the vehicle has been released from impound at the time the written request is received, the court shall set the hearing within forty-five (45) days.

c. Any person seeking a hearing who has failed to request such hearing within the time requirements set forth in subsection (C)(3) of this section may petition the court for an extension to file a request for hearing. Such extension shall be granted only upon the demonstration of good cause as to the reason(s) the request for hearing was not timely filed and only in the event that notice of the auction of the vehicle has not been published by the tow truck operator pursuant to the requirements of RCW 46.55.110, 46.55.130, and other applicable statutes as now enacted or hereafter amended. For the purposes of this section, "good cause" shall be defined as circumstances beyond the control of the person seeking the hearing that prevented such person from filing a timely request for hearing. In the event such extension is granted, the date of granting the extension shall be treated as the date the hearing request was received. In the event that an extension is granted, additional fees resulting from the storage of the vehicle caused by the delay in the hearing shall be paid by the person requesting the extension, regardless of whether the impound is determined to be lawful or unlawful.

d. If a person fails to file a request for hearing within the time periods required, and no extension to file a request has been granted, the right to a hearing is waived, the impoundment and the associated costs of impoundment are deemed to be proper, and the city shall not be liable for any charges arising from the impound.

e. For the purposes of this section, any computation of time shall be in accordance with Civil Rule 6(a) of the Washington Court Rules.

f. Delivery of notices required by this section shall be deemed proper three (3) calendar days after the date such notice is sent by regular first class mail, or in any other manner reasonably calculated to reach the intended recipient. For the purposes of delivering notices required by this section, the address of the intended recipient which is either listed on a citation issued by a police officer, or which appears on any record maintained by or for the Department of Licensing, or which appears on any document or correspondence filed with the court by the intended recipient, shall be an appropriate and accurate address of the intended recipient.

5. Hearings shall, at the discretion of the court, be held by a judge, commissioner, judge pro tempore, or magistrate of the Kent municipal court, who shall determine whether the impoundment was proper and/or whether the associated removal, towing, storage, and any administrative fees were proper. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

6. The court may consider the criminal citation, the notice of traffic infraction, the authorization to impound created pursuant to KCC 9.39.040, and any other written report made under penalty of perjury submitted by the city of Kent or other impounding agency in lieu of the officer's personal appearance at the hearing. The court may also consider an abstract of driving record and electronically printed registration information, without further evidentiary foundation. Such records shall constitute prima facie evidence of the status of the driver's or contestant's license to drive a motor vehicle, the proper period of impoundment, or the ownership of the impounded motor vehicle. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in court.

7. The burden of proof is upon the city to establish that the impound was proper by a preponderance of the evidence.

8. If the impoundment is found to be proper, the court shall enter an order so stating. The court's order shall provide that the impounded vehicle shall be released only after the applicable impound period has expired and the redemption requirements of subsections (B)(5) and (6) of this section have been satisfied. The court shall grant time payments only in the cases of extreme financial need, and only after a finding of such extreme financial need, and only where there is an assured and effective guarantee of payment.

9. If the impoundment is found to be improper, the court shall enter an order so stating and order the immediate release of the vehicle. If the costs of impoundment have already been paid, the court shall order the refund by the city of the costs of impoundment. If the impoundment is determined to be improper, and a filing fee was paid, the filing fee shall be returned to the payor.

10. In the event the court finds that the impoundment was proper, but the removal, towing, storage, or administrative fees charged for impoundment were not in compliance with the posted or contracted rates, the court shall determine the correct fees to be charged. If the costs of impoundment have been overpaid, the court shall order a refund by the towing company of the costs of impoundment for the amount of the overpayment. If the costs of impoundment have been overpaid, and a filing fee was paid, the filing fee shall be returned to the payor.

11. No determination of facts made at a hearing under this section shall have any collateral estoppel effect on a subsequent criminal prosecution and such determination shall not preclude litigation of those same facts in a subsequent criminal prosecution.

12. The hearing procedures set forth in this subsection shall apply only to hearings set pursuant to this section.

13. The court, in its discretion, may waive the filing fee required by subsection (C)(3) of this section upon proof by competent evidence that the person who is requesting the hearing is indigent as that term is defined in RCW 10.101.010(1).

*D. Economic or personal hardship – Rental cars – Vehicle dealer or lender with perfected security interest – Exceptions.*

1. The court is authorized to release a vehicle impounded pursuant to this section prior to the expiration of any period of impoundment upon petition of a family member or dependent person of the driver based upon economic or personal hardship to such family member or dependent person resulting from the unavailability of the vehicle and after consideration of the threat to public safety that may result from the release of the vehicle, including, but not limited to, the driver's criminal history, driving record, license status and access to the vehicle. If such release is authorized, the person redeeming the vehicle must satisfy the redemption requirements of subsection (B)(5) and (6) of this section. The decision to release the vehicle pursuant to this subsection shall not create any duty to protect any individual. The release of a vehicle pursuant to this subsection shall be available to a relative or dependent person of the driver one (1) time only.

2. Pursuant to RCW 46.55.120, as now enacted or hereafter amended, a rental car business may immediately redeem a rental vehicle it owns upon payment of the costs of removal, towing, and storage.

3. Pursuant to RCW 46.55.120, as now enacted or hereafter amended, a motor vehicle dealer or lender with a perfected security interest in the vehicle may immediately redeem or repossess a vehicle it owns upon payment of the costs of removal, towing, and storage.

E. *Sale of vehicle.* Any vehicle impounded pursuant to this section shall be subject to the sale provisions of RCW 46.55.130 and other applicable statutes, as now enacted or hereafter amended.

F. *Authority to enforce.* The chief of police, or his or her designee, and the court are hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this section.  
(Ord. No. 3464, § 2, 7-6-99; Ord. No. 3569, § 1, 8-7-01)

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IN THE COURT OF APPEALS  
DIVISION ONE  
OF THE STATE OF WASHINGTON

CITY OF KENT,

Plaintiff/Petitioner,

vs.

RAYMOND MANN,

Defendant/Respondent.

NO. 09-2-17404-1 KNT

DECLARATION OF  
MAILING

I declare as follows:

I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, competent to be a witness herein, and have personal knowledge of the facts stated below.

Declaration of Mailing - 1

TOM BRUBAKER  
Kent City Attorney  
220 - 4<sup>th</sup> Avenue South  
Kent, Washington 98032  
P: (253) 856-5770  
F: (253) 856-6770

On August 9, 2010, or thereabouts, and in the manner indicated below, I caused the City's Brief of Appellant to the Court of Appeals Division One to be served upon the defendant/respondent care of his attorney, David Kirshenbaum, at the following address: 1314 Central Avenue South, Suite 101, Kent, Washington, 98032.

- By U.S. Mail - First Class, Postage Pre-Paid  
 By Legal Messenger  
 By Facsimile

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Kent, King County, Washington, on the 9<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
Kathleen Studer  
Prosecution Paralegal